

Tobacco industry tactics

Edward L Sweda Jr and Richard A Daynard

Tobacco Products Liability Project, School of Law, Northeastern University, Boston, Massachusetts, USA

The tobacco industry's strong-arm tactics have been used consistently over many years. These tactics include: using the industry's size, wealth, and legal resources to intimidate individuals and local governmental bodies; setting up 'front groups' to make it appear that it has more allies than it really does; spending large sums of money to frame the public debate about smoking regulations around 'rights and liberty' rather than health and portraying its tobacco company adversaries as extremists; 'investing' thousands of dollars in campaign contributions to politicians; and using financial resources to influence science. These tactics are designed to produce delay, giving the nicotine cartel more time to collect even more profits at the direct expense of millions of lives around the world.

In the field of public policy, the tobacco industry has a long and usually successful track record in influencing legislators and other decision-makers. This is especially true at the national or state level; while the industry has engaged in battles in cities and towns, its rate of success is notably poorer as they go closest to the people. Thus, the tobacco industry turns to one of its favorite strategies — pre-emption. In effect, the lesson to be learned is this: if you can't win at a particular level of government, then make that level of government irrelevant by taking away its power to act.

So, in 1994, after years of watching California communities pass and implement tough local laws requiring smoke-free public places, including restaurants, the tobacco industry poured over \$18 million into a campaign to sponsor its pre-emption proposal and to collect the necessary signatures to put the proposal on the November ballot as a binding referendum. And in its efforts to obtain signatures for its effort to pre-empt local laws, Philip Morris falsely persuaded potential signers that its goal was to achieve a law to restrict smoking in public. California's Secretary of State, Anthony Miller, accused Philip Morris's front group — called Californians for Uniform Statewide Restrictions (CUSR) — of outright deception. CUSR made no mention of its tobacco connections. 'A great many signers have been duped, and they are furious and I don't blame them. Don't be fooled by petitions sponsored by the tobacco industry,' said Miller¹.

Once made aware of the tobacco industry's backing of Proposition 188, California voters repudiated it at the polls in November 1994, 70.5% to 29.5%.

Where they have been unsuccessful at pre-empting local authority to act, the tobacco lobby is not above acting directly to try to sway the balance on an upcoming vote by a city council. A recent example of this activity occurred in Cambridge, Massachusetts, where the city council was considering amending its existing ordinance (passed in 1987, requiring 'no-smoking' areas of at least 25% of the seating capacity in restaurants over 25 seats) to shrink any permissible smoking section to 15% of the seats. Less than a week before the scheduled vote, Philip Morris launched what the *Boston Globe* described as 'an aggressive last-minute phone bank operation' which was trying to stir up voter opposition to the ordinance².

Alliances with restaurant associations are nothing new for the tobacco industry. One example occurred in 1993 and 1994 in Massachusetts when Roger Donoghue worked simultaneously as a registered lobbyist at the State House for both the Massachusetts Restaurant Association and the R.J. Reynolds Tobacco Company.

A public relations effort aimed at restaurant owners across America was started in 1989 by Philip Morris. The 'Accommodation Program' was unveiled to persuade restaurants and other businesses open to the public to 'accommodate' smokers (i.e. to allow them a place to smoke in their establishment) and 'accommodate' non-smokers (i.e. to provide an area that is labeled 'no smoking,' but without any assurance, whether through separate ventilation or the physical separation of rooms, that the smoke from the smoking area would not affect those in the declared 'no smoking' area). Having published and distributed a sourcebook called, *8 Steps To Becoming An Accommodating Restaurant*, the Accommodation Program offers a 'sensible way to satisfy the preferences of non-smoking and smoking customers'. Among its tips on 'how to be an accommodating server', are: 'carry an extra pack of matches or a lighter to assist your smoking guests' and 'know where to obtain cigarettes on behalf of your guests'. Note that the sponsor, Philip Morris, is never identified in this book.

Tobacco companies have long espoused the public position that smoking is 'an adult custom'. Thus, children should simply be patient and wait until they become 18 years of age, at which time they will be sufficiently 'mature' to make a personal 'choice' as to whether or not to smoke. No mention is made of disease or addiction or anything negative about tobacco products. Rather, cigarettes are portrayed as the 'forbidden fruit' which remains ubiquitous throughout society.

The nicotine cartel has also been alarmed by the bad publicity that retailers around the US have received when they were caught illegally

selling tobacco products to minors. R.J. Reynolds has launched a campaign with the national Jaycees—national Junior Chambers of Commerce—purportedly designed to discourage sales to children. In December 1990, the Tobacco Institute initiated the ‘It’s the Law’ campaign, which featured orange and blue signs posted in stores warning that ‘it’s the law’ that tobacco sales are prohibited to those under the age of 18. Of course, no mention is made as to *why* tobacco sales to minors should not occur. Never are any health issues raised in the industry’s promotional material.

The tobacco industry has repeatedly refused to provide the public—or even its own shareholders—with evidence that would show the effectiveness or non-effectiveness of the industry-created and industry-financed campaigns against sales to minors. A glimpse of the industry’s true position on this important issue can be seen in some promotional material for retailers that was disseminated by R.J. Reynolds, which designated June 1995 as ‘National Awareness Month’ about the problem of illegal tobacco sales to children. The R.J. Reynolds’ ‘Dear Retailer’ letter states that ‘while accessibility at retail is not the reason kids start using tobacco products, it does provide them with the opportunity to continue’. It goes on to allege: ‘we also recognize the efforts of organized sting operations across the country that may have serious ramifications for retailers. These sting operations do not focus on education. The objective of these operations seems to be to make the retailer look bad rather than to work with the retailer to solve the problem.’ Again, there is no mention of addiction, disease, or health in this letter to retailers.

Similarly, Philip Morris’s ‘PM USA NewsLine’ warns retailers that ‘motivated in part by a severe new federal directive, states across the country are increasingly mounting “stings” against retailers, using undercover minors to test compliance with underage sales laws. Anti-smokers are arguing for increased regulation of retailers . . .’³ The article goes on to cite the example of Woodridge, Illinois, where ‘the village council in the town of 30,000 recently passed a new law—written by the local police—that requires sting operations on a quarterly basis, a \$50 annual tobacco license fee, license suspensions for repeat violators, and fines on store owners. Since the law was implemented, 12 vendors have had their licenses suspended’. Of course, what Philip Morris omitted about Woodridge is the fact that the proportion of regular smokers in the junior high school dropped by 69%⁴.

If there is not an appropriate group or entity to make an alliance with on a particular subject, the tobacco industry does the next best thing—it creates them! A prime example in the US is the National Smokers Alliance (NSA). Maintaining the guise of a spontaneous grass-roots uprising of millions of smokers outraged at the steady infringement of their God-given rights as Americans, the NSA is in reality an ‘astro-turf’

organization, designed to give the appearance of a legitimate expression of genuine anger at the grass roots, but created and financed by powerful outside interests. So, the NSA came into existence with the benefit of seed money from Philip Morris's public relations firm, Burson-Marsteller. It quickly claimed over a million members. The term 'member' was defined simply as someone signing his name to a form provided by signature gatherers who were paid per signature and who gave prospective 'members' free gifts, such as a key chain or lighter.

Another example of tobacco industry fabrication of allies is the United Restaurant, Hotel and Tavern Association (URHTA) of New York State which placed full-page advertisements in the *New York Times* in September 1994 to oppose the smoke-free ordinance proposed by the New York City Council. Joe Cherner of Smoke-Free Educational Services not only discovered that URHTA did not even have a telephone listing in New York City and that its supposed chapters in Queens, Brooklyn, the Bronx, and Staten Island were all defunct, but also that the URHTA representative at a City Council hearing admitted that the advertisements were, in fact, paid for by tobacco interests⁵. Similarly, in California, a group called Restaurateurs for a Sensible, Voluntary Policy (RSVP) was created by tobacco interests⁶.

Not surprisingly, the 'rights' of smokers, according to the NSA, are fully consonant with the financial interests of the tobacco industry. For example, the 'right' of smokers to learn about the various ingredients in tobacco products or to bring a product liability suit against tobacco companies is not what the NSA advocates. This point was crystallized on October 28, 1994 when attorney Ronald Motley of Ness, Motley, Loadholt, Richardson & Poole cross-examined William J. Althaus, NSA chairman, at Occupational Safety and Health Administration's (OSHA) hearings on workplace smoking rules. Asked by Motley if smokers have a right to be informed about what substances are in tobacco and the impact they may have on their health, Althaus replied, 'I have no opinion on that'. When asked if he believed smoking is addictive, he replied, 'I have no idea'. While Althaus earlier had blasted the proposed OSHA regulation of smoking in the workplace as an unfair burden on NSA's members, he offered no opinion regarding the health risks of a product that will bring about the premature deaths of thousands of NSA's members⁷.

An example of an NSA attempt at public education was its hiring of an airplane to tow a banner reading 'Mall St Matthews Discriminates Against Smokers', referring to a mall in Louisville, Kentucky. One might expect that a mall that truly 'discriminates' against smokers would bar them from entering the mall to shop. Instead, what got the folks at NSA agitated was that a mall in a major tobacco-growing state had the audacity to make a voluntary business decision to adopt a smoke-free

policy. If one were to logically follow the reasoning behind the NSA's banner, St Matthew's Church equally 'discriminates' against smokers when it prohibits congregants from smoking during Sunday Mass.

Extremism is one of NSA's traits. The April 1995 issue of its newsletter, *NSA Voice*, quotes syndicated newspaper columnist Walter Williams, complaining about the plans of eight major airlines to ban smoking on international flights. 'Many Americans think it's good to restrict smoking and applaud the intimidation tactics by the anti-smoking lobby. We should remember that it was decent, well-meaning Germans who helped create an all-powerful government to do good things but didn't figure they were building the Trojan Horse for Adolf Hitler. Similarly, Americans are making it easy for a future tyrant.' This is NSA's response to an effort to remove a toxic pollutant from airline cabins.

Extremist language is not limited to publications that target the public at large; it can be uncovered in the industry's trade journals as well. A recent example can be found in an editorial in the April 1995 issue of *Tobacco International*. The editorial, entitled 'Blacklisting 90s Style', denounces tobacco control advocates who 'are going after the smaller, more fiscally vulnerable suppliers of tobacco flavors, papers, filters and agricultural supplies'. After predicting that the efforts of the 'antis' will fail, the editorial concludes, 'the difference is that communism is about the absence of choice, which is why it failed; smoking is about the freedom of choice, which is why it survives'⁸.

Laden with money and often dissatisfied with the editorial content of newspapers and magazines, the tobacco companies have bought full-page ads, some of which appear as thinly disguised legitimate articles, in major publications across the country to send out their message on a wide variety of public policy issues affecting tobacco. A major round of such advertisements occurred shortly after a spate of negative publicity that the industry received after the Congressional hearings in the spring of 1994. R.J. Reynolds's series of ads included headlines such as 'Today It's Cigarettes. Tomorrow?', 'Smoking in a Free Society', 'Secondhand Smoke: How Much Are Non-Smokers Exposed to?' and 'Is the Government Going Too Far?' The three prongs of tobacco's propaganda are: (i) dismissing health concerns; (ii) emphasizing people's 'rights'; and (iii) bashing Government (in R.J. Reynolds's ads, the 'G' in government is always capitalized, thus making it bigger and more menacing).

Another means by which the tobacco industry influences the media occurred in mid-May 1995 when Philip Morris sponsored a tour of New York and Washington DC for ten Asian journalists. On the agenda for this trip were some highlights not likely to be attractions to the average visitor to these two major American cities. Topics for the journalists on the New York leg of the trip—just one month after the city's smoke-free ordinance went into effect for most restaurants—included: 'Smoking

Ban and Regulations in the US', by a speaker from the Cato Institute, a libertarian think-tank; 'Smoking Ban Impact on Chinese Restaurants', 'Smoking Ban Impact on Pubs and Restaurants' and an address by a New York City Councilman who opposed the ordinance. In Washington, the Asian journalists heard from longtime tobacco industry ally, Gary L. Huber, speaking on environmental tobacco smoke (ETS); an author from the Capital Research Centre discussing 'America, a Rising Nanny State?'; William Althaus, Chairman of NSA (who presumably did not provide transcripts of his cross-examination by Attorney Motley); and Patrick Tyson, a lawyer who represents the tobacco industry in its opposition to proposed OSHA regulations to limit smoking in the workplace.

The tobacco industry can influence public opinion in ways that are not readily apparent to the general public. For example, an editorial in the *New York Post* entitled, 'No-Smoking's Victims', berated the purported negative effects on the restaurant business inflicted by New York's smoke-free ordinance. 'This time the butt-inski brigade seems to have gone too far. The health fascists, as predicted, have actually injured a vital New York City industry,' began the editorial. What was the source of the assurance that no-smoking laws are bad for restaurant business? 'Surveys conducted independently — one by a tobacco-rights group, one by the New York Tavern and Restaurant Association — concluded that folks are staying out of eateries in large numbers'⁹.

Rupert Murdoch, the Editor-in-Chief of the *New York Post*, has been a member of the Board of Directors of Philip Morris since 1989. Those who read the *Post*'s vitriolic editorial that day were not apprised of that fact.

Money is in plentiful supply at tobacco industry headquarters. An article in *Business Week* details how the tobacco lobby successfully persuaded the Florida legislature to repeal a 1994 statute that makes it easier for the state of Florida to bring litigation against tobacco companies for reimbursement of Medicaid and other health benefit payments. The article, entitled, 'Full-Flavored, Unfiltered Statehouse Shenanigans', described the 'Tobacco Team' — the two dozen lobbyists who descended on the Florida legislature in Tallahassee. 'The industry relied on its traditional strengths: money, power, and influence. The combination worked once again — proof that tobacco makers are far from vanquished by negative public opinion and antismoking legislation.' Governor Lawton Chiles has promised to veto the repeal of the statute. The article concludes: 'polls indicate two-thirds of Floridians favor his law, and he'll work to lure enough Democratic legislators to avoid an override. But Team Tobacco has staying power. Public opinion is against it. Yet money, and legal acumen, often talk louder than voters'¹⁰.

An example of the tobacco industry's proclivity to bully small municipalities occurred in late 1994 in the town of Puyallup,

Washington. The Puyallup City Council passed an ordinance on August 1 to require all restaurants in that city of 27,000 to be smoke-free as of January 1, 1995. However, on December 19, less than two weeks before the new law was to take effect, the council voted 6 to 1 to reverse itself and repeal the ordinance. What had happened in the intervening months that had such a profound effect on the city councillors?

On November 29, nine restaurants in Puyallup filed a civil rights suit to challenge the ordinance. Among the allegations contained in the complaint filed by the plaintiffs was the assertion that the ordinance was pre-empted by state law because the Washington Clean Indoor Air Act, set forth at RCW 70.160, permitted smoking sections in restaurants. The plaintiffs also imaginatively alleged that the city had unlawfully and substantially deprived plaintiffs' rights guaranteed by the US Constitution including, but not limited to, violating the 'takings' clause (which requires the Government to pay compensation for private property which it seizes) of the Fifth Amendment.

The lawsuit was financed by the R.J. Reynolds Tobacco Co. Rather than expend the funds necessary to fight the lawsuit in court, the City Council backed down and decided to repeal the ordinance before the public had any opportunity to benefit from it. Tobacco money had once again prevailed over the public health.

According to *Can't Kick the Habit . . . The Tobacco Industry & Washington*, a lengthy study unveiled in March 1995 by Common Cause, a citizens' lobbying group, 'twelve tobacco industry companies and lobbying groups, along with their executives, gave a total of \$16,738,872 in political action committee (PAC) and soft money contributions during the past decade—a decade in which increasing public scrutiny of the health effects of smoking and tobacco use resulted in relatively little congressional action on anti-tobacco legislation'. Common Cause President, Ann McBride, said that the 'tobacco lobby's use of political contributions is a classic example of the influence-money scandal at work in Washington. Members of Congress are as addicted to large campaign contributions as smokers are to nicotine.' The breakdown was as follows: Philip Morris \$5,083,557; R.J. Reynolds \$4,879,975; US Tobacco \$2,882,438; and Tobacco Institute \$1,618,979.

The recipients of the campaign contribution money were not chosen at random. For example, in the spring of 1994, legislation to ban smoking in most public buildings was approved by the House Subcommittee on Health and the Environment and sent along to the full Energy and Commerce Committee. The full committee postponed scheduled mark-ups on that bill (H.R. 3434) and never took final action on it. Members of the 103rd Congress who served on the Energy and Commerce Committee received \$860,658 from tobacco industry PACs during the decade 1985–1994 (an average of \$19,560 each). The average member of

Congress over that same time span received \$9,409 from tobacco PACs, less than half of the amount received by committee members¹¹.

Glantz and Begay have documented the significant influence of tobacco industry campaign contributions on state lawmakers in California, independent of their constituents' support for tobacco control¹².

Tobacco companies are equally virulent in their use of the judicial system to intimidate those who would criticize or regulate them. While the combined resources of scientists, NGOs, the media, and local and national governments obviously far exceed the wealth of even the tobacco industry, the industry is able to threaten and deter (though only rarely to defeat) individuals and entities in each of these categories through a 'divide and conquer' strategy.

Beginning in 1953, the industry adopted 'a holding strategy'¹³, consisting of:

- creating doubt about the health charge without actually denying it.
- advocating the public's right to smoke, without actually urging them to take up the practice.
- encouraging objective scientific research as the only way to resolve the question of health hazard.

As for individual scientists who had reached troublesome findings, Philip Morris in 1981 proposed 'attacking researchers themselves, where vulnerable'¹⁴. Current and former employees and contractors are held on a tight leash: thus, R.J. Reynolds Tobacco Co. obtained an injunction to keep a former scientist from discussing work done for the company to determine how smoking causes emphysema¹⁵, while Council for Tobacco Research agents threatened a major recipient of research funds that publishing his result—that inhaling smoke does cause cancer in laboratory animals—would end their relationship. When he published anyway, his funding was indeed cut off, and his efforts to publicize his results were surreptitiously undermined¹⁶.

Avoiding Faustian bargains with the tobacco industry does not protect scientists from harassment and intimidation, however. Dr Irving Selikoff's data for his pathbreaking studies on the relationship between asbestos exposure, smoking, and lung cancer were subpoenaed by the tobacco industry¹⁷, as were the records of the process leading up to the various Surgeon General's reports on smoking and health¹⁸, as were the data and other records of the researchers who concluded that the 'Joe Camel' advertising campaign appealed to children and teenagers¹⁹.

Even reporting studies done by others can be hazardous, if the tobacco industry is displeased. In 1987 the Dutch Foundation on Smoking and Health (StiVoRo) dared to state, as part of a public education campaign, that passive smoking badly affects one's health. The joint tobacco

manufacturers quickly sued, accusing StiVoRo of 'misleading the public'. The court sided with StiVoRo, and the tobacco companies finally withdrew their claims and agreed to pay legal costs²⁰. But, for 42 months, StiVoRo was distracted from its tobacco control efforts by having to fight this rearguard action. News media have had the same experience: Philip Morris filed a \$10 billion lawsuit against the American Broadcasting Company and two of its journalists for daring to suggest that the industry 'spiked' cigarettes with nicotine²¹.

It is perhaps not surprising that the industry feels free to sue local governments like Puyallup, Washington (discussed above), Provincetown, Massachusetts (unsuccessful industry effort to overturn ban on cigarette vending machines), or even New York City (successful 'pre-emption' attack on ban on taxicab-top cigarette advertising)²². But the industry has also taken on the US Environmental Protection Agency (for daring to conclude that environmental tobacco smoke causes lung cancer) and the Canadian Government (for presuming to have the constitutional power to ban cigarette advertising)²³. Presently, it is threatening governments throughout the world with the preposterous legal claim that label regulations infringe the companies' trademark rights, in violation of international conventions.

The point of these tactics—whether political, public relations, or legal—is not to win. The tobacco executives know that, at least in developed countries, they are fighting a losing battle. But the tactics do succeed in distracting and intimidating tobacco control forces, and delaying (and occasionally reversing) tobacco control gains. And every year of delay means billions of dollars in profits, albeit at the cost of millions of lives.

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