

Burning Issues

Tobacco's Hottest Topics

Tobacco-Related Disease Research Program Newsletter

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Proposition 86 in California "Smoked" and Rests in Peace for Now!

Obituary

November 7, 2006. California, USA.
by: Kamlesh Asotra, Ph.D.

Proposition 86 on the November 2006 California ballot died at the polling booths today. Nearly 6.8 million Californians, from amongst 16 million registered voters hailing from 25,090 precincts and of various political leanings, were present—48% on the "yes" and 52% on the "no" side of the decedent's bed to witness the sad end.¹ In the end, a majority of 295,052 "no" voters sealed the fate of Prop. 86.

Proposition 86 succumbed to a shootout perpetrated by its foes, despite the very best efforts and care provided by its sponsors.

Proposition 86 is survived by its 18 year-old predecessor, Proposition 99 and its progeny including Assembly Bill 13, Proposition 10, and several local ordinances in California.

The bereaved family members across California are mourning this tragedy and blame the murder on the opponents of Proposition 86, especially the R.J. Reynolds and Philip Morris tobacco companies who both provided the money and the hit men.

The voluntary health organizations that co-sponsored Proposition 86 are considering re-introducing the defeated tobacco-tax increase, citing the approval of tobacco measures in other states.²

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Postmortem: anatomy of defeat

by Kamlesh Asotra, Ph.D.

To understand why this battle between the proponents and opponents of Proposition 86 resulted in its death, it is important to learn more about the victim and the circumstances surrounding its fate. An analysis of the origins of Proposition 86, its intent, and the events occurring during several weeks before the shootout may provide clues about the modus operandi of the opponents. This knowledge may help Californians avert such a tragedy in the future.

Origin of Proposition 86

Impressive and measurable successes of various programs created and supported by tobacco-tax revenues as a result of Prop. 99 and the dwindling tobacco-tax revenues in recent years because of declining smokers in California, served as the inspiration and rationale for Prop. 86. Several groups had been independently considering new initiatives for quite some time to generate much needed additional funds to sustain very successful programs thus far funded by Prop. 99. Of these, two groups emerged that planned to craft initiatives for raising tobacco tax in California that could be used for health care and research. One of these groups was composed of the voluntary health organizations that included the American Cancer Society, the American Heart Association, and the American Lung Association of California, who wanted to use the revenue from tax increase for tobacco control programs and research. The other group was the California Hospital Association, which wanted most of the money for patient care. Recognizing that there would be two mutually competing initiatives for the November ballot, the groups decided in December 2005 to put forth a single proposition—the Tobacco Tax Act of 2006 (Proposition 86; see reference 3 for details). Early polls indicated strong support in favor of Proposition 86, but it was also clear that the tobacco industry would fight to defeat it in order to protect its biggest market—California (see “*The Empire Still Standing*” page 8).⁴ The proposed tobacco-tax increase of \$2.60 per cigarette pack in California would have been the highest in the country and would have supported several ongoing and new health care, tobacco cessation, and research programs including TRDRP, were Prop. 86 to pass at the November ballots.⁷

A number of known and unknown factors that come into play before the polling day ultimately determine the fate of a given proposition. It is simplistic to think that voters

make their choice once they have a clear understanding of the pros and cons of a proposition as it is presented to them in the written form. Visual media, especially the TV, serve as a powerful tool to influence the voters’ decision-making process. This was the case with Prop. 86, where the tobacco industry’s \$70 million Ad campaign systematically unleashed a barrage of TV and print ads against this proposition. The proponents of Prop. 86 had expected stiff opposition from tobacco industry, and still they put up a valiant effort. Prop. 86 was defeated by a narrow margin. How did the tobacco industry successfully exploit the situation, subvert the intent of Prop. 86, and ultimately kill it? From the following analysis, it will become clear to the reader that the tobacco industry’s well-oiled marketing machine and its experienced cadres twisted the facts to their advantage, and prevailed once again. Ironically, it was the tobacco industry that trumpeted the need for greater funds for tobacco control and research. Although the early polls were strongly in favor of Prop. 86, the tobacco industry’s bankroll and campaign turned the voters against it.

Proposition 86—proponent views

According to “Yes on Prop 86” campaign, Proposition 86 would save lives and reduce smoking. Proposition 86 would: “Prevent 700,000 kids from becoming adult smokers; prevent nearly 180,000 deaths due to smoking among California kids now under the age of 17; prevent approximately 120,000 additional deaths due to smoking among current California adult smokers who quit smoking; and save Californians \$16 billion in health care costs.”⁵ Because of these expected results, every major health care advocate joined the campaign to pass Proposition 86.

The California Hospital Association, another Prop. 86 co-sponsor, had hoped that a part of the new tobacco-tax revenue could pay for the emergency room and physician services for the uninsured. Maria Robles, a spokesperson for the Coalition of Healthy California, wrote “Smoking remains the number one cause of death and disease: 42,000 Californians die of smoking-related diseases each year. By passing the tobacco Tax Act of 2006, funds raised would go directly to assist in offsetting the billions of dollars spent on smoking-related diseases, as well as fund smoking prevention programs.”⁶ Upon the release in June 2006 of the U.S. Surgeon General’s report on “The Health Consequences of Involuntary Exposure to Tobacco Smoke,” the proponents hoped that Prop. 86 would gather further

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support among Californians.⁵ Robles added, “Because of the links between tobacco and diseases such as cancer, California taxpayers are currently paying \$8.6 billion annually in health care costs related to smoking. That means every family—whether or not smokers—is paying more than \$860 a year. That’s money that could pay for child care, doctor’s bills or food.”

Proposition 86—opposing views

The opponents of Proposition 86, i.e., tobacco industry, obviously had an entirely different set of views about its measure. Several concerns were raised by the “No on Prop. 86” campaign, most prominently that the California Hospital Association (CHA), who put up the most money for the “Yes on Prop. 86” campaign, would be the biggest beneficiary. The potential harvesting of nearly 90% of the tax revenues by the CHA was actually a money-grabbing scheme. Moreover, it was the tobacco industry that pointed out that only 10% of funds were going to promote tobacco control, cessation, and smoking related disease research. This approach of the tobacco industry of throwing a spotlight on the meager funds earmarked for tobacco control and research, and then effectively designing a media campaign to vilify the hospitals for not focusing enough on tobacco, really paid off. In the end, several programs that could have received funding support from Prop. 86, including the TRDRP were the unfortunate losers.

Big Tobacco and its media marketing machine

The R.J. Reynolds and Philip Morris tobacco companies funneled more than \$70 million into their Prop. 86 opposition campaign.⁶ California is the largest market for Big Tobacco, and it was critical for these tobacco companies to bankroll media blitzkrieg—misleading TV and print advertisements to steam roll the voters to say “no” to Proposition 86. Print advertisements created doubts in the minds of voters that “there were no guarantees that the money will actually go where it is supposed to, or assurances the money from this \$2.1 billion tax hike on smokers won’t be wasted,” and that “under Prop. 86, most of the money goes to costly bureaucratic programs and less than 10% goes to programs to help people stop smoking or keep them from starting.” Some print materials were targeted at diverse ethnic populations, for example, using images of African Americans that would appeal to African American voters. Clearly, the tobacco companies brought their marketing prowess into effective play to deliver their printed propaganda materials to voters.

Tobacco industry paid big sums of money for the “No on Prop. 86” media onslaught with an objective to defeat this initiative. Not only did tobacco industry ads vilify so-called “money grabbing large hospital corporations,” they also call Prop 86 a regressive tax destined to hurt poor people. Moreover, a yes vote on 86 was linked to greater crime and even terrorism (see “*The Empire Still Standing*” page 8). It should be noted that actually only one-third of the revenues would have gone to the hospitals but as we know the tobacco industry has always been loose with the facts.

Influence of elected officials and the newspapers

An overwhelming number of elected officials had endorsed Prop. 86, but none of these had high visibility or recognition factor. In contrast, only a handful opposed it. The most prominent individual opposing Prop. 86 was Governor Arnold Schwarzenegger, who did not want to increase any taxes, including those on tobacco. Instead, Governor Schwarzenegger was mainly interested in getting Propositions 1A–E passed for bonds to pay for infrastructure improvements.

Op-ed pieces in a number of California newspapers in October and November 2006 overwhelmingly opposed Prop. 86, while only a few endorsed Prop. 86. Op-eds criticized Prop. 86 as a money grab scheme by the California Hospital Association to pay for their emergency room services that should be paid from the State General Fund instead. A stinging editorial in Sacramento Bee was repre-

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By Charles L. Gruder, Ph.D.

TRDRP awards 44 new research grants

The Tobacco-Related Disease Research Program awarded 44 new research grants in its 15th annual cycle for a total of \$14.2 million to investigators at 15 California institutions. The TRDRP Scientific Advisory Committee recommended these grants for funding based on scientific merit as determined by peer review, the program's priorities, balance in the grant portfolio, and available funds.

The percentage of funded applications declined from 27.7% last year to 17.6% because, although the number of applications jumped dramatically, the amount money available to fund new grants did not increase. We were able to fund only 16.3% of the proposals for Research Project Awards, our largest grants category.

More information about all new grants, including abstracts of the research plans and the rosters of peer reviewers, is reported in the 2006 Compendium of Awards, which is available at:

<http://www.trdrp.org/Docs/Compendiums/Compendium-2006.pdf>

Here are highlights of some of the new grants we funded in 2006:

Building on his previous research on the role of inflammation in the development of other cancers, **Michael Karin at the University of California, San Diego**, is studying whether inflammatory processes are also critical to lung cancer. Prolonged cigarette consumption results in chronic airway and lung inflammation. This, in turn, can activate a regulatory protein called NF- κ B that interferes with natural processes that protect against cancer development. This protein, for example, promotes growth factors and interferes with the natural killing of cells with DNA damage due to tobacco carcinogen exposure. (***NF- κ B mediated inflammation in tobacco-induced lung cancer***)

Maternal smoking is the largest preventable cause of infertility and pregnancy complications in women who would otherwise have uneventful pregnancies. **Susan J. Fisher at the University of California, San Francisco**, found in a previous TRDRP-funded project that exposure to secondhand cigarette smoke often does as much damage as active smoking. She is attempting to explain these negative effects by exposing human placental and federally approved embryonic stem cells to nicotine, a constituent of cigarette smoke that does a great deal of damage by restricting blood flow to the placenta, which, in turn, dangerously reduces oxygen delivery to the baby. (***Effect of maternal smoking on early human development***)

Surprisingly little is known about the health effects of hookah (water pipe) tobacco smoking, despite its growing popularity (about 50 hookah bars in California). **Peyton Jacob at the University of California, San Francisco**, will compare the intake of toxic substances from hookah tobacco smoking and cigarette smoking. The substances to be measured include nicotine, carcinogens, and other toxic substances implicated in causing tobacco-related diseases. (***Clinical pharmacology of tobacco alkaloids***)

In a Community-Academic Research Award (CARA), **Hope Landrine at San Diego State University and Rhonda West-Peters at the California Black Health Network** will assess black Californians' tobacco use from a random, stratified, statewide probability sample of 4,000 black adults surveyed in-person, in their communities. Previous data were collected via random-digit dialing and low-income blacks are more likely to have been excluded from these surveys because they lack landline telephones. Since low-SES groups have higher smoking rates, the telephone surveys are believed to have underestimated Black smoking rates in California. (***Prevalence and correlates of African-American tobacco use***)

Cornelius Hopper Diversity Award Supplements

On the recommendation of the Scientific Advisory Committee, TRDRP awarded almost \$250,000 for Cornelius Hopper Diversity Award Supplements to the following nine active TRDRP grants. The goal of the CHDAS is to provide funding for the training of promising individuals who want to pursue careers in tobacco-related disease research and are either: (a) from socioeconomic, cultural, ethnic, racial, linguistic, and geographic backgrounds who are and/or have been underrepresented in tobacco research; or (b) pursuing a research interest focusing on cultural, societal, or educational problems as they affect underserved segments of society.

<u>Trainee Name</u>	<u>PI Name</u>	<u>Institution</u>
Boman, Marie	Kassem, Nada	SDSUF
Hong, Nuong	Gehricke, Jean	UCI
Howard, Toby	Pechmann, Cornelia	UCI
Mercer, Heather	Morton, Deborah	UCSD
Mukherjea, Arnab	Bero, Lisa	UCSF
Pham, Jane	Butler, Lesley	UCD
Ramos, Malena	Halpern-Felsher, Bonnie	UCSF
Romero, Romina	Matt, Georg	SDSUF
Soller, Brian	Lee, Juliet	SDSUF

Scientific Advisory Committee

I am very pleased to welcome Lawrence W. Green, Dr.P.H., as the newest member of the Scientific Advisory Committee. Dr. Green has had a distinguished career in public health and has made important contributions to tobacco control. At the Centers for Disease Control and Prevention (CDC), he served as director of the World Health Organization Collaborating Center on Global Tobacco Control and as Acting Director of the Office on Smoking and Health. He also served as the director of the CDC’s Office of Science and Extramural Research. Dr. Green is currently at the University of California, San Francisco, where he is Adjunct Professor of Epidemiology and Biostatistics in the School of Medicine and co-leader of the developing Society, Diversity and Disparities Program in the Comprehensive Cancer Center.

TRDRP after Proposition 86

If Proposition 86 had passed, we would be looking forward to the challenge of expanding TRDRP in exciting new directions with substantially increased resources. The referendum’s failure at the polls (see cover article), however, confronts us with the very different challenge of continuing to have a significant impact on tobacco-related disease and tobacco control in California on a limited budget.

Over the past 7 years, the program has made significant changes to accommodate a declining budget, including the institution of hard caps on grant budgets and the designation of “Primary” areas for Research Project Awards. These changes were made on the recommendation of the Scientific Advisory Committee after obtaining input from program stakeholders. The committee has begun another strategic planning process to determine future changes that may be needed, including possible modifications in TRDRP’s mission and goals.



Big Tobacco Makes Cigarettes More Addictive—Legally!

by M.F. Bowen, Ph.D.

Is FDA Regulation Far Behind?

“We are, then, in the business of selling nicotine, an additive drug...”¹

A recent Massachusetts Tobacco Control Program report revealed that nicotine yields of cigarettes manufactured by all three leading tobacco companies, Altria Group (formerly known as Philip Morris Companies), R.J. Reynolds, and Lorillard, increased significantly between 1998 and 2004.² Although nicotine yields increased for all brands, the largest increases were found for Doral and Kool, brands target-marketed respectively to low-income consumers and specific racial/ethnic groups. This means that nicotine, a highly addictive drug to which smokers are exposed with every puff, now reaches levels that could result in the addiction of yet more new smokers, make dose estimation for nicotine replacement therapy more difficult, and make it harder for smokers to quit. Perhaps it should be no surprise that the reduction in adult smoking rates that the U.S. has enjoyed since 1998 has stalled (4) and that the rate of decline of youth smoking from 2002 to 2004 has slowed.⁵

Variation in plant yields cannot explain the results. Nicotine yield remains markedly consistent within brands despite wide variations in the nicotine content of different

tobacco plant varieties. The decision to raise nicotine levels was obviously a corporate decision predicated on declining U.S. consumption, higher cigarette taxes, and new tobacco-marketing restrictions. In light of the tobacco companies’ history and the fact that continued profits depend on retaining existing smokers and recruiting new ones (usually adolescents under the age of 19), the increases in nicotine content were certainly intentional.

The news is particularly timely in light of the fact that the Family Smoking Prevention and Control Act was introduced before Congress just last year 2006. The legislation, if passed, would grant the FDA authority to regulate tobacco, including constituents such as nicotine.

Eight years ago the American Medical Association recommended that the nicotine content of cigarettes be gradually reduced to levels that prevent adolescent nicotine addiction and help millions of addicted smokers quit.³ What happened?

Knowledge is power

“We now possess a knowledge of nicotine far more extensive than exists in the published scientific literature.”⁶

The tobacco industry has known for decades that nicotine is addictive and has long appreciated what a gold mine it had. When the health risks of smoking began to

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be accepted both by medical professionals and the lay public, the industry responded by denying the risks while at the same time developing low-tar cigarettes that were marketed as “safer” alternatives.ⁱⁱ The problem was that as the tar content dropped nicotine content also dropped. The industry was, understandably, quite concerned about this and invested vast amounts of money and resources in solving the “problem.” While wary of adding nicotine directly “...because of the legal and public relations problems and the possibility of production errors...” they nonetheless concluded that “...these objections do not refer to tobacco or tobacco extracts which contain nicotine.” Nicotine levels had to be precisely calibrated: too much nicotine and the product tasted bad; too little and the addictive properties were lost.

The fact that nicotine is a highly addictive drug that is intentionally manipulated by the tobacco industry to keep people “hooked” was the basis of David Kessler’s 1992 decision as then commissioner of the FDA, to investigate the feasibility of regulating tobacco products as drug-delivery devices.⁹ To prepare for congressional testimony, the FDA team studied the available scientific literature on nicotine addiction and talked to expert researchers. At that time, however, the industry’s secrets were closely guarded. Fortunately a few insiders were beginning to feel uncomfortable about working for an industry that dealt in addiction, disease, death, and denial and became invaluable sources of information. Kessler accumulated the evidence he needed to go forward and presented his landmark testimony to Congress in 1994.¹⁰ Tobacco industry representatives invited to testify in response issued strenuous denials, unwittingly providing material for one of the most effective anti-smoking ads ever created: the image of seven industry executives rising, one after the other, to state under oath that nicotine is not addictive. The claim, they knew, was patently ridiculous.

Evidence uncovered by the FDA team, as well as details that have since emerged from industry documents, reveals how nicotine yield is controlled. The science is extremely sophisticated. The critical point is that cigarette “engineers” don’t have to add nicotine as an isolated compound. Control of nicotine yield is instead accomplished in at least three known ways: 1) blending of high and low nicotine tobacco leaf; 2) using reconstituted tobacco or tobacco “sheet” that is

treated with nicotine extract made from scrap parts of the plant; and 3) increasing the pH by adding ammonia. This last process free-bases the nicotine already in the blend thus maximizing the uptake and “impact” of the addictive component. This method of nicotine delivery is very similar to that of free-based (crack)cocaine.^{11 iii} Particle size, burn rate, paper porosity, and filter design also contribute to the amount of nicotine delivered deep into smokers’ lungs, the bloodstream and the brain. As industry documents and patents revealed, the tobacco companies had assiduously researched every aspect of this phenomenon.

How the Empire struck back: the Tobacco Wars

“Where imposition of maximum tar and nicotine yields is likely this should be resisted...”¹³

After Kessler’s testimony the industry went on the offensive immediately and formulated the Tobacco Strategic Attack Plan, a comprehensive plan of action that included filing numerous lawsuits, mounting an aggressive ad campaign, mustering its supporters in Congress, and generously spreading its considerable largess among favored legislators¹⁴ and organizations willing to carry its message. In a 1995 pre-emptive strike the industry sued the FDA. In 1997 a U.S. District Court judge ruled that the FDA does have the authority to regulate nicotine as a drug. The tobacco industry immediately appealed the ruling. The Supreme Court in 2000 finally ruled that only Congress can give the FDA authority to regulate tobacco and tobacco advertising aimed at children.

So, over ten years after Kessler presented incontrovertible evidence that nicotine is addictive, that the industry knew it for years and intentionally manipulated nicotine yields in cigarettes, the tobacco industry is still manufacturing and selling addictive products that cause disease without any regulatory oversight whatsoever and increasing the nicotine yield of their products at will.

It’s not just nicotine

“...attention should be paid to the possible discovery of other substances possessing the desired features of brain stimulation...”¹⁵

The more we learn about the psychopharmacologic components of cigarettes the more alarming the story becomes. It’s not just about nicotine. Other chemicals in cigarette smoke besides nicotine also contribute to tobacco’s addictive properties. For example, smokers

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The Empire Still Standing

The Tobacco Industry took a few on the chin, but won the prize of the day



by Phillip Gardiner, Dr. P.H.

While the Empire (aka the tobacco industry) lost many ballot measures across the country in November of 2006, it was ultimately successful in defeating a major tobacco tax increase in California, which, if passed would have cut deeply

into the industry's bottom line and spurred similar initiatives throughout the country. For the November 2006 mid-term elections the tobacco industry pulled out all stops to stave off ballot measures that would limit smoking in various states throughout the country. Spending over \$100 million dollars on "alternative legislation," and misleading TV advertisements throughout the United States, (\$70 million in California alone) the Empire threw up road block after road block to obfuscate and confuse voters.¹ However, voters for the most part, saw through the Empire's smoke screens, and passed anti-smoking legislation in five states (see below). Yet, the real prize of the day, blocking the \$2.60 a pack tax-increase in California, was won by the Empire, an especially sweet and important victory. To accomplish this, the industry stooped to new lows, linking a "yes" vote of Proposition 86 with terrorism, being anti-Black, and illegal immigration. Moreover, along with the California victory, the Empire-friendly Federal Court System² has rendered impotent a Federal judge's ruling that the Empire is a racketeer-influenced and corrupt organization.

Five for the good guys

Voters in five states, Arizona, Florida, Nevada, Ohio, and South Dakota all passed anti-smoking legislation guaranteed to save lives and dramatically reduce health care costs. Arizona and Ohio outlawed smoking in virtually all work places, including restaurants and bars, thus becoming the 15th and 16th states to pass comprehensive tobacco control legislation. Florida passed a constitutional amendment mandating that the legislature annually fund comprehensive statewide tobacco education and prevention programs. Annual funding will be calculated as 15% of the 2005 Master Settlement Agreement (MSA) payments to Florida, adjusted for inflation. South Dakotans raised taxes on cigarettes a \$1 per pack in an attempt to raise approximately \$40 million a year to fund tobacco prevention and cessation programs. And even in Nevada, a smoker's paradise, voters passed legislation that will prohibit smoking in restaurants, grocery stores, shopping malls and other retail establishments that serve food. The failure of industry legislation in Arizona, Ohio, and Nevada, coupled with anti-smoking victories in South Dakota and Florida

can be attributed to the hard and skillful work of anti-tobacco forces nationally and especially in those states.³

However, the real prize of the mid-term elections went to the Empire, with the defeat of Proposition 86 in California. Prop. 86, which would have raised taxes on cigarettes \$2.60 per pack was rejected by voters. Not only did the Empire spend over \$70 million dollars to run endless commercials vilifying hospitals and increased taxation, they are also able to exploit some weaknesses in the proposition itself (e.g., only 10% of revenues generated from the tax would go to tobacco control and research). For a full accounting of the debacle in California, see Kamlesh Asotra's article in this issue. But before examining the bottom feeding instincts of the Empire, a small anecdote about the breadth of its TV coverage is in order. Kristina Wilfore, executive director of the Ballot Initiative Strategy center reported to the Wall Street journal in early October that: "I was in California two days last week, and that's all I saw on TV. They were even airing it on the Cartoon Network at midnight."⁴

Terrorism, racism, and anti-immigration: Empire bottom-feeding at its finest

To hear the apologists and mouthpieces of the Empire tell it, the passage of Prop 86 in California would support terrorism worldwide and Hezbollah in particular. Fanning the flames of ignorance about and hatred of Arabs, especially during the time of the Lebanese/Israeli conflict, the industry employed scare tactics to play on the emotions of California voters. Seeking to exploit imagined and real fears, the Empire's puppets so skillfully framed the issue that a "yes" vote for 86 was a vote for terrorism and a vote against 86 was a vote for security. The argument went something like this: terrorist sleeper cells will steal and smuggle cigarettes from low to high tax states and then sale their products at a discount. Profits from these illegal sells would then be funneled to Hezbollah and other terrorist groups in the Middle East. Leo McCarthy, president of the California Taxpayers Association, makes the point succinctly, "This (Proposition 86) is an opportunity for terrorist organizations, including Hezbollah, to produce revenue to finance their activities."⁵ Now, while not to diminish the actual use of smuggling to make profits for criminal enterprises, it is an entirely different thing to suggest that anti-smoking propositions and ballot measures across the country and in California are supporting terrorism.

Then of course there is always the race-card, which the Empire conveniently trotted out to divide and conquer voters. In the case of Proposition 86, the Empire, in the guise

of Philip Morris, paid Alice Huffman, the state chairperson of the California NAACP, \$100,000 this year from a campaign account set up specifically to fight the initiative. With money in hand, Huffman proceeded to mouth the very words the Empire was using to attack Prop. 86 by calling the initiative a regressive tax on the poor and African Americans. As early as April of 2006, Huffman was widely circulating a letter on NAACP stationery asserting that "this regressive tax will be especially burdensome on lower income smokers in California, who could be forced to pay a larger percentage of their income on cigarette excise taxes." Huffman went on to say that: "In fact, for a pack a day smoker with a household income of \$15,000, cigarette taxes alone would account for nearly 12% of their total income."⁶ Heaven forbid! Huffman's logic would ensure that poor families are able to buy their cigarettes as cheaply as possible! Cancer and heart disease should not be that expensive to contract!

James Sweeney, a spokesperson for Huffman, stated the Proposition 86 would encourage crime in at-risk communities because people could try to make a profit selling cigarettes illegally without paying taxes (sound familiar). Then to add insult to injury, Huffman in her own words declared: "I don't think we are in business to stop people from smoking."⁷ Since, tobacco-related disease is the number one killer of African Americans, with 47,000 lives lost this last year, Huffman words are misguided at best and mean-spirited at worst— talk about regressive. It seems that if Huffman is working for a state organization that is concerned about the advancement of colored people, encouraging them not to smoke should be at the top of her agenda. It should be noted that the National NAACP, in contrast to Alice Huffman, came out in support of Prop. 86. But this isn't all. What would a full-court press against a tobacco tax increase be without smearing California's immigrant population? Americans for Legal Immigration PAC were calling Proposition 86 a subsidy for illegal immigrants! Steven Foley, taking an openly anti-immigrant, stance, asserted that: "Make no mistake, California's Proposition 86 is a ruthless money grab designed to subsidize or recoup monies owed to HMO's and Hospitals by illegal aliens not a deterrent to smoking cigarettes."⁸ With millions of California residents and immigrants in the streets this past year demanding fair and just immigration reform, leave it to the tobacco industry to use this as a wedge issue in the attack on Proposition 86. Parroting the Empire's political line almost exactly, Foley states: "Prop. 86's proponents say it's about encouraging people not to

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smoke, but it isn't. It's really a money grab by huge hospital corporations who will reap hundreds of millions of taxpayer dollars each year! Less than 10% of the tax revenues go toward helping smokers quit or keeping kids from starting. The largest share—almost 40%—goes to hospitals, many of which are funding the campaign for the new tax.”⁸

Doesn't it sound just like the inane ads of the tobacco industry that ran uninterrupted in September and October on all TV channels in California? Is it a coincidence that Americans for Legal Immigration PAC are based in Raleigh North Carolina, one of the largest tobacco producing states in the country and home to R.J. Reynolds?⁸

Sticks and stones may break my bones, but names will never hurt me

The Empire's electoral victory in California was not an isolated event; the judicial arena in 2006 was also lucrative for the industry. In August of 2006, a Federal Court found the Empire guilty of racketeering and corrupt business practices or said another way, guilty of being themselves. However the Empire played its legal cards quite skillfully and coupled with friends in high places, ensured that they would be around to fight another day, even in the face of an apparent court loss. Much has been made of the stinging and castigating remarks by Judge Kessler when she found that the Empire was engaged in a long-term, fraudulent scheme to mislead the American people about the health risks of smoking and exposure to secondhand smoke, the addictiveness of their products, and in their tactics for marketing their products to children.⁹

Judge Kessler ordered among other things that the Empire stop using the terms, “low tar,” light,” ultra-light,” and “mild” in the marketing of cigarettes.

But for all the caustic nature of her comments and the seriousness of the cease and desist order, previous and subsequent court rulings favorable to the tobacco industry have given little weight to Judge Kessler's ruling and orders. The Empire, quick and astute, noticed the writing on the wall that Judge Kessler wasn't leaning in their favor, filed a partial judgment motion back in 2005 to block the potential imposition of a whopping \$280 billion penalty in this racketeering case. And while Judge Kessler denied this motion, the industry appealed to the District of Columbia Circuit Court of Appeals, which on a 2 to 1 margin, voted to uphold the restriction on monetarily penalizing the Empire. Moreover, when the Department of Justice peti-

tioned for a re-hearing, both the District of Columbia Circuit Court of Appeals and the United States Supreme Court ruled in the Empire's favor.¹⁰ The bottom line is that even though the Empire was found guilty of being a racketeer-influenced corrupt organization, there was no monetary fine associated with it.

Coupled with the no-monetary-penalty-ruling in this case, the Empire successfully appealed Judge Kessler's order prohibiting the selling of cigarettes as “low-tar,” “light,” “ultra-light,” and “mild.” The same District of Columbia Circuit Court of Appeals has stayed Judge Kessler's order for one year and allowed the continued and admittedly fraudulent marketing of these cigarettes, and no date as of yet has been set for the review of this matter. It should be noted that this court ruling, if upheld, would bring the U.S. in line with one of the key provisions of the Framework Convention for Tobacco Control (FCTC) prohibiting the sale and marketing of “light,” etc. cigarettes. Legal scholars also saw a silver lining, noting that Judge Kessler's ruling lays the foundation to sue the Empire for violating the MSA provisions against advertising to minors and deceptive and fraudulent advertising.¹⁰ These battles are yet to be fought.

While the Empire finds itself in many court battles across the country, the weak wrist slapping in the federal RICO case must be sweet satisfaction. The tobacco Empire is laughing all the way to the bank. “Not only can't you penalize me for my bad behavior, but with the help of the Court of Appeals and the Supreme Court, I can continue my bad behavior for sometime to come.” While it is true that stays are more often than not granted in RICO cases like this, the delay in implementation minimally puts the industry in a position to absorb the blow more easily than if they had to stop marketing light cigarettes today.

And the hits just keep on comin'. As Burning Issues goes to press, the Empire scores another victory in federal court: On November 27th, the United States Supreme Court sided with Philip Morris USA, refusing to disturb a court ruling that threw out a \$10.1 billion verdict over the company's marketing of “light” cigarettes.²

The children's adage that sticks and stones may break my bones but names will never hurt me, never was truer than in the case of the tobacco Empire and the Federal Court System.

Sober assessments are a must

Hats go off to the numerous victories achieved by anti-tobacco forces during the 2006 mid-term elections. Still, the Empire we face is unchanged and will lie, steal, pro-

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mote wedge issues and cheat at every chance it gets to ensure its bottom line. Their track record is dismal at best and essentially downright appalling. Given this, it is especially important that tobacco control and research forces not get too swept up in the gains of the moment. For example, recent research shows that the industry secretly raised nicotine levels in cigarettes, across the board, over the past eight years in the face of the MSA to ensure the addiction and the untimely death of their users. (See “*Big Tobacco Makes Cigarettes More Addictive-Legally!*” page 6.) While parts of the Empire have voluntarily agreed to stop selling “flavored cigarettes” in the United States, you can bet that these products will be pushed even more aggressively around the world, and with immigrant populations streaming into this country, California in particular, favored cigarette use will continually rear its ugly head as an attraction, particularly for youngsters. Even the legislative victory in Nevada to outlawed indoor smoking in many places unfortunately has an asterisk beside it since the crown jewels of that state, the casinos, truly remain a smoker’s paradise. And while court cases will continue to dog the Empire, it has weaseled out of not having to pay a dime for its corrupt and criminal business practices; it has slipped a few big punches.

Let’s be frank: California is the single largest domestic market for cigarettes and other tobacco products in the United States. The Empire essentially drew a line in the sand and said this far and no further. Yeah, they may have taken a few on the chin across the country, but the real prize on election day went to the Empire.

Special thanks to Ads of the World.com for use of the featured illustration

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Smoked

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representative of papers throughout the state, it said it all: "Hospitals have long sought to dig into somebody else's pocket to pay for the uninsured patients in the emergency rooms."

Lessons learned

Now that Prop. 86 is dead and buried, and the postmortem report is almost complete, it is clear that the proponents of Prop. 86 were outspent more than 3 to 1 by the tobacco industry. Obviously, the tobacco industry went into the battle with a "do or die" mode of action in California. The proposed allocation of substantial funds to the hospitals was ultimately rejected by the voters, and unfortunately, the programs on smoking cessation and research were also major losers. Would the outcome be different, had a substantially larger proportion of tax revenues been allocated to smoking cessation and smokers' disease research? What if the proposed tax increase was \$1.25 per pack of cigarettes instead of \$2.60 a pack? Was it a good marriage between the California Hospital Association and the voluntary health organizations to jointly craft Proposition 86?

We may never be able to answer some of these questions, but one can make intelligent guesses. One might argue that a significantly higher allocation of funds for smoking cessation and tobacco-caused disease research would have been much more acceptable to California voters. Also, it is probable that voters would have liked to see most money earmarked for smoking related diseases rather than to hospitals for emergency treatment. Perhaps, an increase of \$1.25 per pack of cigarettes, too, would have been acceptable to Californians as opposed to the \$2.60 proposed. Regardless of the intent and allocation of funds described in the narrative of Prop. 86, ultimately, the majority of voters were not convinced that the proposed increase in tobacco tax was justified. One can also safely surmise that the alliance between the voluntary health organizations and the California Hospital Association was not successful in this instance.

The next incarnation of Proposition 86

Citizens of California are some of the most forward thinking people in the world, and they are known to support innovative initiatives. A testimony to this characteristic of Californians is the passage two years ago of Proposition 71 to invest in research on embryonic stem cells for regenerative medicine, even in the face of enormous opposition from the president of the United States and the federal

administration. If the voluntary health organizations in California go alone to write a proposition to raise tobacco tax, perhaps additional \$1.25 per pack of cigarettes, and allocate at least 50% of the revenues to support programs that are currently funded by Proposition 99, Proposition 10, and AB 13, and even a few new disease research programs, Californians would probably be more inclined to pass such a proposition. Had Prop. 86 passed, \$1.2 billion would have been earmarked for children's health coverage, tobacco control, cancer research and treatment, and Prop. 10 backfill. Nearly this same amount can be raised by proposing a \$1.25 per pack tax in the next incarnation of Proposition 86, that will, hopefully, accomplish many of the goals that the deceased initiative would have.

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Addictive

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display a pronounced decrease in brain monoamine oxidase (MAO) levels, an enzyme that breaks down dopamine. The drop in MAO levels in smokers (as in heroin and cocaine users) results in higher dopamine levels. Dopamine levels in the mesolimbic area of the brain regulate mood and affect and play a key role in neurological motivation and reward processes. Thus, smokers continue to smoke in order to maintain high dopamine levels.¹⁶ It should not come as a surprise that the effect is due to yet another (at this point unidentified) chemical in smoke other than nicotine; nicotine itself does not alter MAO levels. Another chemical constituent of tobacco smoke, acetaldehyde, dramatically increases, i.e., synergizes, the reinforcing properties of nicotine.¹⁷ The industry augments levels of acetaldehyde in its products by adding sugar, which, when burned, produces acetaldehyde.¹⁸ Moreover, the fact that the tobacco industry manipulates addictive chemical moieties other than nicotine in its products does not seem quite so surprising when one realizes that the industry was interested in developing and exploiting other psychoactive components in tobacco smoke as early as 1968. In the word of one BATCO scientist, “The possibility that nicotine and other substances together may exert effects larger than either separately (synergism) should be studied and if necessary the attention of Marketing departments should be drawn to these possibilities...”¹⁹

Philip Morris emerges from the dark side?

The latest twist to the story of FDA regulation is Altria's 180° reversal on the issue. Steve Parrish, senior vice president for corporate affairs for Philip Morris (and, coincidentally, key author of the industry's Tobacco Strategic Attack Plan during the Tobacco Wars), has persuaded Altria that FDA regulation is really in its own best interest. They claim to welcome FDA regulation of their products.²⁰ Philip Morris' turn-around has somewhat dampened enthusiasm for FDA oversight of tobacco, even among previous standard-bearers like David Kessler.⁹ And it has pitted tobacco control advocates against each other, some claiming that tobacco products are here to stay and it's better to have some oversight than none at all, versus those who see the move as giving the industry a legitimacy that it doesn't deserve and may abuse.

While FDA regulation is still an important goal in tobacco control, there remains the big “if” whether this regulation could ever be codified and enforced. Philip Morris

may say it wants FDA regulation, but other parts of the tobacco industry don't want it at all. Additionally, given the industry's political influence, and media savvy, FDA regulation is far from a done deal. Even if the Family Smoking Prevention and Control Act is signed into law, regulatory issues surrounding tobacco are sure to become a battleground between the FDA and the industry. The act gives Congress specific veto power over FDA actions and allows only Congress to ban any class of tobacco products. Given the cozy relationship between the tobacco industry and many key members of the Congress¹⁴ combined with the demonstrated effectiveness of tobacco-industry money to influence legislative decisions,²¹ the congressional veto may be the “poison pill” that the industry is counting on to maintain its market, stay in business and, by so doing, subvert the public health objectives of FDA oversight.

Is taking profit out of the equation the answer?

Some believe that creating a non-profit entity that would manufacture and supply tobacco products to existing smokers may be public health's best chance. Such an entity would also be legislatively mandated to reduce smoking by dropping nicotine (and all addictive constituent) yields to below the “tipping point” for addiction.²² Policy researchers at the Canadian Centre for Policy Alternatives have proposed several workable ways to take the profit out of the tobacco business and create tobacco “companies” that would actually help people quit smoking.²³ The appeal of this approach is that it would preclude the inevitable warfare between the FDA and the tobacco industry that would accompany FDA regulation.

Assuming, on the other hand, that the FDA could exert effective regulatory control over tobacco products, it could demand, for instance, that the identity of all tobacco additives be on each pack of cigarettes; that tobacco products be sold only to users possessing a “prescription”; that levels of constituents be maintained below a specified thresholds; and that marketing and advertising efforts be discontinued. One very effective way for the FDA to control or put a stop to the ravages of tobacco smoking would be to insist that the industry lower levels of nicotine to below the threshold for addiction, believed to be 5 mg nicotine per day.²⁴ The amount of nicotine delivered would have to be low enough so that smokers could no longer behaviorally compensate for lower nicotine delivery.²⁵

Is it time to dismantle an industry that for far too long has lied, litigated, and paid its way out of even any slight accountability to public health, while at the same time rak-

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Filtered Tips

by Kellie Medrano, M.A.

The following is just a small sample of some of the latest tobacco-related research and tobacco control news. We chose these topics in particular because we found them - interesting and provocative. Enjoy!

Help! I failed my smog check

A Costa Mesa, CA smog technician and two-pack-a-day smoker compared his own smog reading after taking a drag on a Marlboro to a 1997 Volvo. He took a reading for both in parts per million of hydrocarbon emissions. The Volvo passed, but the smog technician did not. At a reading of 351 he is a gross polluter. Perkes, C. (2006, August 4). Smog technician not just blowing smoke. *The Orange County Register*. at <http://www.ocregister.com/>

R.J. Reynolds uses smokers' patriotism to look like heroes

R.J. Reynolds is supporting the Veterans of Foreign Wars (VFW) Operation Uplink program, which provides free phone cards for military and hospitalized vets so they can stay in touch with their families, by creating the "Seals for Soldiers Fund." RJR asks smokers of Doral-brand cigarettes to mail in pack seals (proofs of purchase); in return RJR agrees to make a donation to the VFW's Operation Uplink for every seal. This is one instance in which the tobacco industry kept good on its promise—in just seven weeks \$520,000 was raised. According to VFW's press release, VFW Adjunct General Allen "Gunner" Kent "applauds" the

tobacco industry for its support. Similar to handing out cigarettes to GIs, which the military banned in 1984, the tobacco industry has found a new way to back-handedly encourage smoking, increase its own profits, and boost its image using patriotic smokers to do so. VFW press release. (2006, March 15). 'Seals for Soldiers' Program Raises \$520,000 for VFW's Operation Uplink. <http://www.vfw.org/>

CT scans as lung cancer predictor—hope or hype?

In a new study conducted by researchers at New York-Presbyterian Hospital/Weill Cornell Medical College and recently published in the *New England Journal of Medicine*, CT scans were administered to more than 31,000 people at high risk for lung cancer across seven different countries. Although none of the participants had any symptoms, the CT scans showed hundreds of suspicious lumps that led to 484 participants being diagnosed with lung cancer, most of which was caught at a very early stage. Although these preliminary findings are hopeful, the lack of a control group and the potential for a high incidence of false positives leads to controversy over these findings. Editorial Desk. (2006, October 30). A Lung Cancer Breakthrough? *The New York Times*. <http://select.nytimes.com/>

The International Early Lung Cancer Action Program Investigators. (2006). Survival of Patients with Stage I Lung Cancer Detected on CT Screening. *New England Journal of Medicine*. 355(17):1763-71. <http://content.nejm.org/>

Tobacco-sponsored TV ads say "Think. Don't Smoke" but teens please do!

In a recently published study researchers found that exposure to tobacco-company-sponsored smoking-prevention television ads that target youths and parents at best had no beneficial outcomes for youths in grades 10 and 12 and at worst may have harmful effects on youth, including greater likelihood of having smoked in the past 30 days.

But why spend millions to make ads flop? The *New York Times* takes the stand that Philip Morris has no real intention or investment in making its smoking-prevention ads actually discourage youth smoking. The NYT says that the theme of Philip Morris' ads, "... that adults should tell young people not to smoke mostly because they are young people—is exactly the sort of message that would make many teenagers feel like lighting up." The NYT also states that the ads are "fuzzy-

See "Vaccines page 11

Filtered Tips

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warm, which could actually generate favorable feelings for the tobacco industry and, by extension, its products.” *Editorial desk. (2006, November 27). When Don’t Smoke Means Do. The New York Times, p.A22. <http://www.nytimes.com/>*

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Big Tobacco continues its bad behavior with no restrictions in sight

In the federal government’s racketeering lawsuit against the tobacco industry, U.S. District Judge Gladys Kessler scolded the industry for its deliberate manipulation of nicotine delivery in order to create and sustain addiction. Although the tobacco companies deny this behavior, the Massachusetts Department of Public Health released data demonstrating that nicotine yields rose in cigarettes by 10% from 1998 to 2004 (see M.F. Bowen’s article in this issue). Secondly, Big Tobacco asked for a clarification of Judge Kessler’s statement to ensure that the ban on terms like “light” and “low tar” cigarettes do not apply overseas (wink, wink!).

Editorial desk. (2006, September 5). Big Tobacco, Lawless as Ever. The Washington Post, p.A18. <http://www.washingtonpost.com/>

California’s Latino renters show support for smoke-free apartment laws

In the first-ever Latino Renters Survey conducted by Hispanic/Latino Tobacco Education Partnership and the American Lung Association of California’s Center for Tobacco Policy and Organizing, high levels of exposure to drift smoke were found despite 95% of Latino families banning smoking inside their own apartments. Furthermore, of the 409 California Latino adult renters surveyed, there was significant support for completely smoke-free apartment buildings.

The Center for Tobacco Policy and Organizing. (2006, September 21). First-ever Survey of California’s Latino Renters Shows High Rates of Exposure to Drifting Tobacco Smoke Despite Home Smoking Bans.

<http://www.californialung.org/> For full urls see: www.trdrp.org/docs/newletters/2006/107nwsltr.pdf

Addictive

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ing in gargantuan profits that are now aggressively directed at defeating public health initiatives throughout this country (see “*The Empire Still Standing*,” page 8), and addicting children to tobacco in developing countries? Or can the tobacco industry be regulated much like the food and pharmaceutical industries? Times like these are not for the fainthearted; courage, knowledge, and focus are required. The tobacco empire is a formidable foe that has had some stunning victories recently, particularly in California (see “*Postmortem: anatomy of defeat*,” page 2). Even if Congress passes the Family Smoking Prevention and Control Act, history has shown that vigilance by the public health community must be maintained if the full intent of the legislation is to be brought to bear upon the tobacco industry. We must succeed; otherwise the sacrifices of those public health advocates who fought the Tobacco Wars will have been in vain and Big Tobacco will have won—yet again.

For article references please see: www.trdrp.org/docs/newletters/2006/107nwsltr.pdf

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