



Testimony

Of

Anne H. Pearson

**Senior Legal Counsel for Policy, Bureau of Tobacco Control
New York City Department of Health and Mental Hygiene**

before the

New York City Council Committee on Health

regarding

**Intro. No. 433-A: Flavor Tobacco Products
Intro. No. 642-A: Smoking Near Hospital Entrances**

May 21, 2009

City Hall
New York City

Good afternoon, Chairperson Rivera and members of the New York City Council Committee on Health. I am Anne Pearson, Director of Policy and Legal Counsel for the Bureau of Tobacco Control at the New York City Health Department. On behalf of Commissioner Frieden, I would like to thank you for the opportunity to comment on Intro 433A and Intro 642A.

Smoking is the leading cause of preventable death in New York City; it is responsible for 1 in 3 preventable deaths and 1 in 7 deaths overall. Preventing tobacco-related illness and death continues to be a key priority for the Administration. As part of the Administration's comprehensive tobacco control strategy to reduce tobacco use among New Yorkers, the Health Department has prioritized several initiatives, including raising cigarette excise taxes, using health education to make New Yorkers aware of the serious health effects of tobacco use, and establishing smoke-free environments. New York City now has the highest tax on cigarettes in the nation, with a pack price of more than \$9. Our hard-hitting health education campaigns have motivated hundreds of thousands of New Yorkers to get the help they need to quit smoking for good. And thanks to the collaborative efforts of the Council and the Administration in securing passage of the Smoke-Free Air Act of 2002, nearly all workplaces in New York City are smoke-free, including restaurants and bars.

Earlier this month, the Health Department announced that New York City has reached its lowest rate of smoking on record, with fewer than 1 million adult smokers in the City. This represents 350,000 fewer smokers than in 2002. We are equally proud that from 1997-2007, there was a 64% decline in smoking among public high school students. At 8.5%, New York City's current rate of youth smoking is among the lowest in the country. And yet, despite significant progress in reducing the prevalence of smoking, more than 950,000 adults and 20,000 public high school students still smoke in New York City.

In the past few years, we have focused our efforts on proven tobacco control strategies. For example, we successfully advocated for increases in the state and federal cigarette excise taxes, and estimate that these price increases will ultimately result in 75,000 fewer smokers, and 25,000 lives saved. We have also launched a series of hard-hitting public health educational campaigns showing the ugly reality of smoking. Since the campaign launch in 2006, more than 500,000 calls for smoking cessation assistance have been received from New York City residents by 311 and the New York State Smokers' Quitline. These anti-smoking public health campaigns have contributed to a significant adult smoking decline of 16% between 2005 and 2008, corresponding to 190,000 fewer adult smokers in New York City. This decline accounts for more than half of the overall 27% decline in adult smoking prevalence since 2002, the year comprehensive tobacco control began.

With these strategies firmly in place, we think that now is the time to explore additional tobacco control approaches, particularly those that respond to recent trends in youth tobacco behaviors as well as new tobacco industry products and promotional efforts.

One notable and troubling change in youth smoking trends is that between 2001 and 2007, the percentage of youth smokers in New York City who smoke cigars or cigarillos only nearly tripled. Because the cigars and cigarillos that are affordable and accessible to youth are typically flavored, the availability of peach, strawberry and chocolate flavored products may be

fueling this trend. These products are easily found in corner stores and bodegas, wrapped in colorful packaging to resemble candy and gum. They are products that appear designed to appeal to children. By disguising the harsh flavor and odor of regular tobacco, flavorings such as pina colada and chocolate chip cookie dough make these tobacco products attractive to young smokers. In fact, despite tobacco industry claims that flavored cigarettes are meant for adults, teens are at least twice as likely as adults to try them.

Although some people believe that cigars are less dangerous than cigarettes, this is incorrect. A single cigar can contain as much tobacco as five cigarettes, if not more, and has a much higher level of nicotine, the chemical in tobacco that causes addiction. Like other tobacco products, cigars are linked to various cancers, respiratory illnesses and heart disease. The dramatic surge in cigar and cigarillo use among youth is cause for concern, and requires a response.

Another notable change since 2006 has been the advent of new tobacco products. In 2008, RJ Reynolds introduced snus, a smokeless, spitless tobacco product that comes in four flavors: frost, original, spice and mellow. Snus consists of pasteurized powdered tobacco apportioned into small teabag-like pouches that are placed between the cheek and the upper lip where the nicotine is absorbed by the oral cavity. Packaged in colorful metal tins, snus looks more like candy or mints than a tobacco product. The fact that snus can be used discreetly is part of the product's appeal to youth; snus can be used in school or at home, without the knowledge of parents or teachers.

The Health Department shares the Council's goals of preventing the initiation of smoking among young people and improving the health of all New Yorkers. For this reason, the Health Department supports Int. 433-A which would prohibit the sale of flavored tobacco products in New York City. It is well known that because nearly 90% of all smokers begin smoking as adolescents, the tobacco industry targets youth. We believe that one way this targeting occurs is through the marketing and promotion of flavored tobacco products. A ban on flavored tobacco products would reduce the tobacco industry's ability to market to youth which may, in turn, decrease youth experimentation and initiation.

Since the Council last held a hearing on this bill in 2006, the tobacco control landscape has changed. As a result of the Department's aggressive pursuit of proven tobacco control strategies, we are now closer than in 2006 to creating an environment in which smoking is the exception rather than the rule. In the wake of these successes, we believe that now is the time to prohibit the sale of flavored tobacco products.

New York City is not the only jurisdiction to come to this conclusion. In July of this year, the State of Maine will implement a ban on most flavored tobacco products. In addition, Congress is currently considering the Family Smoking Prevention and Tobacco Control Act, which would permit the federal Food and Drug Administration (FDA) to regulate tobacco products, and would ban all flavored cigarettes except those that are mentholated. Because the FDA bill's ban on flavored products is limited to cigarettes, Int. 433A is still needed to halt the growing market of flavored cigars and cigarillos.

Although the Health Department supports Int. 433A, we are concerned about the exemption for flavored tobacco products that are designed for use in a hookah, as well as the exemption for products that are mentholated. Like cigar smoking, hookah use is a fast growing trend among youth. In the past few years, New York City has seen a surge in hookah bars, many of them in youth-oriented neighborhoods such as the East Village and the Lower East Side. Hookah paraphernalia is also widely available in stores near colleges, such as NYU, suggesting that hookah use is not limited to hookah bars, but takes place in young people's residences as well. According to the World Health Organization, smoke from a hookah contains numerous toxicants known to cause lung cancer, heart disease, and other diseases. Hookah use also delivers nicotine, and is therefore addictive. Because a typical hookah smoking session lasts 20-80 minutes, smokers may take 50-200 puffs and may inhale as much smoke in one hookah session as a cigarette smoker would inhale consuming 100 cigarettes.

The current bill would also exempt any tobacco products with a menthol flavor. More than one fourth of all cigarettes sold in the United States are mentholated. African-American smokers overwhelmingly smoke menthols. Mentholated cigarettes are also popular among young and new smokers, in part because the menthol flavor masks the harsh flavor and irritating effects of cigarette smoke. While we understand that banning mentholated products is not under consideration in this legislation, from a tobacco control perspective, banning such products would likely have a strong impact on adult smoking prevalence and youth initiation.

Another intervention that we believe can have an impact on smoking prevalence is restricting smoking near building entrances, such as hospitals, as proposed in Intro. 642A. In 2002, the Administration worked closely with the Council to ensure passage of the Smoke-Free Air Act (SFAA). Since that time, hundreds of thousands of workers have been protected from exposure to second-hand smoke while on the job. Contrary to historical predictions, the law is very popular; New Yorkers have grown to expect smoke-free environments as the norm.

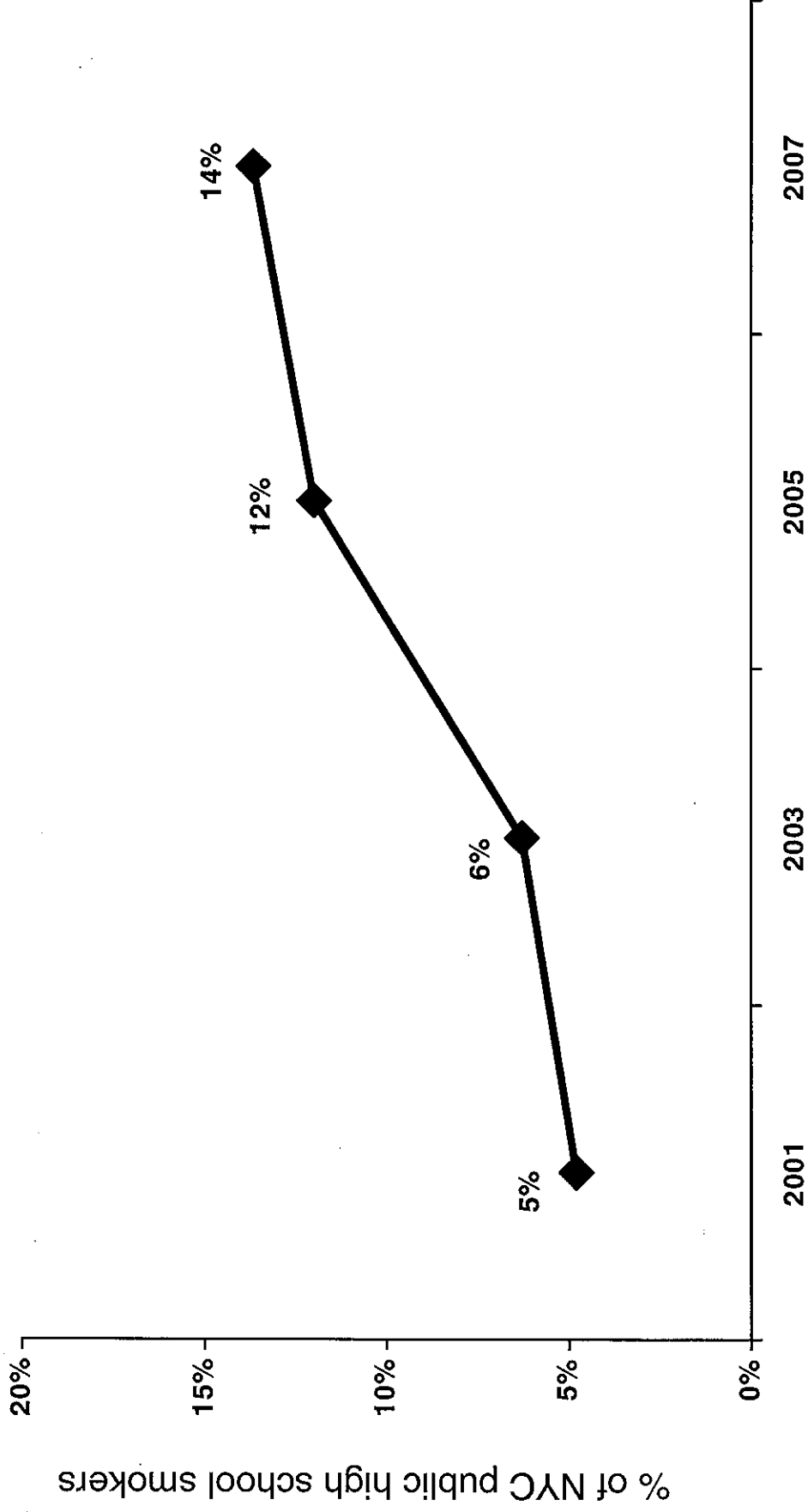
One unintended but serious consequence of the SFAA is that many smokers comply with the ban on indoor smoking by smoking outside the entrances to buildings. While exposure to second-hand smoke near building entrances is brief, it is a repeated and unavoidable daily occurrence for many New Yorkers.

It is well documented that there is no safe level of exposure to second-hand smoke. Research has shown that when smoking is allowed near buildings, outdoor concentrations of second-hand smoke can be as high as concentrations measured indoors from smoking. According to a Health Department study, more than half of non-smoking New Yorkers have elevated levels of cotinine in their blood, resulting from a recent exposure to second-hand smoke in concentrations high enough to leave residues in the body. Cotinine, a by-product of nicotine breakdown, is not harmful itself but signals exposure to environmental tobacco smoke. The study indicates that 57% of adult non-smoking New Yorkers, about 2.5 million people, have elevated cotinine levels, compared to 45% of non-smoking adults nationwide. Given that exposure to second-hand smoke has been associated with lung cancer, heart disease, asthma attacks and respiratory infections, 14 states and 851 municipalities have adopted smoke-free air laws that prohibit smoking at building entrances.

The Health Department supports Int. No. 642-A which would prohibit smoking on hospital grounds, within 15 feet of hospital entrances, and on sidewalks that are adjacent to hospitals. While nobody should have to walk through a cloud of potentially dangerous second-hand smoke, people suffering from illnesses are often the most vulnerable to the consequences of second-hand smoke. In addition, medical professionals -- such as EMTs -- regularly pass through hospital entrances as a condition of their employment; they should be free from exposure to second-hand smoke as they go to their jobs. The Department would be happy to work with the Council to craft appropriate language, including a specific definition of "hospitals".

Thank you for the opportunity to testify. The Department of Health and Mental Hygiene is dedicated to protecting the health of all New Yorkers, reducing youth smoking rates and expanding smoke-free air venues. We look forward to working with the Council to achieve these mutual goals. I am happy to answer your questions.

The Percentage of Youth Smokers who Smoke Cigars or Cigarillos Only Has Tripled Since 2001



Source: Youth Risk Behavior Survey 2001-2007





Testimony of Dr. Suzanne Steinbaum

Director, Women's Health and Heart Disease, Heart and Vascular Institute,
Lenox Hill Hospital
*110 East 59th Street, Suite 8A
New York, New York 10022
212-434-6902 / 212-434-2606
fax: 212-434-2610*

In Support of Proposed Int. 433-A, Proposed Int. 642-A, and Res. No. 1927
May 21, 2009

Thank you, Chairman Rivera and esteemed members of the Council Health Committee for allowing me the opportunity to address several measures today, all seeking to strengthen the city's overall comprehensive tobacco control plan. My name is Dr. Suzanne Steinbaum, and my professional background is as a Director at the Heart and Vascular Institute from Lenox Hill Hospital. However, today, I am here to share my perspective as a cardiologist and a concerned citizen of New York City.

Cardiovascular disease is the number one cause of death in the United States and New York. It accounts for more than 930,000 deaths each year in the U.S., including an estimated 37,000 to 40,000 from heart and blood vessel disease caused by second hand smoke.

According to the American Heart Association, and confirmed by the Centers for Disease Control and Prevention, smoking is the leading preventable cause of coronary heart disease. Toxins in the blood from smoking cigarettes contribute to the development of atherosclerosis, which is a progressive hardening of the arteries caused by the deposit of fatty plaques leading to blockages in the arteries. These blockages and inflammation in the artery can lead to blood clots and can obstruct blood flow which can cause heart attacks or strokes. Smoking low-tar or low-nicotine cigarettes rather than regular cigarettes has no effect on reducing the risk for coronary heart disease.

Regarding Proposed Intro 433-A, I strongly support this effort to remove entry mechanisms to tobacco addiction from the market. According to a 2005 study by the Harvard School of Public Health, "flavored cigarettes can promote youth initiation and help young occasional smokers to become daily smokers by masking the natural harshness and taste of tobacco smoke and increasing the acceptability of a toxic product."

I feel it is important to note that Proposed Intro 433-A possess great potential to raise the bar nationally for the removal of flavored tobacco products from the market. This bill exceeds the current proposals we see from our federal government, in that it would not only ban flavored cigarettes, but also flavored cigars, little cigars and smokeless products. As a cardiologist, I can affirm the reality that tobacco smoke is not only dangerous when it comes from a cigarette. Tobacco destroys the cardiovascular system regardless of its source. I commend the Council for seeking to remove all flavored tobacco from store shelves in New York City. By doing so, I anticipate seeing fewer tobacco addicts in our region, thereby greatly reducing the leading preventable cause of cardiovascular diseases, that being tobacco use.

Regarding Proposed Intro 642-A, I believe firmly that this legislation will serve to encourage more residents of New York City to quit smoking. I work with victims of cardiac disease routinely through my office. These patients often have to travel through environments where smokers congregate. I certainly do not feel it's right that cardiac patients must greatly enhance their risk of exacerbating their illness, just to gain access to their health care provider.

Finally, regarding Res. No. 1927, I share the Council's enthusiastic support for the Family Smoking and Prevention Act. This federal initiative will single-handedly elevate the ability for our government to enact strong national tobacco control measures to unseen heights. Within one year of the bill's implementation into federal law:

- All outdoor tobacco advertising would be banned within 1,000 feet of schools and playgrounds
- All remaining tobacco brand sponsorships of sports and entertainment events would be banned.
- Free giveaways of any non-tobacco items with the purchase of a tobacco product or in exchange for coupons or proof of purchase would be banned.
- Free samples and the sale of cigarettes in packages that contain fewer than 20 cigarettes would be banned.
- Limits would be placed on any outdoor and all point-of-sale tobacco advertising to black-and-white text only
- Advertising would be limited in publications with significant teen readership to black-and-white text only
- Vending machines and self-service displays would be restricted to adult-only facilities
- Retailers would be required to verify age for all over-the-counter sales and provide for federal enforcement and penalties against retailers who sell to minors.

The tobacco industry has long taken advantage of this lack of regulation to market their deadly products to our children and deceive consumers about the harm their products cause. I look forward to the legislation's continued momentum in our nation's Capitol.

In closing, I thank you for your time today. I applaud you for your attention to these valuable steps in achieving a strong national standard in tobacco control. I hope that your efforts today lead to implementing these laws in our city, and provide an example to our country on how effective health policy can lead to a healthier population.

Testimony of Irwin Berlin, MD
Chief, Division of Pulmonary/Critical Care, Elmhurst Hospital
May 21, 2009

On Intro 433-A, Prohibiting the Sale of Certain Tobacco Products
Intro 642-A, Prohibiting Smoking on and around Hospital Grounds
Res. No. 293- Resolution calling upon Congress to tighten advertising restrictions in the federal
Cigarette Labeling and Advertising Act and to allow localities to legislate in this area
Res. No. 1927- Resolution calling upon Congress to pass the Family Smoking and Prevention Act.

Good morning. My name is Dr. Irwin Berlin and I am the Chief of the Division of Pulmonary/Critical Care at Elmhurst Hospital and serve in a volunteer capacity for the American Thoracic Society, the American College of Chest Physicians and the American Lung Association of New York. I am here to offer support and comments on Intro 433-A, to prohibit the sale of flavored tobacco products, including flavored cigarettes, cigars, little cigars and smokeless tobacco as well as Intro 642-A, which would prohibit smoking on hospital grounds and lastly in support of the Resolutions related to federal legislation, which would give the Food and Drug Administration the ability to regulate tobacco.

I first want to thank Health Committee Chair Joel Rivera for his leadership on tobacco control including Intro 433-A and for his overall commitment to protecting the public health. Each of these bills has the potential to have a significant powerful effect on the lung health of our city. At Elmhurst Hospital Center, I see many young adults with compromised lung function, filling Emergency Department beds, medical and specialty clinic waiting rooms, in-patient medical-surgical hospital beds and critical care beds - all related to smoking. Our "Queens Quits" NY State Department of Health grant, to assist in getting patients to stop smoking, has been particularly effective in getting young Hispanic females to stop smoking. I have submitted Elmhurst data for 2008, which shows how an aggressive approach to smoking cessation can be successful.

Smoking is the number one cause of preventable death in New York City, and every effort to prevent our children from picking up their first cigarette demands our advocacy.

Cigarettes and tobacco products in assorted candy, fruit and alcohol flavors are just as addictive and just as deadly as ordinary cigarettes, but enticing to a whole different crowd. What distinguishes them from the other packs on the shelves is their flashy advertising, and their sweet smelling aroma, masking the harsh taste of the tobacco, and attracting a younger, more susceptible eye. By enacting Intro 433 and prohibiting the sale of tobacco products with a "characterizing flavor," excluding tobacco or menthol flavoring, we would not be preventing established smokers from buying their favorite variety of smokes, we would be preventing youth from being tempted to pick up the deadly tobacco habit.

I also am urging passage of Intro 642-A, which would ban smoking at and around hospital grounds. Working at a hospital, I often have to navigate through clouds of tobacco smoke just to enter the hospital. The current 50 foot rule may exist, but is currently impossible to enforce. As unhealthy as it is for me and my colleagues, my main concern is for my patients.

The fact is that secondhand smoke can and does trigger asthma attacks, and exacerbates lung disease including COPD and lung cancer. This legislation is a common-sense public health measure aimed at protecting individuals who go to a medical clinic or hospital to get better.

With regard to the two resolutions, I am a strong supporter of the federal legislation which would give FDA the authority to regulate tobacco. This legislation would be one of the largest pieces of tobacco control legislation ever passed and will have a profound effect on public health. Just a couple of months ago, I visited Capitol Hill twice to advocate on the importance of this bill. I met with members of our Congressional delegation and staff-members to Senators Schumer and Gillibrand. I was encouraged when our New York Delegation unanimously voted in favor of the House version of the legislation, and that both of our Senators are co-sponsors of Senator Kennedy's legislation. I hope that the Council quickly passes this resolution and that Congress passes the legislation before the June recess.

Thank you again for your leadership on tobacco control initiatives. We look forward to continuing to work closely with this committee to advance legislation to prevent youth from a lifetime of tobacco addiction, enacting policies which help current smokers quit, and protecting the public from exposure to secondhand smoke.

Elmhurst Hospital Center
Smoking Cessation Program

2008

Total Participants Enrolled and Couseled	Total Participants for whom Pharma Agents were Prescribed or Dispensed (%)	Total Respondents at least 1 month post enrollment (%)	Total Participants who Reported to have Quit * at least one month post enrollment (%)
3877	3866 (99.7)	2342 (60)	955 (41)

**Testimony of Russell C. Sciandra, Director, Center for a Tobacco Free New York
Before the New York City Council, Committee on Health, May 21, 2009
RE: Intro. No. 433-A**

Chairman Rivera and members of the Committee, thank you for this opportunity to present my views on this important health issue.

My name is Russell Sciandra. I am director of the Center for a Tobacco Free New York in Albany, and my remarks are on behalf of the American Cancer Society.

For tobacco product manufacturers, an important function of the flavorings affected by this legislation is to mask from users, particularly new users, the harsh and toxic properties of tobacco smoke and spit tobacco. A review of tobacco industry internal documents discovered during the course of litigation shows that tobacco companies have long regarded flavored products as "starter" products from which teenage experimenters will "graduate" to adult mainstream brands. In other words, to the manufacturers, flavored tobacco products are like training wheels for their young customers – an introduction to a life-long addiction to nicotine.

Attached to this testimony is an article by Dr. Gregory Connolly analyzing the marketing of smokeless tobacco to youth through the development of low nicotine, and frequently, flavored starter products. Figure 1 on the third page of Dr. Connolly's article depicts US Tobacco's "graduation strategy" in a chart prepared by the company's marketing department. The plan is to begin users with Skoal and Happy Days brand products, the majority of which are flavored mint, wintergreen or "sweet," and gradually promote them to the full-nicotine, tobacco flavored Copenhagen brand. A UST memorandum quoted in the article describes:

"Three products of three different tastes and strengths of nicotine: a) High nicotine, strong tobacco flavor...b) Medium strength of nicotine...using a Happy Days product [Happy Days comes in three flavors "natural," "sweet" and "mint"]... c)Low nicotine, sweet product...Do we flavor this product with honey, chocolate or vanilla?"

We now know that this marketing campaign was tremendously successful. From 1970, when it began, to 1991, the prevalence of snuff use more than doubled, and among males 18 to 24 it increased more than six-fold. In 1990, more than one in four white male high school students in the U.S. used smokeless tobacco. One of the most popular brands, Skoal, now comes in Wintergreen, Peach, Vanilla, Apple, Berry, Spearmint, and Citrus flavors.

The cigarette companies observed this success and long considered following suit. A 1972 Brown & Williamson memo states, "Apples connote goodness and freshness and we see many possibilities for our youth-oriented cigarette with this

flavor...It's a well known fact that teenagers like sweet products. Honey might be considered." A 1974 RJR memo describes a new "Cigarette Designed for Beginning Smokers. This cigarette would be low in irritation and possibly contain an added flavor to make it easier for those who have never smoked before to acquire the taste for it more quickly....The idea is based on the fact that smoking to the initiate is a fairly traumatic experience."

This trend reached its height (or depth) a few years ago when RJ Reynolds Tobacco introduced a line of candy, fruit and alcohol-flavored Camel cigarettes with names like "Twista Lime," "Warm Winter Toffee," and "Snake Eyes Scotch." This marketing campaign was so egregious that the state attorneys general, using the Master Settlement Agreement, forced Reynolds to tone it down and stop using fruit, candy and liquor-related words in the product brand names.

But that didn't stop Reynolds from continuing to sell flavored cigarettes under different names, and the agreement only applies to Reynolds.

The New York State Office of Fire Prevention and Control requires that cigarette manufacturers certify cigarettes as complying with fire safety regulations. The list of certified cigarettes shows that as of January 20, 2009, cigarettes were being sold in New York that were flavored with: Vanilla, Cherry, Coffee, Honey, Chocolate, Strawberry, Wild Cherry, Mint, Grape, Anise, Mixed Fruit, Lime-Lemon, Coconut, Cinnamon, Raspberry, Orange, Licorice, Spearmint, Pineapple, Café Latte, and, for the sophisticates, Chardonnay.

And then there are so-called "little cigars." Little cigars are really cigarettes. They are the size of cigarettes and are made with cigarette tobacco and filters, but wrapped in a paper that contains tobacco leaf. This is done so the product will be taxed at a much lower rate than cigarettes.

Swisher Sweets is a popular brand of little cigar. It comes in cherry, strawberry, peach and grape flavors. RJ Reynolds produces Captain Black little cigars. They come in "Peach Rum," "Tahitian Cherry," and "Madagascar Vanilla." And then there's HBI International, which produces wrappers in more than 30 flavors including Milk Chocolate, Absinthe, Tequila, Peaches & Cream, Mango, Bubblegum and Chocolate Chip Cookie Dough.

So we continue to see a proliferation of flavored tobacco products, all intended to make tobacco users, mostly young people, forget what they are really taking into their bodies. The agreement negotiated by Reynolds and the attorneys general only revealed the shortcomings of such agreements, it did little to stop the marketing of flavored tobacco to New York's young people.

The City Council has an historic opportunity to address the loopholes in the agreement and lead the state and the nation by enacting a ban on these

products from ALL tobacco manufacturers. We urge you to continue your leadership and take that step.

To conclude, we believe that flavored tobacco products are inappropriately attracting new young, smokers. The American Cancer Society strongly supports this bill as a much-needed step to protect our children and to reduce their risk of nicotine addiction and the subsequent lethal effects of tobacco.

Thank you.

SPECIAL COMMUNICATION

The marketing of nicotine addiction by one oral snuff manufacturer

Gregory N Connolly

Abstract

Oral snuff is a form of smokeless tobacco that has been shown to cause oral cancer, gum disease, and nicotine dependence. Since 1970 use of oral snuff has soared among young males. I believe this increased use is a direct result of an industry advertising and marketing campaign that encourages young non-users to experiment with low nicotine starter products with the intent of graduating new users up to higher nicotine brands as dependence progresses. This article reviews internal industry documents offered into evidence in a 1986 Oklahoma court case, tobacco and advertising industry trade literature, and advertising and promotional material that shows how one snuff manufacturer markets nicotine dependence to young people.

(*Tobacco Control* 1995; 4: 73-79)

Keywords: smokeless tobacco; marketing; nicotine addiction

Introduction

Oral snuff is a finely cut, processed tobacco which the user places between the cheek and gum. Nicotine is released from the tobacco and absorbed by the membranes of the mouth. In 1986 the US Surgeon General concluded that use of this product causes oral cancer, gum disease, and nicotine addiction.¹ More recent research suggests that snuff use increases the risk of cardiovascular disease, including heart attack.²

In recent years, use of oral snuff has risen dramatically among young men. From 1970 to 1991, the prevalence of snuff use among men aged 18 and older rose from 1.5% to 3.3%; among men 18-24 years old, it increased more than eightfold from 0.7% to 6.2%, making this age group the heaviest users of the product among those surveyed.³ The 1990 Youth Risk Behavior Survey found that 24% of all white male high school students had used smokeless tobacco at least once during the past month.⁴ A 1989 National Collegiate Athletic Association (NCAA) survey of college athletes found a

40% increase (from 20% to 28%) in smokeless tobacco use from 1985 to 1989.⁵ Among NCAA baseball players, an alarming 57% were users.⁶ There is new evidence which suggests that these increases are no accident, but the result of a sophisticated marketing campaign that developed, advertised, and promoted use of oral snuff starter products with low levels of free (un-ionised) nicotine as part of a graduation strategy that intended new users to move up to brands higher in nicotine as tolerance developed. The high nicotine brands are highly addictive and high in cancer-causing nitrosamines.

Two studies published in this issue of *Tobacco Control* confirm that the amount of nicotine available for uptake by snuff consumers varies systematically according to brand.^{6,7} This paper will describe the evidence available which indicates how manufacturers manipulate free nicotine levels, the role of starter brands in one company's "graduation" strategy, and how advertising and promotions encourage experimentation and nicotine addiction among new users. The evidence presented here has been collected from a variety of sources, including documents offered into evidence in a 1986 Oklahoma court case, tobacco and advertising industry trade literature, Congressional hearings, and other sources.

Control of free nicotine

Oral snuff manufacturers control the nicotine levels delivered to their consumers by controlling the amount of total nicotine in their brands, the level of free nicotine that is available for uptake into the body, and, in the case of Skoal Bandits, the size of the dose by using portion packs of tobacco in a mouth bag. In the 1986 Oklahoma court case *Marsee vs US Tobacco Company*, the plaintiff's attorney discussed a 1981 document on US Tobacco Company (UST) stationery from Per Erik Lindquist, UST's Senior Vice President of marketing, to Barry J Nova, President of the Tobacco Division. The document explained why the levels of nicotine were controlled: "Flavorwise we should try for innovation. Taste and strength (nicotine) should be medium, recognizing the fact that virtually all tobacco usage is based upon nicotine ('the kick') satisfaction."^{8,9}

Total nicotine is controlled through selection and blending of tobacco leaf. Levels of

Massachusetts
Tobacco Control
Program,
Massachusetts
Department of Public
Health, 150 Tremont
Street, Boston,
Massachusetts 02111,
USA
GN Connolly

This article is based on testimony presented by Dr Connolly to the Subcommittee on Health and the Environment, Committee on Energy and Commerce, US House of Representatives, 29 November 1994.

free nicotine are controlled by adjusting the pH, which is done through fermentation, by adding alkaline buffering agents such as sodium carbonate and ammonium carbonate, or by altering moisture content. Free nicotine, which is formed as the pH of the tobacco increases, is rapidly absorbed across the membranes of the mouth into the body.¹⁰ The two alkalising chemicals just mentioned appear on the list of non-tobacco materials used as additives in moist snuff that the industry trade association, the Smokeless Tobacco Council, supplied to the US House of Representatives Subcommittee on Health and the Environment in April 1994.¹¹

The Swedish Tobacco Company, which also manufactures oral snuff and owns the US snuff company Pinkerton Tobacco Company, intentionally controls the level of free nicotine. The company commented on its production process in a 1994 report,¹² *Smokeless Tobacco from Gothenburg* (translated from Swedish): "In order to release the nicotine from the tobacco, the snuff is made slightly alkaline—sodium carbonate is added during the production process as this alters into bicarbonate."

The company's fact sheet entitled *Sunsets innehall*¹³ [*The content of snuff*] further states (translated from Swedish): "Sodium carbonate (Na_2CO_3), which is active in increasing the pH level, makes nicotine more easily released from the tobacco and subsequently facilitates the uptake of nicotine through the mucous membranes of the mouth. The sodium carbonate is altered in the snuff into bicarbonate (NaHCO_3)."

In an October 1994 article in the *Wall Street Journal*,¹⁴ two former UST chemists were quoted on how the company apparently manipulates nicotine: "US Tobacco routinely adds chemicals to its snuff to deliver the free nicotine faster and to make the product stronger"—Larry Story (former US Tobacco chemist). "The fermentation process involves adding chemicals and, at the end, you add some more chemicals which increase pH too.... Without increasing the pH, you couldn't get nicotine release."—James C. Taft (former US Tobacco chemist). "It (Copenhagen) was brought up to a pH of 7.8 by adding more sodium carbonate and ammonium carbonate"—Larry Story.

Starter brands and the "graduation" strategy

If a new user starts with the standard high nicotine brands such as UST's Skoal Fine Cut or Copenhagen, a toxic response such as dizziness or nausea may occur. The novice is more likely to quit before tolerance to the toxic effects of nicotine develops. To respond to this problem and to expand its user base, UST developed low nicotine starter brands: Happy Days, Skoal Bandits, and Skoal Long Cut.

Happy Days was a loose, fine-cut tobacco with low free nicotine which was first introduced in the late 1960s. Evidence from the *Marsee vs UST* court case shows UST concern

with three design problems—"float", "lip burn", and "size of pinch"—that prevented new users from getting accustomed to the smokeless tobacco.¹⁵ "Float" referred to movement of the tobacco around the mouth, which could possibly result in too quick a release of nicotine or poor contact with oral tissue. "Lip burn" could be caused by the chemical and physical irritation of the tobacco contacting the oral tissues. The size of the pinch is critical if a new user is to achieve a sufficient pharmacological response from nicotine but not one so high that it induces a toxic effect such as nausea. Based on these problems, UST embarked on the "Lotus Project" to develop a starter portion pack of tobacco product in a teabag-like pouch.

Three documents from the *Marsee vs UST* court case further elaborated on the strategy. In minutes from a 1968 meeting, LA Bantle, then a UST vice president and later company chairman and chief executive officer, stated: "We must sell the use of tobacco in the mouth and appeal to young people... we hope to start a fad."¹⁶

In the same document Dr Word B Bennett, who was in charge of research for UST, summarised the meeting's recommendations, one of which was: "Develop new products. For example, artificial snuff—a consumable confectionery which would satisfy the snuff user"¹⁶

Two later documents from 1972 further described the Lotus Project.¹⁶ The project was first developed by United Scandia International, a joint venture between UST and Swedish Tobacco Company. A memorandum of 2 June 1972 described the activities of two working groups, one from UST and the other from Swedish Tobacco. A second Lotus document, dated 18 July 1972, was the minutes of a meeting held at UST headquarters in which Bantle stated that he wanted a Lotus Project—smokeless tobacco in a portion pack for the US market—and instructed a UST task force to embark on this. As part of those minutes, the Lotus Project was described, and the target group was defined as "new users, mainly cigarette smokers, age group 15–35". The "strength" of the new product was termed "nicotine satisfaction", and the product was compared to UST's existing brand Happy Days. In 1983, UST introduced Skoal Bandits, which closely resembled the product described in the 1972 memorandum. This design controlled tobacco placement and the size of the dose. It also avoided the tobacco having direct tissue contact.

In 1984, UST introduced another new starter product called Skoal Long Cut, which further addressed these problems.¹⁷ The Long Cut used larger pieces of tobacco and included a binding agent that allowed the user to pack the tobacco into a tight bolus, thus avoiding the "float". The bolus may also allow for a uniform, slow release of nicotine and may be less irritating to the oral tissue than conventional fine-cut snuff. Moreover, the bolus replaced the need for a mouth bag, which may not have been appealing to "macho" dippers.

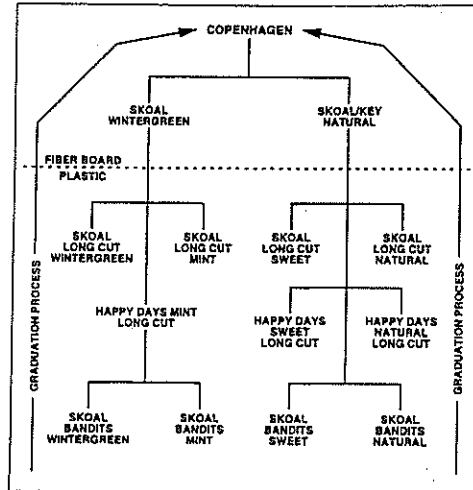


Figure 1 UST's "graduation strategy", as depicted in a UST document exhibited in the Marsee vs US Tobacco Company lawsuit. New users start with Skoal Bandits, progress to Happy Days brands or other Skoal products, and then "graduate" to Copenhagen

In addition, the mouth bag may have served as a barrier to nicotine absorption. Since 1984 UST has introduced an increasing variety of flavours of Long Cut. Today Cherry and Mint Long Cut are the two UST products most commonly given out as free samples, replacing Skoal Bandits as the sample of choice.

According to the 1972 Lotus memorandum¹⁵

There should be three products of three different tastes and strength of nicotine: a) High nicotine, strong tobacco flavor for consumer who presently uses tobacco in the mouth. Can this be accomplished by using present product of Copenhagen or Etna?... b) Medium strength of nicotine. Can this be accomplished by using a Happy Days product?... c) Low nicotine, sweet product. Can this be done by using present size Lotus?... Do we flavor this product with honey, chocolate or vanilla?

According to several sources described below, the company developed a strategy for new users to "graduate" up to higher brands over time. A document entitled *The graduation theory*, prepared by marketing consultants for UST, described the process:

New users of smokeless tobacco - attracted to the category for a variety of reasons - are most likely to begin with products that are milder tasting, more flavored and/or easier to control in the mouth. After a period of time, there is a natural progression of product switching to brands that are more full-bodied, less flavored, have more concentrated "tobacco taste" than the entry brand.¹⁸

According to a 1983 article in *Advertising Age*,¹⁹ "the new product is designed to hook consumers into what Mr [Barry] Nova [president of UST's Tobacco Division] called a 'graduation process' from Bandits to Skoal itself and then to Copenhagen, the company's strongest chewing [sic] tobacco."

In 1985, Jack Africk, Vice President of UST, explained the strategy in a company newsletter *Up to snuff*²⁰: "As far as our strategy for entering a new market is concerned - for each market there is a set of criteria which have been established, and must be met. Skoal Bandits is the introductory product, and then we look towards establishing a normal *graduation process* [emphasis added]."

Nova, who left UST in 1984, described the process¹⁴: "For people who haven't ever tasted [snuff], you'd of course begin them on a product that had a little tobacco taste, but wouldn't turn them off. The *graduation* [emphasis added] is to a more tobacco-y product... to a stronger product."

Despite the impressive documentation of the graduation strategy in publicly disclosed UST literature and public statements by current and former employees of the company, UST officially denies that it has used a graduation process. However, Ken Carlson, a division manager in UST's sales department

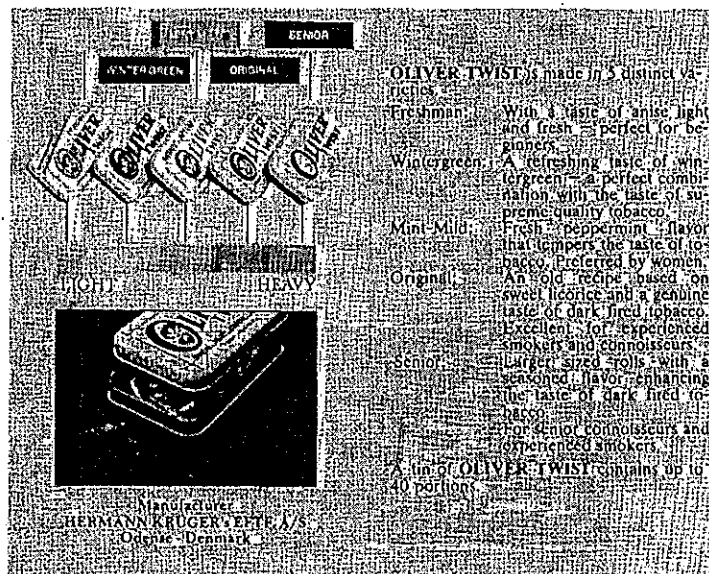


Figure 2 Oliver Twist, a smokeless tobacco product made by the Danish company Hermann Krüger and marketed in the US, comes in five strengths, from Freshman ("perfect for beginners") to "Senior"

from 1979 to 1986, had this to say about the matter¹⁴: "They talked about graduation all the time—in sales meetings, memos and manuals for the college program. It was a mantra."

The graduation process was even depicted schematically in a UST diagram exhibited at the *Marsee* case (figure 1).²¹ The diagram shows a "graduation process", beginning with Skoal Bandits, progressing to Happy Days brands or other Skoal products, and then finally to Copenhagen.

Another oral snuff manufacturer, the Danish company Hermann Krüger, sells smokeless tobacco in the US under the brand name Oliver Twist. Oliver Twist brands come in five strengths ranging from "light" to "heavy" (figure 2). The lightest brand is called "Freshman" and is, according to the company's instructions, "perfect for beginners". "Senior" is the highest strength brand. It is for "Senior connoisseurs and experienced smokers"²²

The Pinkerton Tobacco Company, which is owned by Swedish Tobacco Company, manu-

factures a low nicotine product called Renegades, which is sold in mouth bags, and a high nicotine brand called Red Man oral snuff. The Conwood Company sells both a low nicotine brand, Hawken, and a high nicotine brand, Kodiak.⁷

Advertising and promotion of a graduation strategy

Oral snuff manufacturers promote and advertise starter brands through free sampling, which is done through the mail and at sponsored events. In addition, UST has had a College Marketing Program.²³ The only products given as free samples by UST are the low nicotine brands Skoal Bandits, Skoal Mint, and Skoal Cherry Long Cut. Cherry is a flavour particularly appealing to young people because of the sweet taste. During the last six months of 1984, over 400,000 free samples were mailed by UST in response to national magazine advertisements.²⁴ According to the Federal Trade Commission,²⁵ \$15.8 million (13% of all smokeless tobacco advertising and promotional expenditures) was spent on free sampling in 1993 and \$22.9 million (19%) on public entertainment, which included sponsored rodeos, auto racing, music concerts, and other events where free sampling is routinely done. A major UST target for these samples is the young. In 1977, Bill Falk, a spokesman for US Tobacco, said: "A lot of young people are getting into [snuff]. It's become a status thing. When a kid gets a new pair of jeans, he puts the snuff can in his back pocket and rubs



Figure 3 UST communicated with its college sales representatives through its newsletter Smokeless Signals

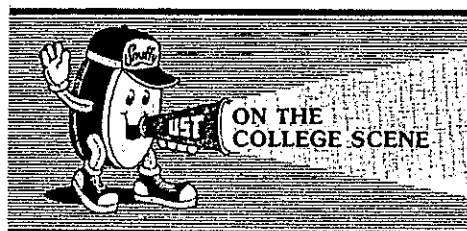


Figure 4 UST's mascot "Snuffy" keeps its sales representatives informed of developments "on the college scene"



It's as easy as 1-2-3.

1. Skoal Bandits is tobacco ritual cones wrapped in a neat, easy-to-use pouch. All you do is put it between your cheek and gum—the refreshing taste comes right through.
2. You don't chew it. Skoal Bandits is not chewing tobacco—it's a neater way to enjoy tobacco. There will be less saliva if you put the pouch between your upper cheek and gum.
3. You can enjoy Skoal Bandits anywhere. So it's perfect to take out in places where you can't light up. We're sure you'll be enjoying the "little pouch of tobacco pleasure" for a long time to come.



Figure 5 A brochure for Skoal Bandits explains that use of the product is "as easy as 1-2-3"

Walt Garrison answers your questions about moist smokeless tobacco.

Q: Walt, do you want to know how to use moist smokeless tobacco?

A: Sure, I'll tell you. First, you should know that moist smokeless tobacco is not like a cigarette. It's not smoked. It's chewed. So, you should take a small amount of tobacco and place it in your mouth. Then, you should chew it for a few minutes. This will allow the tobacco to moisten and release its flavor. After a few minutes, you should spit out the tobacco. You should not swallow it. This is the proper way to use moist smokeless tobacco.

Q: And, is it really that easy?

A: Yes, it is. In fact, it's so easy that even a child could do it. So, if you're looking for a new way to enjoy tobacco, moist smokeless tobacco is the way to go. It's smooth, rich, and convenient. And, it's the only way to enjoy tobacco without smoking.

Q: Does it taste like a cigarette?


A: No, it doesn't. In fact, it tastes much better than a cigarette. It's smooth and rich, and it has a long-lasting flavor. So, if you're looking for a new way to enjoy tobacco, moist smokeless tobacco is the way to go.

Q: How many people are using it?


A: Well, it's becoming more and more popular. In fact, it's the fastest growing segment of the tobacco market. So, if you're looking for a new way to enjoy tobacco, moist smokeless tobacco is the way to go.

Q: Thank you, Walt. We'll be sure to try it.

A: Sure, Walt. We'll be sure to try it. And, we'll be sure to let you know how it goes. So, if you're looking for a new way to enjoy tobacco, moist smokeless tobacco is the way to go.



COPENHAGEN
SMOKELESS TOBACCO



COPENHAGEN
SKOAL
APPLY DAILY


Figure 6 A UST advertisement from Parade magazine (8 June 1980) uses former Dallas Cowboys football star Walt Garrison to explain how to use smokeless tobacco products. It explains that "learning is part of the fun" and that "New users, of all ages [emphasis added],... are joining up all the time."

it until the outline shows. It shows he's old enough to chew."²⁶

UST's College Marketing Program was established in the late 1970s and employed college representatives on hundreds of campuses throughout the US (figures 3 and 4). The following quotes are from the company's *College marketing manual*.²⁷ This was the training manual for student representatives. The first quotation describes the importance of creating new consumers from college students today because of their value as the adult market of the future: "Consider that within this vitally important market many college/young adult consumers have never had the opportunity to experience the enjoyment of smokeless tobacco. Success in reaching the college student today will determine the continued popularity and growth for our products in the young adult and older market segments tomorrow."

The next two quotes deal with the importance of providing free samples to college

Introducing Skoal Bandits Straight Smokeless Tobacco has never been easier to enjoy.



BANDITS

Smooth, rich taste.
Convenient pouch.
Enjoy it anytime, anywhere.

Figure 7 An advertisement "introducing" Skoal Bandits, a smokeless tobacco product "easier to enjoy"

Sooner or later— it's Copenhagen.



COPENHAGEN
SNUFF
NET WT 1.2 OZ (34.02g)

It satisfies.

Figure 8 The advertisement for Copenhagen employs the slogan 'sooner or later it's Copenhagen', the highest free nicotine brand

students and of giving them specific instructions about how to use snuff:

It is fact that the only way to create a new user of our product is by having the consumer actually try the product. We are the ones who must get out to the consumer and show him the proper technique of using our smokeless tobacco.

Your number one objective is quality one-on-one sampling. When sampling, try to zero in on young smokers (smokers are usually more accepting of a

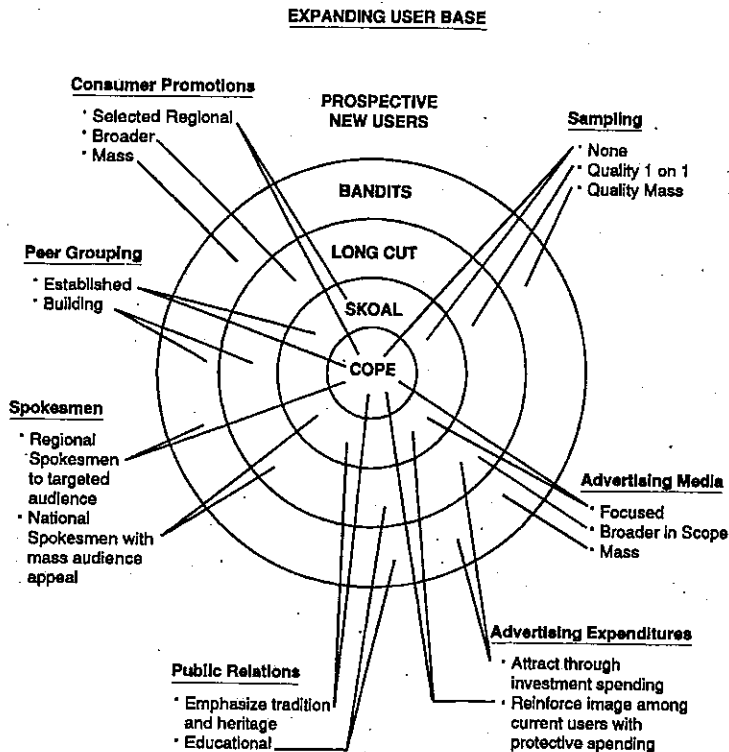


Figure 9 A UST chart, shown at a November 1994 Congressional hearing, which describes seven activities used by UST to expand its "user base". (This chart is a replica of the one presented at the hearing.)

sample as they already use tobacco, and 85% of smokers want to quit). Quality sampling presentations should include teaching non-users how to open the can, start with a small pinch, don't swallow product or juices, it will take time to get used to using oral tobacco, so keep on trying it, and inform the non-user where he can purchase the product.

Another quote from the manual instructs the student representative on how to deal with health inquiries from potential consumers or negative responses:

Don't discuss health issues with anyone. If someone is negative towards your sampling, a good line to use is that "If a person chooses to use tobacco, we would like them to use our product instead of someone else's product." Any further health related inquiries should be addressed to the Greenwich Office.

According to Leading National Advertisers, advertising expenditures for the low nicotine brands far outweigh those for the higher nicotine brands. In 1983, total US Tobacco advertising dollars for Skoal Bandits accounted for 47% of all company snuff advertising,²⁸ even though the brand made up only 2% of market share by weight.²⁹ Copenhagen, the highest nicotine brand made by UST, had only 1% of advertising expenditures²⁸ but 50% of market share.²⁹ UST spent \$5.8 million in 1990-1 for print advertising for Skoal and Skoal Bandits.³⁰ No print advertising was reported for Copenhagen.

Advertising messages for the low nicotine brands further support their role in the graduation strategy. Advertisements have provided non-users with instructions on how to use oral tobacco. A text for a Skoal Bandits brochure (figure 5) reads, "It's as easy as

1-2-3.... All you do is put it between your cheek and gum—the refreshing taste comes right through." In a 1980 advertisement by UST (figure 6), former Dallas Cowboys football star Walt Garrison answered questions about moist snuff, including this one:

Q: Does Going Smokeless take some getting used to?

A: Sure. At first you could feel a slight irritation on the gum, and the tobacco may move around your mouth more than it should, and you might work up too much saliva. But learning is part of the fun and these things pass with practice. Two weeks should make you a "pro."

This advertisement actually instructs the new user to ignore "irritation"—a natural warning sign of disease. It also boasts that: "New users, of all ages [emphasis added]... are joining up all the time."

Other advertisements show how advertising promotes the graduation strategy. An advertisement for Skoal Bandits used selling messages such as "Introducing" and "Easier to enjoy" (figure 7). In contrast, one for Copenhagen simply states: "Sooner or later—it's Copenhagen" (figure 8).

A 1986 brochure for Skoal Bandits³¹ offers new users instructions on how to use the product and conveys a clear understanding of how to develop tolerance to the toxic effects of a drug. According to the brochure:

How long should I keep the pouch in my mouth? If you haven't tried Skoal Bandits before, we recommend that you keep your first one in for about a minute—then remove. The next time you try another one, leave it in for a bit longer. Like your first beer, Skoal Bandits can be a taste that takes time to acquire and get the most out of. After four or five Skoal Bandits you'll find you've developed quite a taste for them and you'll want to keep a pouch in as long as the flavour lasts—this varies from person to person.

Further evidence documenting industry intent to move new users from low to high nicotine snuff products was presented to the US House of Representatives Subcommittee on Health and the Environment at a hearing on 29 November 1994 on smokeless tobacco. Hearing Exhibit 4, a UST document released by Henry Waxman, then subcommittee chairman, describes seven activities that were used to expand UST's "user base" (figure 9). According to the exhibit, these marketing activities are intended to move new users from Skoal Bandits to Long Cut, to Skoal, and finally to Copenhagen. The seven marketing tools include sampling, advertising media, advertising expenditures, public relations, spokesmen, peer grouping, and consumer promotions. In the case of the low nicotine brand Skoal Bandits, mass sampling, mass advertising, and mass promotions are recommended. In contrast, the expansion strategy for the high nicotine Copenhagen calls for no sampling, focused advertising, and selected regional consumer promotions.

Conclusions

This evidence indicates that oral snuff manu-

facturers manipulate levels of free nicotine in oral snuff brands and that UST employs a graduation strategy based on free sampling of low nicotine brands with the intent of causing and maintaining nicotine dependence among young men with no history of tobacco use. The marketing campaign has resulted in a surge in snuff use among adolescent males. Other nations that were recently faced with the new introduction of oral snuff into their markets banned the products before use became widespread. Bans are now in effect in Australia, New Zealand, Hong Kong, and the European Union.³² The long-term impact on oral health and oral cancer from this marketing programme will be devastating unless steps are taken immediately to prevent smokeless tobacco manufacturers from promoting nicotine addiction to youth.

- 1 US Department of Health and Human Services. *The health consequences of involuntary smoking. A report of the Surgeon General, 1986*. Rockville, Maryland: Public Health Service, Centers for Disease Control, 1986. (DHHS Publication No (CDC) 87-8398.)
- 2 Bolinder G, Alfredsson L, Englund A, Faire U. Smokeless tobacco use and increased cardiovascular mortality among Swedish construction workers. *Am J Public Health* 1994; 84: 399-404.
- 3 Giovino GA, Schooley MW, Zhu BP, et al. Surveillance for selected tobacco-use behaviors - United States, 1900-1994. *MMWR* 1994; 43(SS-3): 1-43.
- 4 US Centers for Disease Control. Tobacco use among high school students - United States, 1990. *MMWR* 1991; 40: 617-9.
- 5 Anderson WA, Albrecht RR, McKeag DB. *Second replication of the national study of the substance use and abuse habits of college student-athletes*. East Lansing, Michigan: Michigan State University, College of Human Medicine, Office of Medical Education, Research and Development, July 1993.
- 6 Henningfield JE, Radzins A, Cone EJ. Estimation of available nicotine content of six smokeless tobacco products. *Tobacco Control* 1995; 4: 57-61.
- 7 Djordjevic MV, Hoffmann D, Glynn T, Connolly G. US commercial brands of moist snuff, 1994. I. Assessment of nicotine, moisture, and pH. *Tobacco Control* 1995; 4: 62-6.
- 8 US Tobacco Document No 210 1124, dated 5 June 1981, Marsee Court transcript, vol 4, pp 1661-2, read into the record by George Braly.
- 9 US Tobacco Document No 1037818-20, dated 5 June 1981, Marsee Court transcript, vol 5, p 113, read into the record by George Braly.
- 10 Armitage AK, Turner DM. Absorption of nicotine in cigarette and cigar smoke through the oral mucosa. *Nature* 1970; 226: 1231-2.
- 11 Patton, Boggs, and Blow. *Smokeless tobacco ingredient list*. Washington, DC: Patton, Boggs, and Blow, 3 May 1994: 1-4.
- 12 Gothia Tobak. *Rökfri tobak från Göteborg*. Göteborg, Sweden: Gothia Tobak, Svenska Tobaks AB, 1994: 1-8.
- 13 Kronquist L. *Snusets innehåll*. Göteborg, Sweden: Gothia Tobak, Svenska Tobaks AB, 1994.
- 14 Freedman AM. How tobacco giant doctors snuff brands to boost their 'kick'. *Wall Street J* 1994 April 26; A1, A14.
- 15 United States Federal Court, Western District of Oklahoma, *Marsee vs US Tobacco*. No CIV-84-2777R, vol 25, pp 2220, 2232. Trial exhibit 158, plaintiff's deposition exhibit 14.
- 16 United States Federal Court, Western District of Oklahoma, *Marsee vs US Tobacco*. No CIV-84-2777R, vol 25, pp 2219 et seq. Trial exhibit 157, plaintiff's deposition exhibit 12.
- 17 *UST annual report, 1993*. Greenwich, Connecticut: UST, 1993.
- 18 Document No 2473950, Marsee Court transcript, vol 5, pp 112-3, read into the record by George Braly.
- 19 Feigelson J. Skoal Bandits blitz kicks off NY entry. *Advertising Age* 1983 Aug 8; 46.
- 20 US Tobacco Company. *Up to snuff*. Greenwich, Connecticut: US Tobacco Company, Spring 1985.
- 21 United States Federal Court, Western District of Oklahoma, *Marsee vs US Tobacco*. No CIV-84-2777R, UST Document No 12017104, vol 5, pp 12-13. Plaintiff's exhibit No 157.
- 22 Hermann Krüger. *Information Oliver Twist*. Odense, Denmark: Hermann Krüger, 1994.
- 23 Ernster VL. Advertising and promotion of smokeless tobacco products. In: *Smokeless tobacco use in the United States: National Cancer Institute Monograph No. 8*. US Department of Health and Human Services, Public Health Service, National Institutes of Health, National Cancer Institute, 1989: 87-94. (NIH Publication No 89-3055.)
- 24 Dougherty PN. Moving smokers to snuff. *New York Times* 1984 Jan 13; 4.
- 25 *Federal Trade Commission report to Congress pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986*. Washington, DC: US Federal Trade Commission, 1995.
- 26 Kranes M. Chaws-gripping entertainment. *New York Post* 1977 Mar 16; 37 (afternoon edition).
- 27 US Tobacco Company. *College marketing manual*. Greenwich, Connecticut: US Tobacco Company, 1982.
- 28 Publishers Information Bureau. *Leading national advertisers: national brand report*. New York: Publishers Information Bureau Inc., 1984.
- 29 Maxwell JC Jr. *The Maxwell consumer report: Smokeless tobacco industry in 1993*. Richmond, Virginia: Wheat, First Securities Inc., 1993.
- 30 Publishers Information Bureau. *Leading national advertisers: national brand report*. New York: Publishers Information Bureau Inc., 1993.
- 31 David Brown Promotions. *Introducing Skoal Bandits*. Cranleigh, Scotland: Daniel Brown Promotions Ltd, 1986.
- 32 Connolly GN. Smokeless tobacco in developed countries: an epidemic prevented. In: Durston B, Jamrozik K, eds. *Tobacco and health 1990: the global war*. Perth: Health Department of Western Australia, 1990: 120-5. (Proceedings of the Seventh World Conference on Tobacco and Health.)

CONFERENCE REPORT #23

TATHAM LAIRD & KUDNER, INC.
ADVERTISING

CLIENT R.J. Reynolds Tobacco **PRODUCT** New Products
DATE OF MEETING June 5, 1974 **PLACE OF MEETING** RJR

PERSONS PRESENT Client: Messrs. Blevins, Lloyd, Teague, White; Ms. Stowe
Agency: Messrs. Bassindale, Birn, Donati, Povill, Williams

The Client and the Agency met to review a selected group of technical developments in the cigarette category. The purpose of this meeting was to determine whether any of the technical developments to date could, at this time, be utilized in the development of new brands for marketing.

A. TYPES OF CIGARETTES

The technical group presented a number of technically feasible ideas which were screened from their existing list of ideas explored and in development. The types of cigarettes discussed follow.

1. Cigarette Designed For Beginning Smokers

This cigarette would be low in irritation and possibly contain an added flavor to make it easier for those who have never smoked before to acquire the taste for it more quickly. It would not necessarily be low in tar and nicotine content. The taste would be somewhat bland; there would be minimal after taste/build-up -- which would tend to cut down on the "motorman's glove" morning-after mouth taste. This cigarette could possibly be menthol.

The idea is based on the fact that smoking to the initiate is a fairly traumatic experience. The brand could not, however, be positioned against youth.

2. Low Tar/High Nicotine Cigarette (Reduction Of Carbon Monoxide)

The taste of this cigarette would not be like any current cigarette on the market and would yield a different smoking sensation. It was reviewed by the research group since medical literature appears to point to carbon monoxide as the next "bad guy" as has been the case with "tar" to date. Elimination or reduction of carbon monoxide can provide a story which talks to a "cleaner smoke" idea. Until this development, tar and nicotine went either up or down in a cigarette simultaneously; the technical development here has enabled RJR to deal with these two elements separately and therefore each can be controlled at virtually any given level desired.

50118 6367

3. Vintage Cigarette

The research group suggested that there might be some opportunity in the "choice, tender leaf" part of the tobacco targeted against a particular segment of the market. That segment would probably be an up-scale market since the tobacco would be high quality, would yield better tasting cigarettes, but would be premium priced as a result.

4. Non-Blended Cigarette

The research group pointed out that all American cigarettes are blended, whereas English cigarettes are not. A recent brand launched in the United States, Maryland 100's, was an attempt to simulate the English blend. The taste of a non-blended cigarette is quite different; for example, an all-burly cigarette is one that possibly a smoker could not inhale. The relationship to the Winchester idea (non-inhaled little cigar vs. non-inhaled cigarette) was discussed.

It was agreed that the research group would proceed to prepare a sample batch of non-blended cigarettes using a variety of different tobaccos for each different batch.

5. Flavored Cigarettes

The area of flavored cigarettes was discussed and covered citrus, apple, grape, herbs and spices, cola, coffee, chocolate and hickory. The instability of certain citrus flavors, particularly lemon, was discussed, as was the simulation of them to attempt to overcome the instability problem.

Cola, coffee and chocolate were the three flavors agreed upon for further work by the research group, and sample blends utilizing those ingredients would be prepared. It is possible, for example, to use one of these flavors to enhance the taste of the cigarette without promoting the flavor, and in this connection, the old evidence of Marlboro's inclusion of small amounts of chocolate was discussed. The relationship of flavor to moistness and menthol for talking to the smoker in terms of mouth feel, as opposed to flavor, was also reviewed. It was agreed that the research group would prepare some samples of such types of cigarettes that targeted moistness and freshness as their objectives utilizing, e.g., Cola.

6. More Puffs Cigarettes

A cigarette which would deliver 12 puffs per smoke as opposed to the 7-8 puffs per smoke now currently delivered was also discussed. The implications of tar and nicotine numbers would appear to be an impediment to further consideration at this time.

B. TYPES OF FILTERS

A series of types of filters were then presented by the research group. Among them were: foam type; separate filters (for a modified version of 19+); cyclone separator; electrostatic precipitator; capsule/beads (micro encapsulation) in the filter to yield various flavors; flavor injectors (sold separately, e.g., in a pin to buy with cigarettes); pipe stem type filter with or without a threaded appearance; a texture filter; colored filter; colored tipping paper on the filter; half filter; half cigarette/half filter; filter on either end (cigarette would break in the middle); transparent filter.

C. PUFF TOBACCO

A review of the latest development in "puff tobacco" (which yields a light cigarette with less tar) was an exciting technical development that generated a great deal of discussion. It not only provides an opportunity for developing low number filter cigarettes, but also an opportunity to develop low number straights.

It was agreed that the research group would proceed to make a sample batch up to 50% content of puff tobacco.

D. TLK REVIEW

TLK reviewed a number of the current concepts that it was working on with the research group to apprise them of current direction. Those discussed were: Balance, Frontier; Northwind and Choice.

A discussion followed focusing primarily Northwind, and a cigarette blend using menthol was provided by the research group for tasting at this meeting. It was agreed that the flavor of the cigarette was different than that conceived of for Northwind (since the menthol comes through on the one tasted at the meeting) but that the taste was unique and that TLK would proceed to develop a concept for it.

John Donati

JD:lk
6/11/74

Subject:

Date: May 9, 1974

To: Dr. A. H. Laurene

From: Section No. 3

The following ideas on a new cigarette were generated by our Section:

⑧ G.W.W. 1. Make cigarettes which appeal to all different groups of people. For example, aim for the ethnic market by having "black appeal" brands, "oriental appeal" brands, etc. Included in this concept could be regionally-oriented cigarettes. Also import cigarettes from foreign affiliates to sell in areas where segments of the local population are of that specific nationality.

⑦ G.W.W. 2. A prestige cigarette may be well received; this would be a high D.L.R. quality cigarette which might sell at a premium price and appeal to those P.H.A. willing to pay for a significantly better product (snob appeal). To make J.H.D. the product distinctive, it could be longer, bigger, different shaped such as oval, or have a decorative over wrap.

② G.W.W. 3. Another segment of the total market is the new smoker market (youth D.L.R. market). Make a cigarette which is obviously youth oriented. This could P.H.A. involve cigarette name, blend, flavor and marketing technique. The concept would be similar to that employed by Boone Farm Wines; for example, a flavor which would be candy-like but give the satisfaction of a cigarette.

F.N.W. Another approach would be promotional gimmicks, such as, sports-oriented prizes which would appeal to youth. This concept could also be instrumental in getting parents to smoke a brand when they have children who would want the prizes. This is similar to the approach used in market breakfast cereals.

F.N.W. Along the theme of promotional gimmicks, cigarettes could be coded periodically so that they could be redeemed for prizes. Also, they could be lettered so that if all the letters in a specific word were collected, they would win a prize.

① R.E.L. 4. A cigarette should be formulated to duplicate the old-time robust cigarettes. This would appeal to the older segment of the population.

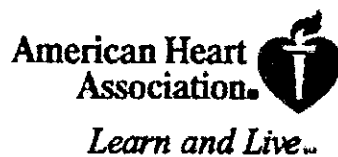
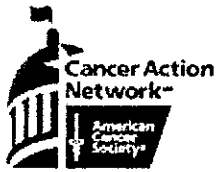
② J.D.F. 5. Cigarettes with a lacy over wrap may be appealing to women smokers. P.H.A. They might also be attracted to a brand containing recipes in the pack or carton; these could be oriented toward RJR Food products.

③ D.L.R. 6. Make a cigarette with an increased puff count so that the price per puff on a cigarette will not increase as the price goes up.

not discuss what wanted

omit

[Handwritten mark]



CRITICAL ELEMENTS OF LEGISLATION GRANTING FDA AUTHORITY OVER TOBACCO PRODUCTS

Tobacco is responsible for killing more than 400,000 Americans every year and is the leading preventable cause of death in the United States, resulting in nearly \$100 billion in health care costs every year. Yet, tobacco products are among the most unregulated consumer products on the market today. We urge Congress to pass legislation granting the Food and Drug Administration (FDA) the authority to effectively regulate tobacco. The pending FDA legislation includes the following important features:

Limits on Marketing and Sales of Tobacco Products to Children – The legislation would lower rates of tobacco use among children and adolescents by: (1) imposing limits on tobacco marketing and promotions and (2) restricting sales to children by limiting self-service displays and requiring age verification.

Tobacco Product Disclosure – Consumers would have access to information about the contents of tobacco products, including the additives that manufacturers put in the products and the constituents of tobacco smoke that result from burning the product, as well as research about the health effects of tobacco products.

Access to Tobacco Manufacturers Research - FDA and the public would have access to information the tobacco industry has on the health effects of their products, on nicotine and its addictiveness, on marketing to children, along with other information that would protect public health.

Meaningful Warning Labels – Warning labels would be strengthened and the FDA would be able to require manufacturers to make further changes to the content and format of warning labels to make them more effective.

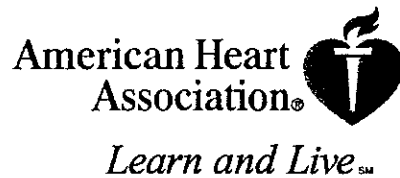
Authority to Require Changes to Tobacco Products to Reduce Risk Where Technologically Feasible - FDA could require manufacturers to reduce or eliminate harmful ingredients and/or smoke constituents where technologically feasible.

Evaluates Health Claims For Scientific Accuracy And Public Health Impact – The FDA would have the authority to require tobacco manufacturers to prove any claims they make about the health risks (or alleged benefits) posed by their products (for example, statements that suggest lower risks of cancer, heart disease, etc.), regarding both their scientific accuracy and their impact on public health. Misleading descriptors such as “light,” “mild” and “low” would be prohibited.

Oversees Reduced Risk Health Claims For New Products – FDA would prohibit reduced risk health claims that are not scientifically proven or that would discourage tobacco users from quitting or encourage new users to start. In evaluating reduced risk claims for new tobacco products, the FDA would calculate whether or not the introduction of such a new tobacco product would reduce harm *and* protect the public health.

Regulates Only Manufacturers, Not Farmers – FDA authority would be limited to tobacco manufacturers and their products and would not include tobacco farmers.

February 4, 2009



FDA Regulation of Tobacco Products: A Common-Sense Plan to Protect Kids And Save Lives

The “Family Smoking Prevention and Tobacco Control Act” is bipartisan legislation that would grant the U.S. Food and Drug Administration (FDA) authority to regulate tobacco products. The U.S. House of Representatives on April 2, 2009, voted 298 to 112 to approve this legislation, H.R. 1256 introduced by Reps. Henry Waxman (D-CA) and Todd Platts (R-PA). Similar legislation passed the Senate Committee on Health, Education, Labor and Pensions and had 60 sponsors/cosponsors in the 110th Congress.

Why This Bill Is Needed

Tobacco use is the leading preventable cause of death in the United States, killing more than 400,000 Americans and resulting in \$96 billion in health care costs every year. Every day, approximately 3,500 kids will try a cigarette for the first time, and another 1,000 will become new, regular daily smokers. One-third of these kids will eventually die prematurely as a result of their addiction.

Despite tobacco’s huge societal costs, tobacco products are the most unregulated consumer products on the market today; they are exempt from important and basic consumer protections, such as ingredient disclosure, product testing and restrictions on marketing to children.

What This Bill Will Do

The “Family Smoking Prevention and Tobacco Control Act” amends the Federal Food, Drug, and Cosmetic Act (FFDCA) to grant the FDA authority to regulate the manufacturing, marketing and sale of tobacco products.

The bill adds a new chapter to the FFDCA to regulate tobacco products. Tobacco products would not be regulated under the “safe and effective” standard currently used for other products under the agency’s purview, but under a new standard – “appropriate for the protection of the public health.”

This legislation will:

- 1. Restrict marketing and sales to youth** – The legislation includes specific restrictions on youth access and marketing and grants FDA authority to take additional actions in the future to protect the public health. The regulations would become effective no later than one year after enactment. These regulations:

- Ban all outdoor tobacco advertising within 1,000 feet of schools and playgrounds,

- Ban all remaining tobacco-brand sponsorships of sports and entertainment events,
- Ban free giveaways of any non-tobacco items with the purchase of a tobacco product or in exchange for coupons or proof of purchase,
- Limit advertising in publications with significant teen readership as well as outdoor and point-of-sale advertising, except in adult-only facilities, to black-and-white text only,
- Restrict vending machines and self-service displays to adult-only facilities, and
- Require retailers to verify age for all over-the-counter sales and provide for federal enforcement and penalties against retailers who sell to minors.

2. Grant FDA authority to restrict tobacco marketing – The Secretary of Health and Human Services (HHS) would be given authority to develop regulations that impose restrictions on the advertising and promotion of a tobacco product consistent with and to the full extent permitted by the First Amendment to the Constitution. These regulations would be based on whether they would be appropriate for the protection of the public health. This authority gives the agency the flexibility to respond to inevitable tobacco industry attempts to circumvent restrictions.

3. Require detailed disclosure of ingredients, nicotine and harmful smoke constituents – Tobacco companies would be required to provide the FDA with information about their products. This information would allow the agency to determine how best to reduce the harm they cause and to better educate the public about the health effects of tobacco use and the dozens of toxic substances in tobacco products. For example, tobacco companies would be required to disclose to the FDA the ingredients in each existing tobacco product by brand and by quantity in each brand, including all smoke constituents. They must also inform the FDA of any changes to the product.

4. Allow FDA to require changes to tobacco products to protect the public health – FDA would be granted authority to require changes in current and future tobacco products, such as the reduction or elimination of harmful ingredients, additives and constituents, if it decided that these changes would protect public health. FDA would be granted authority to change nicotine yields; only Congress could ban nicotine from the product.

5. Strictly regulate “reduced harm” claims about tobacco products – This legislation would prohibit the use of descriptors, such as “light”, “mild” and “low,” to characterize a product on labels or in advertising. In addition, a manufacturer must first file an application and receive an order before they market any tobacco product as presenting a “modified risk.” FDA would have authority to review the marketing of such products and determine if the applicant demonstrates that the product, as actually used by consumers, will significantly reduce harm and the risk of tobacco-related disease to individual tobacco users and benefit the health of the population as a whole – taking into account both users of tobacco products and persons who do not currently use tobacco products.

6. Require bigger, stronger health warnings – The legislation would require warning labels to cover the top 50% of the front and rear panels of the package and require FDA to issue regulations two years after enactment to create graphic warning labels. Under the legislation, warnings must bear the word “warning” in capital letters and 17-point type, the FDA would be empowered to revise labeling requirements including text and format size, and the same warning labels would be required in advertising and must comprise at least 20% of the advertisement’s area. The authority to revise the labels would allow the agency to require labels based on the best available evidence of effectiveness without new action by Congress.

7. Fully fund FDA regulation of tobacco products through a user fee on manufacturers of cigarettes, cigarette tobacco and smokeless tobacco – The legislation allocates payment of all tobacco product-related FDA costs among the manufacturers of cigarettes, cigarette tobacco and smokeless tobacco products sold in the United States, based on the manufacturers’ respective shares of the entire U.S. tobacco product market.

Who Supports the “Family Smoking Prevention and Tobacco Control Act”?

This legislation is supported by more than 1,000 public health, faith and other organizations around the country. Supporting organizations include the American Cancer Society Cancer Action Network, American Heart Association, American Lung Association and the Campaign for Tobacco-Free Kids. Recent surveys have found that 70 percent of voters support this legislation.

Both the President’s Cancer Panel and the Institute of Medicine support Congress giving the FDA the authority to regulate the manufacture and marketing of tobacco products. In its groundbreaking 2007 report, *Ending the Tobacco Epidemic: A Blueprint for the Nation*, the Institute of Medicine argued, “...product regulation by the FDA will advance tobacco control efforts in the United States and around the world. The proposed tobacco control legislation embodies the principles that should govern the regulation of tobacco products in the coming years.”



Testimony of Kevin O'Flaherty
Campaign for Tobacco-Free Kids
New York City Council
Health Committee
May 21, 2009

Good morning.

My name is Kevin O'Flaherty and I'm the Regional Director of Advocacy for the Campaign for Tobacco-Free Kids. I'm here today to offer the Campaign's strong support for the two legislative items you are considering as well as the two resolutions on your agenda today.

First and foremost, I wanted to talk about what is the Campaign's number one Federal priority, and that is legislation that would grant the Food and Drug Administration the authority to regulate the tobacco industry. Res. 1927 would call on the Congress to expeditiously do just that. This comprehensive legislation will provide the FDA with the authority it needs to appropriately oversee the marketing, manufacture and sale of tobacco products. This authority will benefit public health by reducing illegal sales of tobacco to kids, by limiting marketing that targets kids to begin smoking and then misleads smokers to discourage them from quitting, by ensuring that new products that claim to reduce harm actually do so, and by requiring tobacco companies to make changes in the products that make them less harmful to smokers who are unable to quit. It also addresses the sentiments being expressed by the council in Res. 293 by removing FCLA preemptions and allowing cities and states the ability to regulate the time, manner, and place of tobacco advertising in your communities.

Your consideration of this resolution comes at a crucial time in the passage of this bill. The Senate HELP Committee held its markup this week, and passed the bill just last night. We are in a critical period where we need to move this to the floor with the strong support of members and the Senate President. New York in general, and New York City in particular, have both often led the nation in advances to control the harm that tobacco causes. A strong show of support coming at this time from this city could have a powerful impact not only on New York's delegation, but on the momentum that we must sustain if we are going to be able to get this bill considered by the full Senate and on its way to the President later this summer.

Which brings me to Int. 433-A. While FDA legislation would directly address the issue of flavored cigarettes, it would not immediately lead to the elimination of other flavored tobacco like chew, small cigars, snus, and other products that are designed to addict our kids. The tobacco companies like to claim that they are a legal industry communicating with their

adult consumers about a legal product, but let's be serious... Cherry flavored chew? Kahlua Kolai cigarettes? Cookie-Dough Ice Cream blunt wraps? Who are they trying to communicate with? Who are they trying to addict? This legislation is one more great example of the types of things where New York takes the lead, and could even impact the speed with which the FDA would use its authority to address the tremendous impact that flavored, non-cigarette tobacco products have creating life-long tobacco addictions in children.

Finally, Int. 642-A would prohibit smoking on and around hospital grounds and the Campaign encourages your support of this proposal as well. While eliminating the smoke in and around hospital campuses might not be the strongest public health intervention on its own, it does provide necessary protection for patients who are already confronting a variety of health issues and makes a lot of common sense in a location whose sole purpose is to get people better and keep them well. And it is likely worth passing this for that reason alone. But it's important to remember that this intervention would not be a stand alone measure. New York already has a strong Clean Indoor Air law, but we've found that when it comes to smokefree protections, more comprehensive is better. Stronger laws are accepted more positively, implemented more smoothly and – most importantly - are more effective at changing the social norms around tobacco use.

In summary, one of the things we've realized at CTFK is the cumulative nature of all of these interventions in our efforts to reduce tobacco use, especially among kids. Research has shown that when you keep the price of tobacco high, eliminate the secondhand smoke in all public places, and fund comprehensive tobacco prevention programs you have a much greater effect on reducing tobacco use than you would just adding the individual effects of those interventions together. While it might seem like these four measures are a disparate group of actions, they are all parts of an important puzzle, and your adoption of them helps to put a few of the last remaining pieces of that puzzle into place, and helps strengthen New York's efforts to reduce tobacco use among its residents.

Thank you very much for your time and I'm happy to answer any questions that you may have.

FOR THE RECORD

**Testimony to the New York City Council
On a Law to Prohibit the Sale of Certain Flavored Cigarettes**

5/28/2009

Gregory N. Connolly, D.M.D., M.P.H.
Professor

Harvard School of Public Health
Division of Public Health Practice
Landmark Center, 3rd Fl East
677 Huntington Avenue
Boston, MA 02115

Written Testimony

This testimony was written by Dr. Carrie Carpenter and Dr. Gregory Connolly. Dr. Carrie Carpenter is a Research Associate, and Dr. Gregory Connolly is a Professor of the Practice of Public Health in the Division of Public Health Practice at Harvard School of Public Health (HSPH).

Dr. Carpenter was principal author, and Dr. Connolly senior author of a recent paper titled, "New Cigarette Brands with Flavors That Appeal to Youth: Tobacco Marketing Strategies." This study was published in *Health Affairs* (November/December 2005, Volume 24, number 6) (copy attached).

The purpose of our study was to review internal industry research on flavored cigarettes and novel flavor technologies that are being used to possibly target youth. Specifically, we examined the use of flavors to target youth, including differences in flavor preferences as well as product design and marketing strategies.

The study drew on findings from internal tobacco industry documents, U.S. patent applications, and a physical examination of selected blends including Camel Exotic Blend cigarettes performed to identify the presence of a unique flavor-delivery system.

Our research showed that within the tobacco industry, the appeal of flavored cigarettes has long been associated with specific consumer populations, particularly young and novice smoker. Statements included in internal industry documents from various cigarette manufactures provided evidence of this association.

Example Quotes:

- A 1993 Lorillard document observed: "Growing interest in new flavor sensations (i.e. soft drinks, snack foods) among younger adult consumers may indicate new opportunities for enhanced flavor tobacco products that could leverage Newport's current strength among younger adult smokers.

- As summarized in an undated RJR document describing the early development of flavored cigarettes: "Flavored cigarettes appeal to women...[and] younger smokers."

Internal industry studies of differences in taste and flavor preferences by age group confirmed that younger smokers are more open to unique and exotic flavors than their older counterparts. Additionally, industry research and findings suggested that young and novice smokers may be especially vulnerable to product benefits of flavored cigarettes. For example, Philip Morris identified a number of possible benefits to young adult smokers related to flavors including (1) increased social acceptance because of a pleasant aroma and aftertaste, (2) increased excitement about sharing flavors, (3) smoking enjoyment, and (4) a "high curiosity to try factor."

Example Quotes:

- RJR Flavor Development (1987): “given their demonstrated behavior in compromising traditional tobacco taste and the strategic opportunity to the company presented by [younger adult smokers.]”
- Lorillard (1991): Given young adults [sic] proclivity towards flavors in other categories (i.e. soft drinks, wine coolers), a flavor enhanced menthol product may appeal to these smokers

Our research indicated that manufacturers could capitalize on youth attraction to candy flavors.

Internal documents also showed that the industry pursued a wide range of newer nonconventional flavor technologies to address the goal of unique flavor delivery. They used innovative product technologies, such as a flavor pellet embedded in the filters of some of RJR’s flavored cigarettes to deliver fruit and liqueur flavors. Our physical examinations found that the pellet was present in a variety of the Camel Exotic Blends. The pellets present in these different brands had the same appearance (color, size, and shape) and could not be distinguished with the naked eye. Flavor filter pellets were a key technology enabling the introduction of a variety of “exotic” Camel flavors.

Past research by Wayne and Connolly (2002) shows that flavored cigarettes can promote youth initiation and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and increasing the acceptability of a toxic product. Regulatory action is an appropriate response to the serious public health concerns raised by the introduction of new product delivery technologies, such as the flavor pellet in the Camel Exotic Blend Twist cigarette filter. Little is known regarding the delivery characteristics or possible health risks associated with these products. The use of the flavor technologies has not been publicly disclosed to public health officials and in the case of the flavored pellet, the device is concealed from the consumer, unless the pellet is dislodged from the filter and exposed. The limited availability of internal industry testing clearly underscores the need for independent studies to assess the effects of new technologies on the delivery and toxicity of these new products.

Our research was supportive of the recent Attorneys General's consent order with RJ Reynolds Tobacco Company related to the marketing of flavored cigarettes. Although one company has agreed not to sell candy flavored cigarettes, many still do, particularly small manufacturers of other tobacco products.

NEW YORK CITY
C.L.A.S.H.

Citizens Lobbying Against Smoker Harassment

P.O. Box 1036
Brooklyn, New York 11234
917-888-9317

May 21, 2009

Testimony of Audrey Silk, Founder

City Council Health Committee

Int. No. 433-A

Int. No. 642-A

Res. No. 293

Res. No.1927

Proposed Int. No. 433-A
Sale of flavored tobacco products prohibited.

Why this constant appeal to act on prohibitionist tendencies in a country that prides itself on the free market system and for adults to be left free to make informed choices in regard to legal products? It's malicious, not virtuous, and a stain on anyone's record... historically speaking.

This war on smokers is a model of discrimination and the suspension of personal principles. Rather than apply a principle evenly to all things you apparently pick and choose which to apply it to based on personal favorability. Otherwise we'd be hearing about a proposal to ban *flavored liquors – of which there are 10 fruit and other flavors for rum, 7 for tequila, and 32 for vodka – “for the children.” Or is it that you prefer the pharmaceutical version of nicotine only be available that comes flavored with Mint, White Ice Mint, Cinnamon Surge, Fruit Chill and FreshMint? A 2004 study printed in the Archives of Pediatrics and Adolescent Medicine found that minors were able to purchase nicotine replacement therapies like this gum 81% of the time. (1)

Adults enjoy flavored cigarettes the same way they enjoy flavored liquors. Children deserve special attention but not at the constant expense of adults. You see the solution

to the failure by tobacco control, and your own law restricting tobacco sales to minors, to reduce underage smoking by punishing adults. How much more infantilizing of adults does government intend to exercise in order to control a segment of society best left to their parents?

Supreme Court Justice O'Connor delivered the opinion of the court, in the Massachusetts case, that struck down that state's tobacco advertising restrictions. In part:

"The State's interest in preventing underage tobacco use is substantial, and even compelling, but it is no less true that the sale and use of tobacco products by adults is a legal activity."

*Flavored liquors

- Flavored rums --- flavors include lemon, lime, orange, vanilla, and raspberry, and extend to such exotic flavors as mango, coconut, pineapple, banana, and watermelon.
- Flavored tequilas — flavors include lime, orange, mango, coconut, watermelon, strawberry, pomegranate, chili pepper, and coffee
- Flavored vodkas — flavors include lemon, lime, lemon-lime, orange, tangerine, grapefruit, raspberry, strawberry, blueberry, vanilla, black currant, chili pepper, cherry, apple, cinnamon, coffee, chocolate, cranberry, peach, pear, passion fruit, pomegranate, plum, mango, white grape, banana, pineapple, coconut, mint, melon, rose

(1) "Access of Over-the-counter Nicotine Replacement Therapy Products to Minors."
Arch Pediatr Adolesc Med/Vol158, Mar 2004
<http://archpedi.ama-assn.org/cgi/reprint/158/3/212.pdf>

Proposed Int. No. 642-A
Prohibiting smoking on and around hospital grounds.

Just two weeks ago, May 8th, the Rutland Region Medical Center in Vermont “snuffed out its smoking ban on hospital grounds because of complaints about people smoking and littering on city streets.” (1)

Another example, in Ottawa, Canada in 2007: “The hospital relaxed its rules prohibiting smoking on its property after patients were risking life and limb to drag their IV poles across traffic.” (2)

The latest rationale for implementing such a ban is that hospitals should reflect only a “healthy environment” and deter unhealthy behavior. I take enormous exception to that overreaching excuse to force ever more paternalistic dictates down the public’s throat. Hospitals, like car mechanics, are there to provide a service. They are a business and the patients are customers paying for that service. They are not prisoners of moralizers that are there to enforce an image of acceptable behavior. Indoors and in one-on-one patient to doctor interaction is where these discussions can take place.

Why not
also a ban
on french fry
+ candy eating
on the grounds
then?

Hospitals are also supposed to embody compassion. This is as uncompassionate as you can get.

Hospital smoking bans deter smoking patients from obtaining medical treatment and procedures.

Forced smoking cessation hinders recovery for admitted patients.

Family members and friends of the patients who are smokers will reduce the length and frequency of their visits to comfort those patients.

Staff members who smoke will become resentful and be reflected in their performance.

What barbaric cruelty to hospitalized smokers (adding completely unhealthy, unnecessary stress) and to their worried, tense, frightened visitors who are often enduring all-night vigils, and/or facing the prospective death of relatives and friends, and/or under great additional stress to try to make informed, often life-and-death, decisions under huge emotional pressure.

What possible benefit can there be to anyone -- or anyone's "health"-- to add this burden to people in extremis? There is absolutely no valid proof that smoke from cigarettes in the outdoors poses any kind of risk to health. This is one of the meanest proposals yet. Behavior modifications, mandated under already stressful situations in hospitals, are sheer stupidity -- and inhumane -- and show a complete lack of respect for the well being of a great number of the very people they are committed to help... when that help is *asked* for.

(1) <http://www.timesargus.com/article/20090508/NEWS02/905080362/1003/NEWS02>

(2) "Smokers shacking up together at Ottawa Hospital." Ottawa Sun, April 28, 2007

Res. No. 293

Resolution calling upon the United States Congress to tighten advertising restrictions in the federal Cigarette Labeling and Advertising Act and to allow localities to legislate in this area, in order to reduce the exposure of youth to tobacco advertising.

You justify more advertising restrictions “in order to reduce the exposure of youth to tobacco advertising.”

I am NOT endorsing any notion that anyone under 18 should smoke. But there's a massive amount of anti-smoking messages on TV, in print, and in the schools to assist in weighing the choice at that time. Despite protests that "Big Tobacco outspends them" it's impossible for any to say "I haven't heard" from the other side.

I am no "apologist" for the tobacco industry. I'm a defender of the Constitution. You are free to tell anyone what you think about smoking. You are free to instruct kids you feel the ads are harmful. The way to protest speech is with more speech. What you are advocating -- the force of law to silence speech -- is a perversion of the Constitution.

You rely on flawed and outdated material and papers produced by agenda-driven activist researchers to support your position.

You justify the resolution with: “According to testimony delivered to the City Council Committee on Youth Services by the Kings County Reality Check Organization (“Reality Check”), 90 percent of all current adult smokers began using tobacco as teens;”

There appears to be this self-delusion by anti-smoker advocates that if you increase the legal age it will substantially reduce initiation. I contend that the greater effect is it simply delays initiation, much like alcohol. This is evidenced in a fairly recent paper by your own faculty in the NYC Dept. of Health. Entitled “Improving Understanding of Smoking Adoption,” it was delivered at the 2007 National Conference on Tobacco or Health which was held in Minneapolis. The paper is attached. (A) To summarize, Dr. Jennifer Ellis and others concluded:

[N]early one-third did not begin smoking regularly until between ages 18 and 20 (30%) and an additional 15% started smoking regularly between ages 21 and 24. [A]dults age 25-44 were most likely to have begun smoking regularly during young adulthood (48.4%), indicating that delaying adoption of regular smoking may be a recent trend. [M]ore than half waited 2 or more years between smoking the first whole cigarette and beginning smoking regularly.

You justify the resolution with: “[E]vidence described in the Tobacco Control article demonstrates that the tobacco industry *has continued* to market and “subtly” advertise its products to youth...”

The article demonstrates no such thing. (1) It examines tobacco industry documents from as far back as the 1940s and no later than 1998 and then implies (and hopes all infer) -- by leap -- that tobacco companies STILL market to underage smokers. That is quite different than what is actually written: “[D]ocuments reveal an undeniable interest in marketing cigarettes to underage smokers.” This study -- your citation -- is supposition (predicting the future) based on documents at least 10 years old and older than the MSA agreement signed in 1998 -- that you also cite -- whereby the tobacco companies agreed to many restrictions on what was described as youth advertising.

You justify the resolution with: “Whereas, The “Youth Tobacco Survey” issued in 2000, by the Centers for Disease Control, found that 49.5 percent of surveyed students had smoked at one point in their lives, 23.1 percent were currently using a tobacco product and 14.5 percent used tobacco products other than cigarettes;”

First of all, according to the Survey “Current Use” of cigarettes is defined as having used it “on ≥ 1 of the 30 preceding days.”

“Current Use” is deceptive. More than or equal to ONE day in the last month?! So it could also be they tried a cigarette ONE day or only smoke one day a month. In other words, this is no indication of how many youths smoke on a regular basis (every day).

The more recent 2006 CDC Youth Tobacco Survey reports:

“[S]ince the MSA, tobacco companies appear to have refocused their marketing resources on young adults (age 18-24 years). [Y]oung teens (age 12-14 years) have been found to be significantly less like than both older teens (age 15-17 years) and young adults to be aware of pro-tobacco print advertising...” (2)

In NYC, it was reported in 2008 that teen smoking rates dropped to 8.5%. (3)

Nationally, a survey released in 2008 by the group Monitoring The Future concludes that teen smoking is at an all time low. (4) But it's most valuable conclusion is the irony -- one I'm sure you've heard before but is no less valid -- that mocks these calls for tobacco advertising restrictions “for the children.” It reports: “About 11% of eighth-graders, 24% of 10th-graders and 32% of 12th-graders reported using marijuana in the last year.” That's far higher than any claimed youth cigarette smoking rate and with no advertising to lure them.

(1) K.M. Cummings et al. “Marketing to America's youth: evidence from corporate documents.” *Tobacco Control* 2002;11(Supplement 1):i5-i17;
doi:10.1136/tc.11.suppl_1.i5
http://tobaccocontrol.bmj.com/cgi/content/full/11/suppl_1/i5#R12

(2) (CDC) 2006 National Youth Tobacco Survey and Key Prevalence Indicators
http://www.cdc.gov/tobacco/data_statistics/surveys/NYTS/00_pdfs/indicators.pdf

(3) "Teenage Smoking Rate [in NYC] Drops to 8.5 Percent." NY Times. January 2, 2008
<http://cityroom.blogs.nytimes.com/2008/01/02/teenage-smoking-rate-drops-to-85-percent/>

(4) "Poll finds teen smoking rate at all-time low." LA Times. December 11, 2008
http://latimesblogs.latimes.com/booster_shots/2008/12/poll-finds-teen.html
Monitoring the Future:
<http://monitoringthefuture.org/pubs/monographs/overview2008.pdf>

Res. No.1927
Resolution calling upon the United States Congress to pass
the Family Smoking and Prevention Act.

As stated in your resolution, the intent of your support for this Act is to further your ambition to gain local control over restrictions on tobacco advertising. In attempting to squeeze this piece of juice from the Act you incur all the other pitfalls.

Dr. Michael Siegel, at Boston University School of Public Health and a prominent tobacco control researcher with over 20 years experience, among others in his field, has laid out in careful detail the disaster this Act would be to tobacco control. In short, after careful analysis of the language of the Act and knowledge of behind-the-scenes activity that include the co-crafting of this bill with Philip Morris (the only tobacco company to support it) that all believe is their way to lock in their majority share of the market, he asserts this legislation will:

- "1) transfer the fraud that was committed by cigarette companies over into the hands of the federal government;
- "2) increase smoking rates; and
- "3) overwhelm and severely harm the already-troubled FDA;
- "4) undermine the underlying mission of the FDA; and
- "5) make the federal government complicit with the tobacco companies in harming the public's health." (1)

But perhaps more importantly, in answer to your own interests, First Amendment obstacles based on historical US Supreme Court opinion, and having no evidence they can be overcome, leads Dr. Siegel to conclude "*[T]here is no justification for highly touting this bill as being the ultimate answer to curtailing cigarette advertising.*" (2)

I invite you to visit Dr. Siegel's blog, *The Rest of the Story: Tobacco News Analysis and Commentary*, for his and other's full analysis to get the entire picture of what makes this Act a disaster for the interests of Tobacco Control. (3)

Stanton Glantz at UC San Francisco, probably the most notorious anti-smoker researcher and activist in the U.S., while accepting an award this past March said, "I think that the damage that this bill will do extends far beyond the narrow confines of product regulation and could do great damage to tobacco control, not only in the United States, but globally." (4)

I've got news for you. I lean toward letting them have it. I think it will be the death knell of many an anti-smoking group across the country, save for the biggies like Campaign for Tobacco Free Kids and Americans for Nonsmokers' Rights who will still see their power reduced. I also don't believe that the FDA will ever -- in all the bureaucracy -- get around to playing with the ingredients of the product as planned. And they'll never withstand certain 1st Amendment challenges to some of their "no-advertising" edicts. The way I see it, we're either stuck with the anti-smoking groups slowly eating at and getting to whatever the FDA will do and more or with the FDA who will just mirror whatever the anti-smokers would do but probably less. And once the FDA has it the anti-smokers lose a lot of their power and influence.

Plus, cigarettes will now come with the perception that it's government approved! If Glantz is saying that FDA takeover will be the worst thing to happen to the anti-smoking movement that's all I need to know to think that I'm on the right track over my thinking of this!

(1) Michael Siegel. "Law Review Article Concludes that FDA Tobacco Legislation Would Be a Public Health Disaster, Making the FDA Complicit in Harming the Public's Health." Blog: The Rest of the Story: Tobacco News Analysis and Commentary. April 16, 2009.

<http://tobaccoanalysis.blogspot.com/2009/04/law-review-article-concludes-that-fda.html>

(2) Written Statement of Michael Siegel, MD, MPH, Regarding the Family Smoking Prevention and Tobacco Control Act Submitted to the U.S. Senate Committee on Health, Education, Labor, & Pensions. February 27, 2007

<http://tobaccoanalysis.blogspot.com/2007/02/written-statement-of-michael-siegel-md.html>

(3) Dr. Michael Siegel. The Rest of the Story: Tobacco News Analysis and Commentary
<http://www.tobaccoanalysis.blogspot.com/>

(3) "Stan Glantz receives Terry Award and comments on FDA regulation."

March 14, 2009

http://www.healthline.com/blogs/smoking_cessation/2009/03/stan-glantz-receives-terry-award-and.html

(A)

National Conference on Tobacco or Health, October 24-26 - Minneapolis, MN
<http://ncth.confex.com/ncth/2007/techprogram/P14700.HTM>

Thursday, October 25, 2007

Exhibit Hall

Improving Understanding of Smoking Adoption

Jennifer A. Ellis, PhD, NYC Department of Health and Mental Hygiene, Bureau of Tobacco Control, jellis1@health.nyc.gov, Tracy Durrah, DrPH, tdurrah@health.nyc.gov, Karen Czarnecki, MPH MSW, kdavis@health.nyc.gov, Sarah Perl, MPH, sperl@health.nyc.gov.

Learning Objectives: Describe populations that are particularly reachable to for prevention efforts following experimentation.

Problem/Objective: As adolescent smoking rates decline, tobacco control programs must better understand the vulnerability of the young adult population. In particular, better understanding is needed on the critical transition between experimenting with smoking and becoming a regular smoker.

Methods: Population-based survey of adult smokers and recent quitters in New York City, n=2423. Data presented are restricted to adults age 25 and older (n=2243). Measures of initiation included age when respondent first smoked a whole cigarette and age when respondent first started smoking regularly. Analyses are presented by current age and other demographic subgroups.

Results: Although two-thirds of respondents smoked their first whole cigarette before age 18 (65.5%), **nearly one-third did not begin smoking regularly until between ages 18 and 20 (30%) and an additional 15% started smoking regularly between ages 21 and 24.** Compared to those age 45-64 and 65 and older, adults age 25-44 were most likely to have begun smoking regularly during young adulthood (48.4%), **indicating that delaying adoption of regular smoking may be a recent trend.** One-third of respondents started smoking regularly at the same age as first smoking a whole cigarette, less than 15% waited one year, and more than half waited 2 or more years between smoking the first whole cigarette and beginning smoking regularly.

Conclusions: Efforts to prevent adoption of regular smoking in young adulthood warrant attention. As the tobacco industry increases marketing to young adults, tobacco control programs must counter by promoting smoke-free college campuses and limiting tobacco industry sponsorship of young-adult-oriented activities.



Altria
Altria Client Services

FOR THE RECORD

May 21, 2009

WRITTEN TESTIMONY SUBMITTED TO THE NEW YORK CITY COUNCIL
REGARDING BILL INTRODUCTION 433-A

Submitted by Mr. Armando Mejia, Altria Client Services Inc.

On behalf of Philip Morris USA Inc., John Middleton Company, and U.S. Smokeless
Tobacco Company

Altria Client Services Inc.
101 Constitution Avenue, NW
Suite 400-W
Washington, DC 20001
202-354-1745

WRITTEN TESTIMONY SUBMITTED TO THE NEW YORK CITY COUNCIL
BILL INTRODUCTION 433-A
May 21, 2009

Altria's tobacco operating companies, Philip Morris USA, John Middleton Company and U.S. Smokeless Tobacco Company, oppose Bill Introduction 433-A. If enacted, this bill would amend the New York City Administrative Code to introduce a ban on all tobacco products containing any natural or artificial constituent or additive that causes the tobacco product or smoke to have a "characterizing flavor" other than tobacco or menthol.

We understand the general intent of this legislation is to respond to concerns expressed by the public health community and others in recent years about an increase in tobacco products with characterizing flavors other than tobacco. Specifically, the perception is that these products are packaged, advertised and marketed in a manner that may appeal to youth.

As responsible manufacturers and marketers of tobacco products intended for adults, we believe that reducing underage tobacco use is a critical goal for us and society. We take this responsibility very seriously and work toward it, among other things, by:

- (1) packaging and labeling our products responsibly;
- (2) focusing on marketing methods that are designed to minimize reach to unintended audiences, such as minors and those who do not use tobacco products; and
- (3) identifying, supporting, and developing programs to help prevent youth tobacco use while promoting positive youth development.

We believe that any regulation of tobacco products with characterizing flavors should occur only at the federal level. On April 2, 2009, the House of Representatives passed H.R. 1256, the Family Smoking Prevention and Tobacco Control Act ("FSPTCA") by a vote of 298 to 112, and the Senate is now considering a similar bill. Altria's tobacco operating companies support this important legislation, which grants the Food and Drug Administration ("FDA") authority to regulate the advertising, marketing, and manufacturing of tobacco products in order to protect the public health. Specifically, Section 907(a)(1)(A) of the FSPTCA bans cigarettes with a "characterizing flavor" other than tobacco or menthol.

To the extent that the Council finds federal action with regard to regulation of flavored tobacco products inadequate, the New York State legislature has also introduced a bill (S.4496/A.777) that would similarly ban cigarettes with a characterizing flavor.



Submitted by Altria Client Services Inc.
on behalf of Philip Morris USA Inc., John Middleton Company, and U.S. Smokeless Tobacco Company

Bill Introduction 433-A risks creating a counterproductive patchwork of regulations. Moreover, Bill Introduction 433-A does not, as would both the FSPTCA and New York State bill, take into account the history of tobacco flavorings within each tobacco product category, the legitimate preferences of adult tobacco consumers, and measures to ensure that tobacco products are marketed responsibly to adult tobacco consumers.

1. Regulation of tobacco products with “characterizing flavors” should occur only at the federal level.

We believe regulation of tobacco products with “characterizing flavors” should be addressed at the federal level, and in the context of comprehensive tobacco product regulation by the FDA. The FSPTCA would grant the FDA authority to regulate the advertising, marketing, and manufacturing of tobacco products in order to protect the public health. Section 907(a)(1)(A) of the FSPTCA prohibits cigarettes from containing as a constituent or additive or a flavor other than tobacco or menthol, or herb or spice that is a “characterizing flavor” of the tobacco product or tobacco smoke. This prohibition is appropriately limited to cigarettes with characterizing flavors other than tobacco and menthol, in light of the legitimate preferences of adult tobacco consumers and the history of tobacco product flavor varieties in other tobacco product categories, such as smokeless tobacco products and cigars.

Altria’s tobacco operating companies are opposed to state or local regulation of tobacco products because we believe that such product regulation would lead to a patchwork of inconsistent and conflicting state regulations and would unduly burden interstate commerce. Such state and local regulation also would be preempted by federal law, including under the express preemption provision of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §1334(b), as well as under the Supreme Court’s holding in *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000).

As previously noted, should this Council find that federal action with regard to regulation of flavored tobacco products is inadequate, the Council should consider the pending New York State bill (S.4496/A.777). As with the FSPTCA, the New York State bill would prohibit the sale in the State of New York *cigarettes*, or any component part thereof (including but not limited to the tobacco, paper, roll or filter), that contain a natural or artificial constituent or additive that causes such cigarette or its smoke to have a characterizing flavor.

As both Congress and New York State are actively considering characterizing flavor bans, and adoption of the federal statute appears imminent, the New York City Council need not act now to adopt its own characterizing flavor legislation.

2. Bill Introduction 433-A does not take into account the history of tobacco flavorings within each tobacco product category and the legitimate preferences of adult tobacco consumers.

The characterizing flavor legislation pending before Congress and the State of New York, the FSPTCA and New York S.4496/A.777 respectively, are appropriately limited to cigarettes. As the Congressional Research Service report on the FSPTCA observed, flavored cigarettes “tend to be used only occasionally, either by regular users of other products, by individuals who are experimenting with tobacco use, or by those who smoke only in certain social settings.” The FSPTCA prohibition on flavored cigarettes reflects a balanced and measured response to concerns raised by the public health community and others regarding these types of cigarette products.

In contrast, there is a long tradition of adult consumer interest in flavor varieties in other tobacco products, such as smokeless tobacco and cigars. Smokeless tobacco flavoring, for example, is well-established and a substantial portion of adult smokeless tobacco users consistently use these products. Flavored products comprise approximately two thirds of the moist smokeless tobacco market and over half of the smokeless tobacco pouch market.

Banning flavor varieties in smokeless tobacco, cigars or pipe tobacco could potentially stimulate demand for illicit trade as adult consumers seek to obtain these products. The FSPTCA recognizes that illicit trade is a major concern that must be considered. Section 3(10) of the FSPTCA states that one purpose of the bill is “to strengthen legislation against illicit trade in tobacco products.” Further, Section 907(b)(2) requires FDA to “consider all . . . information concerning the countervailing effects of the tobacco product standard . . . such as the creation of a significant demand for contraband.” This Council should not overlook a concern that Congress has recognized as significant.

3. There are more effective methods to prevent tobacco use by minors without precluding adult consumers access to tobacco flavor varieties.

We believe the general intent of Bill Introduction 433-A is to respond to the concerns expressed by the public health community and others in recent years about an increase in tobacco products with characterizing flavors other than tobacco. Specifically, the perception is that these products are packaged, advertised and marketed in a manner that may appeal to youth.

The following alternative approaches to address underage tobacco use, which are already addressed by the FSPTCA, may be more successful:

- Emphasize responsible marketing and advertising. The legislative findings identified in the FSPTCA indicate: “Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products,” and that “children are more influenced by tobacco marketing than adults.”
- Emphasize responsible sale at retail, including a prohibition against self-serve vending of cigar and smokeless tobacco products. The FSPTCA already

provides that the FDA shall promulgate regulations regarding the sale and distribution of tobacco products that occur through means *other than* a direct, face-to-face exchange between a retailer and a consumer in order to prevent the sale and distribution of tobacco products to underage individuals.

In summary, Altria believes that three principles should guide this Council to reject this legislation.

First, the regulation of tobacco products should occur only at the federal level, and accordingly, this Council should abstain from enacting this legislation in favor of the comprehensive legislation that is currently pending before the U.S. Senate. This is particularly the case where the current pending federal legislation has specific provisions governing the manufacture, sale, and advertising of flavored tobacco products.

Second, the bill does not consider the long history of, and adult preference for, flavored cigars, pipe tobacco, pipe tobacco cigars, and smokeless tobacco.

Finally, the bill fails to recognize other potentially more effective measures to promote youth smoking prevention or to limit youth access to smoking.

We believe that the pending federal legislation is consistent with these important principles and that Bill Introduction 433-A is not. Accordingly, we urge the Council not to move forward with Bill Introduction 433-A.

The Council of the City of New York
Committee on Health
Hearing – May 21, 2009

Greetings Committee Members.

Thank you for the opportunity to speak with you today on Proposed Int. No. 433-A, Proposed Int. No. 642-A, Resolution No. 293 and Resolution No. 1927. My name is Ruth Tripp and I am the Director of the Tobacco Control Training Project at Cikatelli Associates. Cikatelli Associates is a non-profit training and capacity building agency located in mid-town Manhattan. We are proudly celebrating our 30th year. For the last five, we have been privileged to work on behalf of the New York State Department of Health's Tobacco Control Program. The TCP funds community-based partners in every county of our state and charges them to change tobacco-related policies and social norms. We support these partners by providing skill-based training to maximize their success.

I am going to speak broadly about the impact and effectiveness of policies, resolutions and legislative actions that here in New York have been tremendously successful at bringing smoking rates down and saving lives. That is what each of the matters before us today has in common, if you enact them, they will have the impact of furthering a tobacco-free social norm here in New York. Plus, as you know, what happens in New York City doesn't stay in New York City. When NYC boldly created smoke-free workplaces for all workers – including bartenders and food servers, the whole world noticed – and followed suit. Here you have another opportunity to be global leaders in preventing death and suffering.

What is a social norm? Let's say it is a set of actions, beliefs and values generally held by a culture or subculture. Okay – with that definition in mind, let's rewind the time machine (sorry I just saw the Star Trek movie) and think about what the social norm regarding smoking was 20 years ago. And let's narrow the picture down further – imagine you are in a hospital. The year is 1989. Now – look around. Where are people smoking? Answer: almost everywhere. Patients smoke in their rooms, visitors smoke in waiting rooms and doctors and nurses puff away in their offices or at the nursing station. How does that look through the lens of today? Almost comical, and certainly hard to believe. Slowly, over time, more and more spaces became smoke-free. In 1991 the Joint Commission (the body that accredits hospitals) issued smoke-free building standards. By 1993, 96% of hospitals were compliant. This helped bring down smoking rates among staff, and also changed our perception of what is acceptable social behavior. It is not okay to smoke inside a hospital. That is what I mean by the impact that policy and resolutions have on social norms and hence our thinking and behavior. And why not extend that norm to include hospital grounds, places where people go to be treated for chronic and acute medical conditions? Why not extend the notion that smoking is not a behavior that is in line with the missions & values of our medical institutions? We have been working with Staten Island University Hospital on this very initiative. In January of this year, they took their campus smoke-free. Sure, there is push back and resistance, yet they persevere. Their task of communicating this policy and enforcing it for all patients, staff and visitors would be supported by a local law that made this the standard of practice and CARE in our great city.

So, we support your efforts to save more lives, to create an even more cohesive smoke-free New York City. The savings will be vast and impossible to calculate. For how can you truly measure less disease, addiction, and pain? Let me close with a brief anecdote. Recently I met a man who quit smoking 10 years ago. He told me that what made him stop was his readiness – he had been thinking about quitting for awhile – and when cigarettes hit \$5 a pack. That policy change pushed him over the edge. I said to him, “Think of all the money you saved.” And he clarified for me that he got something even better than the money. He used to be a singer and he had to stop because the smoking ruined his voice. Just recently, 10 years later, he has begun to sing again. “This,” he said, “is priceless.”

Thank you for your time.

Ruth Tripp, RN, MPH
Director Tobacco Control Training Program
Cicatelli Associates Inc.
505 8th Avenue, Suite 1601
New York, NY 10018
212.594.7751
rtripp@cicatelli.org

Testimony of M. Jane Lewis, DrPH
Associate Professor, UMDNJ-School of Public Health
Before the Health Committee of the New York City Council
In Support of Proposed Resolution # 433-A

May 21, 2009

Good morning Chairman Rivera, members of the City Council Health Committee and other distinguished guests. I want to thank you for the opportunity to address my support of proposed resolution # 433-A, to prohibit the sale of certain flavored tobacco products.

My name is Jane Lewis. I am an Associate Professor of Health Education and Behavioral Science and a member of the Center for Tobacco Surveillance and Evaluation Research at the University of Medicine and Dentistry of New Jersey School of Public Health. I am pleased to submit testimony in support of the proposed resolution.

My research focuses on tobacco industry marketing and I am the principal investigator of a surveillance system that collects tobacco industry products and promotions and makes images and information regarding them available on its website. As part of this work I have seen the proliferation of flavored tobacco products, observed how they are marketed, and considered their implications. I am here today because I believe that it is in the interest of public health and the people of New York City that these products be banned.

Passage of this introduction is important because existing policies do not adequately address the problem of flavored tobacco products. In 2006 RJ Reynolds, which had been aggressively marketing attractively packaged flavored cigarettes, reached agreement with 38 attorneys generals to stop marketing cigarettes with candy, fruit or alcohol flavors to youth. Some may say that this agreement makes a more formal ban on flavored tobacco products unnecessary. I disagree. The agreement offers the people of New York City only very limited protection from the marketing of flavored products. For example, it does not address flavored cigars or smokeless products or flavored cigarettes from other companies, nor does it prevent R J Reynolds from offering new lines of flavored cigarettes under different packaging. The following paragraphs will elaborate these separate points.

Smokeless tobacco is the one segment of the tobacco industry where sales are growing. In recent years, producers have introduced new flavored products such as apple, berry, and peach and expanded the marketing of their products to frame them as alternatives to quitting smoking in response to clean indoor air laws. Flavoring may be a key to reaching youth since, just as with cigarettes, flavoring for smokeless tobacco undoubtedly makes the first taste of these tobacco products more appealing to youth and young adults.

In terms of cigars, sales are booming and flavored products are common. Perhaps of particular concern is recent research that shows that cigarette-like little cigars are increasing in popularity with youth and being used as a replacement for cigarettes which are frequently costlier. Flavoring adds to the attraction of these products and may encourage use by masking the taste.

Both these trends are disturbing and could be addressed, at least in part, by this introduction.

In addition, the recent agreement does not affect marketing and sales of flavored cigarettes from other companies, such as Kretek International's Dreams line and others, and leaves the door open for the development of new flavored products by other companies and the marketing of these in ways that appeal to youth. Finally, in the words of an RJ Reynolds spokesman as quoted in news articles, RJR "can still sell flavored cigarettes in the future." That may be true, but hopefully, passage of this introduction will mean that they cannot sell them in New York City.

For now, RJ Reynolds would apparently be allowed to market flavored cigarettes – even those with candy, fruit or alcohol names - in adult-only facilities or through marketing channels believed to be accessible only to adults. This is an important point because in surveys conducted at Roswell Park in 2004, use of flavored cigarettes in the last 30 days was highest for two groups – 17 year-olds (19.6%), to whom marketing would be restricted by the agreement, but also for 18-19 year olds (20.2%), who would still be fair game. Young adults, while not officially protected by many of our policy initiatives, are an important population and constitute an appealing market for the industry, and not only because they are presently its youngest legal targets. In addition to having among the highest rates of smoking, young adults are increasingly a starter

market: Although previous research showed that approximately 90% of smokers began smoking during early adolescence, recent studies suggest that a growing number are initiating smoking as young adults, and therefore possibly unduly attracted to flavored products which mask the taste of tobacco. It's also true that marketing to young adults may indirectly influence teens, who seek to emulate their peers.

Although we tend to focus on flavored products' potential to encourage experimentation (while masking the taste of tobacco) among nonsmokers, smoking initiation is not the only behavior they may influence. These products offer a variety of tempting tastes and smells that may entice current and transitional smokers to continue smoking, derail quitting attempts, and lure those who have quit smoking to take it up again.

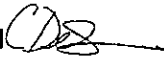
In closing, let me say that for all these reasons, and undoubtedly many more, passage of this introduction is important. Again, thank you for considering this legislation and providing me with an opportunity to support it.



CENTER FOR TOBACCO SURVEILLANCE & EVALUATION RESEARCH

at the School of Public Health

New York City Council Health Committee

Re: Proposed Int. No. 433-A
Provided by: Cristine Delnevo, PhD, MPH 
Center Director and Associate Professor, UMDNJ-School of Public Health
732-235-9746

Position: **IN SUPPORT**
Date: May 19, 2009

Thank you for allowing me to submit testimony on Proposed Int. No. 433-A which would ban the sale of flavored cigarettes, cigars, and smokeless tobacco in New York City. My name is Dr. Cristine Delnevo, I'm an Associate Professor and Director of the Center for Tobacco Control Surveillance at the UMDNJ-School of Public Health. My testimony is specific to cigars and smokeless tobacco. While cigarette consumption in the United States continues to decline, consumption of cigars and moist snuff, the most popular form of smokeless tobacco in the United States, has significantly increased over the past decade. Indeed, the tobacco industry refers to the recent cigar increases as a "renaissance" and boasts that "smokeless is a tobacco rarity these days in that it is growing."

The increase in cigar and smokeless tobacco consumption is concerning. Even moderate cigar use carries significant health risks, including increased risk for heart and lung disease, and cancer, including but not limited to oral, esophageal, larynx and lung, compared to non-smokers. Likewise, smokeless tobacco use increases the risk of multiple cancers, oral diseases, as well as cardiovascular disease. While the health risks associated with SLT are believed by some to be lower than conventional cigarettes, levels of cancer causing tobacco-specific nitrosamines vary widely by smokeless tobacco brands. Lastly, the potential for cigars and smokeless tobacco to create lifelong nicotine addiction is unquestionable.

Traditionally, cigar smoking and smokeless tobacco use in the United States was a behavior of older men but the industry's increased marketing of cigars and smokeless, including the use of flavoring, to targeted groups reversed low rates of use among youth, young adults, and for cigars, women. The most recent data available nationally show that past month cigar and smokeless use significantly increased over the last five years among young adult males. Smokeless tobacco use also increase among adolescent males over the same time period. While significant increases have not be noted among young females, their rates of cigar use are not inconsequential; in 2007, approximately 7 percent of females, ages 18 to 20 report past month cigar use.

According to various tobacco industry trade publications, flavored cigars and smokeless tobacco are responsible for the majority of growth in the **other tobacco product market**. Our own research with AC Nielsen Market Scanner data supports this, forty percent of the cigar market in 2008 in the US was flavored. Flavored cigars are offered in both large (including the cigarillo size) cigar and small cigars, which are cigarette size. Both have financial incentives. The average unit price for a pack of small cigars is considerably less expensive than that of cigarettes, often more than half. And among large cigars, the high-margin "single-stick" cigars, have grown tremendously; these single cigars often sell for under \$1.00. New York specific data mirror national trends; 40% of the market is flavored, and among the cheap single stick cigars, 44% are flavored. The most popular flavors in New York were strawberry, grape, vanilla, wine, peach, honey, pineapple and watermelon. Other common flavors include Irish Cream, Sambuca, and Caribbean Peach Rum.

It deserves mention that some young smokers who report using cigars may be engaging in a practice known as "blunting," involves hollowing out the tobacco in the cigar and replacing it with marijuana. Research suggests that alcoholic and fruit flavored cigars are targeted strategically to the young marijuana user; blunt users report the flavoring of cigars makes the blunt sweeter, masking the bitter taste of the tobacco and/or the marijuana. In addition, this flavoring often masks the smell of the marijuana. Anecdotal data suggests that much of the single stick sales are associated with blunting.

Flavored products are also contributing to the overall growth in SLT products. Indeed, our research indicates that flavored products are fairly dominant in the moist snuff market, with more than half (55.5%) of the moist snuff products nationally sold in 2008 being flavored products. While flavors such as wintergreen and mint are popular, other flavors such as peach, vanilla and bourbon are common – and are responsible for 5% of the overall growth of moist snuff between 2005 and 2008. New York specific data suggests that flavored moist snuff is even more popular. In New York state 70% of moist snuff is flavored; the most popular flavors are Wintergreen (28%) mint (21%) and fruit flavored (22%). The most popular fruit flavors in New York were Apple, Berry, Cherry, Citrus and Peach.

In summary, passing Intro 433 will send a strong message to the tobacco industry that they cannot continue to market cigars and smokeless in candy, fruit and alcohol flavors to youth and young adults. Flavored products provide another choice and a new way for youth to experiment with tobacco. Variety, in products and brands, supply new opportunities to use, which may increase overall incidence and prevalence of tobacco use. The City Council has an opportunity to set a national precedent by outlawing flavored tobacco products in New York City. This law can spur action at the State level in New York, and throughout other states and cities across the country.



**Testimony of
Michael Seilback, Vice President, Public Policy & Communications
May 21, 2009**

**On Intro 433-A, Prohibiting the Sale of Certain Tobacco Products
Intro 642-A, Prohibiting Smoking on and around Hospital Grounds
Res. No. 293- Resolution calling upon Congress to tighten advertising restrictions in the federal
Cigarette Labeling and Advertising Act and to allow localities to legislate in this area
Res. No. 1927- Resolution calling upon Congress to pass the Family Smoking and Prevention Act.**

Good morning. My name is Michael Seilback, VP Public Policy & Communications for the American Lung Association in New York. Thank you Chairman Rivera and to the members and staff of the committee for your work on these important issues.

I wanted to begin by briefly mentioning our strong support on the national level for legislation that will give the Food and Drug Administration the ability to regulate tobacco products. We commend the City Council for their resolutions on this front. Passage of these resolutions cements New York City's status as one of the most progressive and aggressive municipalities in the nation in the battle against the deadly effects of tobacco. The federal government must be able to stop tobacco companies from advertising to children, making misleading health claims about their deadly products, and manipulating their products to make them increasingly more addictive. Thanks in part to your support -- this will hopefully become the law of the land.

On the local level, there is much that can and must be done to protect the public, especially children, from deadly tobacco products. That's why we are here to offer our support and comments on Intro 433-A, which will prohibit the sale of flavored tobacco products, including flavored cigarettes, cigars, little cigars and smokeless tobacco.

Currently, tobacco companies spend approximately \$12.5 billion each year in advertising and marketing of their products—over \$800 million of which is spent here in New York State. This is a staggering number that is more than the twice the combined payroll of the Yankees and Mets.

We know, and the tobacco companies know, that nearly 90 percent of smokers pick up the habit before the age of 18. As a result, the future of the tobacco industry depends on their ability to addict children to cigarettes. Tobacco companies use sly marketing techniques, such as catchy names, flashy advertising, and sweet smelling flavors, to hook a new generation of smokers. We cannot tolerate this behavior. While scents may mask the taste of nicotine, flavored cigarettes are just as addictive and just as deadly as ordinary cigarettes.

Each day, the tobacco industry lures 1,100 kids into becoming regular, daily smokers. Half will eventually die from smoking related illness in their adult years. Prohibiting the sale of flavored tobacco products is a serious step toward reducing the number of youth starting upon a lifetime of tobacco addiction.

(over)

To overstate the obvious - you have to smoke to be a smoker. Preventing youth from starting is a key to reducing the number of addicted adults.

Years after the Master Settlement Agreement, and additional separate agreements between several attorney generals and Big Tobacco, tobacco companies continue to market products which are clearly targeted at youth. You've seen examples of some of these products, which could be purchased just blocks from where we are sitting now. This legislation will protect New York's children by battling an insidious new generation of flavored tobacco products.

We also urge you to pass Intro 642-A, which would ban smoking at and around hospital grounds. The Surgeon General has stated that there is "no safe level of exposure" to secondhand smoke. Secondhand smoke is classified as a "Group A" known carcinogen, a category reserved for the most dangerous cancer-causing chemicals, which includes such toxins as benzene and asbestos.

Secondhand smoke is not simply an annoyance that one endures on the way to work. Even a quick walk through a cloud of tobacco smoke on the way into a hospital could be enough to trigger an asthma attack. The Surgeon General's report stated that even brief exposure could cause immediate harm.

Secondhand smoke has been scientifically linked to causing dozens of diseases and illnesses including asthma, heart disease, respiratory tract infections and ear infections. It poses serious health risks for all people, especially those with chronic health conditions, who are the ones most likely to be seeking care at hospitals.

This legislation will ensure that those people going to seek vital healthcare do not compromise their health by walking through plumes of smoke on the way to get there. Hospitals are where people go to get better, not to get worse.

In closing, I thank you again for your support of these tobacco control measures and your dedication to the public health of all New Yorkers. The American Lung Association in New York welcomes the opportunity to work closely with this Committee to protect our citizens from secondhand smoke and our children from being preyed upon by Big Tobacco.

Thank you for the opportunity to comment. We are happy to entertain any questions you may have.

John Wedeles, Manhattan Tobacco Cessation Center

Good morning. Thank you for the opportunity to speak at today's hearing. My name is John Wedeles, and I am the Program Coordinator for the Manhattan Tobacco Cessation Program. We are one of 19 cessation centers throughout New York State, and with funding from the New York State Department of Health's Tobacco Control Program, we work with health care institutions and providers in Manhattan to help their patients successfully quit smoking.

I would like to inform you of the current leadership efforts of two major New York City health care institutions, New York-Presbyterian Hospital and New York University College of Dentistry, in implementing smoke-free campus policies. New York-Presbyterian Hospital, including the Columbia University Medical Center and Weill-Cornell Medical College campuses, will institute a smoke-free policy on their grounds on July 4th of this year, while New York University College of Dentistry plans to institute its smoke-free policy in September of this year. These policies will restrict smoking in outdoor common areas and at building entrances, and will provide employees who smoke with comprehensive support systems to help them quit.

As direct providers of medical care, these two institutions must demonstrate their responsibility to protect the health and well being of their patients, their patients' visitors and their employees. By officially designating their properties tobacco smoke-free, these institutions send a clear, strong message that they promote health, not disease. While some hospitals have voluntarily adopted smoke-free grounds policies, New York City residents visiting any hospital in any neighborhood deserve equal protection from second hand smoke. As we all know, tobacco use is a serious detriment to our health, causing an estimated 440,000 deaths each year. Health care facilities are in a unique position to set the standards of healthy behaviors in their communities and help remove unhealthy ones from the mainstream. Every healthcare facility should lead by example and say "no" to tobacco use on their property.

By making hospital grounds smoke-free, children, asthma sufferers, the elderly, newborns, individuals with cardiopulmonary disease and other vulnerable New York City residents are no longer forced to walk through a toxic cloud of tobacco smoke to receive health care or visit family members in treatment. Employees are protected from the dangers of secondhand smoke and supported in their efforts to quit. When patients are discouraged from going outside for a smoke they too are more likely to quit, and wound healing, surgical and overall treatment outcomes improve.

Quitting smoking is an extremely difficult thing to do. Studies show that more than 70% of the 45 million smokers in the U.S. want to quit, and roughly 44% try to quit each year. But evidence also suggests that a smoke-free environment on hospital grounds can prevent the triggering of relapse and increase the odds of quitting.

Earlier this month, the City announced that the number of New Yorkers who smoke had dropped to 15.8%, the lowest rate on record. However, New York City healthcare institutions lag far behind others throughout New York State in implementing smoke-free hospital policies. Along with education and resources for quitting, smoke-free hospital policies can improve patient outcomes, enhance employee satisfaction and productivity and strengthen bonds with the institution's immediate community, thus succeeding in their commitment to improving the health of New Yorkers.

Thank you for your time and considerate attention.



American Heart Association® | American Stroke Association®

Learn and Live®

122 East 42nd Street

New York, NY 10168-1898

Tel. 212.878.5900 Fax. 212.878.5970

www.americanheart.org

www.strokeassociation.org

Testimony of Stephanie Chan

American Heart Association / American Stroke Association

122 E. 42nd Street, 18th Floor

New York, NY 10168

212.878.5922

Jeffrey C. LeSage
Chair

Richard M. Hodosh, MD
President

Glenn Bashe
Immediate Past-Chair

Ralph L. Sacco, MD
Immediate Past-President

P. Gregory Hess, Esq.
Vice President, Legal Counsel

Michael R. Rosella, Esq.
Secretary

Arthur H. Christy, Esq.
Legal Counsel Emeritus

Directors

Karin J. Barkhorn, Esq.
Gail Blanke
Bernadette Boden-Albala, PhD, MPH

Jill Siegel Chalsty
Warren W. Chin, MD
Kate Coyne
Van H. Dunn, MD, MPH
Samuel J. Daniel, MD
Ben Gallina
Aubrey Galloway, MD
Max Gomez, PhD
Dian Griesel

Toby Gropen, MD
Michael Harrell, MPA
Seth Horowitz
Patti Kenner
Tak Kwan, MD
Thomas Kwiatkowski, MD
Johnny Lee, MD
David Lefkowitz, Esq.
Walter Lestrangle, RN, MPH
Benjamin H. Lewis, MD
Helga M. Long

Mary Martinez
Marcella Maxwell, EdD
Beth Oliver, RN
Thomas George Pickering, MD
Malva Rabinowitz
Brent Saunders
Allan Schwartz, MD
Marcy Syms
Harvey Tanenbaum
Anthony J. Tortolani, MD
Ed Wise
Linda Zango-Haley

Helaine R. Baruch
Regional Vice President

Position: In Support

Re: Proposed Int. 433-A, Proposed Int. 642-A, and Res. No. 1927

Date: May 21, 2009

Good morning, Chairman Rivera and distinguished members of the City Council Health Committee. My name is Stephanie Chan, I am a resident of Brooklyn and I am honored to speak on behalf of the American Heart Association / American Stroke Association in support of the several tobacco policies on the committee's agenda today.

I am a survivor of heart disease. I know I don't look like someone who suffers from New York's #1 killer, but it's true. At 16, I was diagnosed with diabetes, high cholesterol and high blood pressure due to genetics and unfortunately some poor lifestyle choices. These conditions went largely unmanaged until the age of 24, when I was diagnosed with coronary artery disease. Three separate arteries were blocked (two at 90% and the third at 70%) and I ultimately received three stents to keep my blood flowing.

As someone who has witnessed first-hand the pain and agony of heart disease, it shocks me that New York City kids continue to pick up cigarettes, setting the stage for a lifetime of addiction. Smoking is the leading preventable cause of heart disease and stroke. Big tobacco created flavored tobacco for one simple reason: to help hook our kids on to cigarettes. There is no reason that tobacco should be disguised in various candy, alcohol or other sweet flavors. Evidence clearly shows that flavored products maintain their position as the largest growing segment of the tobacco market. Clearly, the existing agreement with the states' attorneys general is not working – there are too many loopholes that the tobacco companies can take advantage of. We must protect our impressionable youth from the dangers of smoking, even when it's dressed up in the cloak of appealing flavors. For this reason, the American Heart Association strongly supports Proposed Intro 433-A.

My experience as a survivor of heart disease has placed a larger emphasis on my surrounding environment. Under medical advice, I simply cannot be exposed to

secondhand smoke. Inhaling someone else's tobacco smoke will cause my arteries to harden and increase my risk of clots. A clot traveling to my heart could cause a heart attack; if it travels to the brain, it could cause a stroke. For victims of cardiovascular disease, the banning of smoking on hospital campuses, as proposed in Intro 642, is much more than an effort to continue the de-normalization of tobacco use. This policy would help ensure access to our health care providers, without the threat of breathing in the devastating effects of secondhand smoke. I join with the American Heart Association in supporting this effort and look forward Intro 642's passage and implementation.

Regarding the remaining two components of today's agenda, the American Heart Association strongly supports all efforts to better monitor and control the outreach of Big Tobacco. That being said, we believe that the pending legislation in Congress (H.R. 1256 / S 982) that would allow the Food and Drug Administration to gain oversight over the tobacco industry would also mandate stricter controls over tobacco advertising. The American Heart Association has been working with our partners in tobacco control across the country to assist in motivating this federal bill.

It is unbelievable that despite all the harm that tobacco products cause, they are still virtually unregulated by the FDA. Dog food has to adhere to stricter rules than does a pack of cigarettes. Ironically, cessation medication, intended to help people stop smoking are regulated, but cigarettes aren't. The tobacco industry has long taken advantage of this lack of regulation to market their deadly products to our children and deceive consumers about the harm their products cause.

Again, I humbly thank you for this opportunity share the perspective of a young woman who struggles with heart disease. On behalf of the American Heart Association, I look forward to the implementation of these policies as we seek to champion the organization's mission... building healthier lives, free of cardiovascular diseases and stroke!

**PUBLIC HEARING ON INTRO 642-A PROHIBITING SMOKING ON AND
AROUND HOSPITAL GROUNDS**

**TESTIMONY OF SUSAN MOSCARELLO, GUEST AT HOPE LODGE, NYC,
132 W32nd STREET, NEW YORK, NY 10001**

May 21, 2009.

Thank you Speaker Quinn, Council Members Rivera and Dickens and members of the Health Committee for the opportunity to speak in support of Intro 642-A legislation to prohibit smoking on and around hospital grounds.

As a person who has always led a very healthy lifestyle, it is of great concern to me to be exposed to second-hand smoke. I have undergone two lung surgeries because of metastasis and though this spread was not caused by smoke, other lesions are now present in my lungs which certainly makes me more vulnerable to the toxicity of cigarette smoke.

For the past seventeen months, I have been undergoing chemotherapy at the 53rd Street annex of Memorial Sloan Kettering Cancer Center. I am very appreciative of the fact that there is an ordinance posted by the hospital forbidding smoking directly in front of the entrance, but seldom do I not find someone smoking within an inch of that posted sign. Your proposed legislation would expand smoke-free areas outside a facility that I use regularly. This is a good start towards promoting health for those of us who value it. It is a proven fact that second-hand smoke is very damaging, and as a person with a cancer for which there is presently no cure, every day that I can add to my life is very precious to me and my loved ones. To think that some of that time may be taken away from me because of someone else's unhealthy choices greatly concerns me, and I would urge you to do all that you can to support this legislation. I do hope that this is only the beginning to taking action towards banning public smoking altogether.

Thank you for your time.

**Testimonial given at NYC Council Hearing
Thursday, May 21, 2009**

Good morning and thank you for asking me to speak today. My name is Jack Pease and I am President and CEO of Eger Lutheran Homes and Services, located on Staten Island. I'm happy to share with you our mission which was to become the first nursing home in New York City to go smoke-free.

In May 2008, the management of Eger Lutheran Homes & Services decided to take a leadership role and initiate a smoke-free campus program. The target was to have a tobacco-free campus by November 20, 2008, The Great American Smoke Out. The campus includes our 22 acre grounds, our 378 bed skilled nursing and rehab facility, and our 75 bed Assisted Living Program. As a health care facility, the goal was to provide a healthy workplace and environment for our staff and residents through wellness and healthy lifestyle initiatives.

The facility did not ask tobacco users to stop using tobacco; we simply requested that tobacco products not be used anywhere on the grounds in order to maintain a healthy atmosphere for those in and around the grounds. Those interested in leading a healthier life were provided with education and nicotine replacement therapy. Of the 378 residents, only six currently smoke and are grandfathered, and have a small designated outdoor smoking area. These residents were also provided with the opportunity for education and nicotine replacement therapy. New admissions must be non-smokers or agree not to smoke as indicated on their application.

As a result, this initiative has had a positive impact on the quality of life of our staff, residents and visitors. Our concerns were abated by carefully designed educational programs and wellness initiatives. Visitors have not been an issue and have actually embraced the change. Our signage begins on the road leading onto the campus announcing that we are smoke-free facility.

Eger is a forerunner, the first Nursing Home in NYC to go smoke-free and recognize that it is time to stop smoking in a health care environment. In fact, only 25 eldercare facilities in the country have completely banned smoke for people who live and work there.

As a symbol of support our staff, a blue wristband was given to all as a reminder to everyone that "Eger Cares". We are proud to say that not only have we accomplished our goal as a "smoke-free campus, but have successfully persuaded many employees to "kick the habit".

The facility's effort was supported by the American Cancer Society, Assemblyman Louis Tobacco, Staten Island University Hospital Center of Complimentary Medicine, S. I. STOP, S. I. QUITTS, and 1199 SEIU Benefit and Pension Funds.

Remember, the key to success is education, support and a positive attitude. Thanks and good luck.



FOR THE RECORD

Testimony of the American Cancer Society of New York and New Jersey

Health Committee Public Hearing NYC Council Intro 433-A, and Intro 642-A Thursday, May 21, 2009

Chairman Rivera, Councilmember Dickens and members of the Health Committee, thank you for the opportunity to testify in support of Intro 433-A, to prohibit the sale of certain flavored tobacco products and Intro 642-A, to prohibit smoking on and around hospital grounds.

I am Michele Bonan, Regional Director of Advocacy for the American Cancer Society in New York City. I want to thank the Council for the outstanding work it has already done in advancing tobacco control measures in our city. We have much to celebrate, but our work is not done. Intros 433 and 642 are important steps to further reduce the burden of tobacco on our city.

Additionally, I would like to voice the American Cancer Society's support for the Family Smoking and Prevention Act, federal legislation to give the FDA authority to regulate tobacco products, and the subject of Resolution No.1927. This bill is our top tobacco priority at the national level, and we are very pleased to support this resolution. All together, these policy changes will have a tremendous positive health impact on New York City.

The American Cancer Society is committed to reducing the devastating burden of cancer in our communities. Tobacco kills 440,000 Americans each year, causing nearly one-third of all cancer deaths. It is the number one cause of preventable death in the country¹. Tobacco use and exposure to secondhand smoke (SHS) from cigarettes account for nearly one in three cancer deaths—deaths that are completely preventable.

Support for Intro 433-A

Each day 5,000 kids under the age of 18 try their first cigarette. We believe it is incredibly important to ban flavored cigarettes and other flavored tobacco products covered under this legislation, because they are aimed at recruiting young, underage smokers. Flavored cigarettes are often the first cigarette kids will try – they are like training wheels for traditional cigarettes.

With names like “Sweet Dreams Cherry” and “Sweet Dreams Vanilla” (made by Kretek), sweet, fruity and even alcohol-flavored cigarettes have proliferated in the past few years. There are also fruit and alcohol flavored little cigars like “Prime Time’s-- Strawberry, Grape and Cosmo” flavors. These look a lot like cigarettes and are cheaper to obtain. I brought some samples with me here today. These flavored tobacco products have the greatest appeal to new smokers, 90% of whom are under age 19. Established smokers are unlikely to give up their favorite brands for these new cigarettes, but many kids will be tempted to give them a try and many will get hooked on nicotine. The tobacco industry understands this well and has avidly sought young people as “replacement smokers.”

¹ Mokdad AH, Marks JS, Stroup DF, Gerberding JL. Actual causes of death in the United States, 2000. JAMA 2004;291:1238-1245.

National studies have shown that flavored cigarettes appeal to young smokers, including minors. A Harvard School of Public Health Study published November 2005 points out that flavored cigarettes promote youth initiation and help young occasional smokers become daily smokers by masking the natural harshness and the taste of tobacco smoke². It has been said that these flavored cigarettes “sweeten the poison” and thereby increase the attraction to youth.

Data from a 2004 national study by the Roswell Park Cancer Institute of 17-26 year old smokers bear this out. The study found that 17-19 year old smokers were more than twice as likely to use flavored cigarettes as 20-26 year old smokers. Of the 17 year olds 22.8% used flavored cigarettes in the month preceding the study, in contrast to only 9.1% of smokers aged 24-26³. We believe the evidence is clear: younger smokers are the ones using these products.

This legislation is more relevant than ever. As I’m sure you recall, RJ Reynolds, one of the world’s largest tobacco manufacturers, signed a voluntary agreement with 38 Attorneys General to stop marketing cigarettes with candy, fruit or alcohol flavors in late 2006. While we are pleased with this agreement, it was not a cure-all. RJ Reynolds is just one manufacturer of flavored tobacco products – and their agreement did nothing to stop others from marketing and selling flavored cigarettes to our youth. Furthermore, Intro 433-A goes further than the proposed Family Smoking and Prevention Act, by prohibiting other flavored tobacco products. The City Council has an historic opportunity to address these loopholes by enacting a ban on these products from ALL tobacco manufacturers. We urge you to continue your leadership and take that step.

Support for Intro 642-A

Decades of research on SHS led to the EPA classifying it as a Class A carcinogen similar to asbestos or benzene, with no safe level of exposure. The high toll of frequent exposure to SHS in enclosed places, such as workplaces, are well documented at 3,000 lung cancer deaths per year and as many as 50,000 deaths from chronic diseases annually.⁴

Research on secondhand smoke exposure has continued to mount. Recent research has shown that even short-term exposure to secondhand tobacco smoke can be very harmful, especially for people with compromised cardiac and respiratory conditions.^{5,6} One landmark study on the effects of the NYS clean indoor air law on hospital admissions for heart attacks suggests that secondhand smoke is a major trigger for acute myocardial infarctions.⁷ Another study found that “being within a few feet of a smoker outdoors may expose you to air pollution

² “New Cigarette Brands with Flavors That Appeal to Youth: Tobacco Marketing Strategies; *Health Affairs*, November/December 2005, Volume 24, number 6.

³ Unpublished data from the 2004 National Youth Smoking Cessation Survey of older adolescent and young adult smokers and the 2004/2005 Assessing Hard Core Smoking Survey of US adult smokers; Roswell Park Cancer Institute and the University at Buffalo.

⁴ CDC, 2006.

⁵ JAMA. 2001;286:436-441,462-463.

⁶ Circulation. 2005;111:2684-2698.

⁷ Am J Public Health. 2007;97.

levels that are comparable, on average, to indoor levels that we measured in previous studies of homes and taverns.”⁸

High levels of exposure to harmful secondhand smoke are the norm right here in New York City. In April, the NYC Department of Health and Mental Hygiene found that 57% of non-smoking New Yorkers—2.5 million people—have cotinine in their blood, evidence of exposure to second hand smoke. The levels of exposure found in NY were much higher than in other parts of the country⁹.

Healthcare facilities need to be leaders in the community on health related issues.

To allow smoking and exposure to secondhand smoke on their property or in front of their facilities suggest tacit approval of smoking among employees, patients, and visitors, and is not consistent with a hospitals’ mission to promote health.

By allowing patients, visitors and staff to smoke on hospital grounds, we are undermining efforts to help patients to stop smoking. A patient is more likely to make a quit attempt and use smoking cessation medications while in the hospital if the patient knows that smoking outside the hospital entrance is not an option.

In addition, allowing smoking near entrances, vents, and windows of healthcare facilities threatens the indoor air quality of those buildings since SHS, which contains numerous carcinogens, is often sucked into the facility and circulated throughout the hospital. This is of particular concern for patients suffering from illnesses such as cancer as well as hospital staff who suffer from long-term exposure.

Smoke free hospital campuses have also been **effective at promoting reductions of tobacco use among employees in those settings**. Two upstate hospitals, including SUNY Upstate Medical University in downtown Syracuse reported a drop in smoking among employees by 25-30% in the first year following implementation. With each smoking employee costing upwards of \$3,500 per year in additional healthcare costs and productivity losses, smoke free grounds can potentially reduce healthcare costs to the city.

Smoke free hospital grounds are increasingly becoming the norm. In New York State, it is estimated that nearly half of all hospitals have voluntarily implemented smoking or tobacco use bans on their grounds. All 1550 state licensed addiction treatment centers (via regulation) and psychiatric hospitals have implemented smoke free campus policies. Today, we have heard from several facilities that have voluntarily implemented these policies locally, and the policies are working. We urge you to pass Intro 642-A, to codify the great work that is already being done and to extend this protection to all hospitals and healthcare facilities in New York City.

Once again, we thank you for your leadership and look forward to our continued work together. Thank you for the opportunity to testify.

⁸ J. Air & Waste Management Association. 2007. 57:522-534

⁹ <http://home.nyc.gov/html/doh/html/pr2009/pr011-09.shtml>

Testimony by Amanda Septimo

May 21, 2009

Hello, my name is Amanda Septimo, I am a rising sophomore in college and I am a former member of the teen activist group A.C.T.I.O.N. , Activists Coming To Inform Our Neighborhood, which is based out of The Point CDC in the Hunts Point section of The Bronx. While A.C.T.I.O.N. is thoroughly committed to the ban of flavored cigarettes, I am here speaking today as a concerned member of the youth community on behalf of New York City's young people that are unknowingly targeted by tobacco companies.

First I'd like to note that the commitment to a flavored cigarette ban is not fueled by a power struggle against big tobacco companies, and it is not a lash out against big business and its sly marketing schemes. While these issues remain at hand with big tobacco companies, the health of New York City's youth is what remains at the core of this flavored cigarette ban.

Each day 5,000 children under the age of 18 try their first cigarette, and every single day another 2,000 children under 18 become established smokers. These figures speak volumes about the effect the tobacco industry has on today's young minds. Flavored cigarettes mask the harsh taste of normal cigarettes and the flashy ads glamorize the deadly habit, all in effort to grab the attention of teenagers and young adults. The compelling product names like Mandarin Mint and Beach Breezer show tobacco companies' blatant attempts to capture the attention of a young audience, and secure replacement smokers for their ever-dying consumers.

While I am lucky to sit before you today as a young lady who has yet to touch a tobacco product, I do have a mother whose attention was captured by tobacco companies at the age of 17, and has been smoking ever since. So many uncontrollable factors can be attributed to young people smoking, which is why we need legislation to eliminate the unnecessary temptations and unfair schemes to hook young people to this deadly habit.

The immense responsibility of looking after the health of today's youth cannot be left for the big tobacco companies. Not only do these companies have a clear track record of disregarding health, but we must also remember that they are in fact companies looking to make money. Big tobacco companies have broken their promises to back off youth in the past and will continue to do so as long as a lack of legislation allows them to, because they are continuously looking to maintain and expand their markets. Thus, legislation must be passed to prevent these companies from continuously taking advantage of the malleable and very impressionable minds of today's youth.

This is a chance for legislators to send the right message to big tobacco companies. Passing this legislation can mark the beginning of seriously changed attitudes regarding boundaries in advertising and the unfair targeting of youth. Passing this legislation will also send a positive message to the people that are represented by all of you. This will show people that their elected officials are representing, protecting, and respecting the concerns that truly affect everyone.

I urge you to remember that regardless of how big tobacco companies package it, they are marketing to children to replace the customers that die because of their product. When older consumers die, you get younger ones. It is unacceptable that tobacco companies market their product so that today's youth are tomorrow's dying customers, and it must come to an end. This game of replacement must be put to rest by passing legislation. I trust that legislation mandating the ban of flavored cigarettes would force tobacco companies to replace their sly marketing strategies, and maybe even force these companies to examine the deadly nature of their product, but it will no longer allow these companies to replace their dying consumers with the young leaders of tomorrow.



Testimony of

Aleah Gathings, MPH
Deputy Director
NYC Coalition For A Smoke Free City

Before the Committee on Health of the New York City Council

Hearing on the following legislation:

Proposed Int. No. 433-A
Proposed Int. No. 642-A
Res. No. 293
Res. No. 1927

May 21, 2009

Good morning, Mr. Chairman and Members of the City Council Health Committee. My name is Aleah Gathings, Deputy Director of the NYC Coalition For a Smoke Free City and I would like to thank the Health Committee for the opportunity to speak this morning. The NYC Coalition is a pro-health advocacy group comprised of numerous partner and grass roots organizations. Our priorities include:

- Protecting youth and vulnerable populations from tobacco industry targeted marketing
- Educating policy makers on the risks of tobacco use and second-hand smoke
- Advocating for policy changes to better protect New Yorkers from tobacco addiction and disease

Our mission is to prevent more than 10,000 New York City residents from needlessly losing their lives each year due to tobacco. We believe that it is unacceptable that each year 20,000 New York City children smoke cigarettes, of whom, one-third will die from the addiction.

Protecting Youth

The industry is committed to addicting their next generation of smokers, our kids. Tobacco industry profits are based on the ability to get kids to start smoking. They target kids through alluring advertisements at points of sales that feature bright colors and flavored tobacco products.

Fact: 90% of all adult smokers become addicted before the age of 18.

Fact: There are 3 times more cigarette ads on windows of stores popular among youth than stores that are not as popular.

Fact: Youth, who visit a convenience or small grocery store at least weekly, have a 50% greater chance of smoking.

Historic and current industry trickery demonstrates how versatile the tobacco industry is in finding ways to market to kids regardless of our efforts to stop them. Product innovation, such as the addition of sensory ingredients (i.e. sugars, candy flavors) makes the overall experience of smoking smooth or pleasurable. This 'ease of dosing' helps kids initiate smoking and reinforces addiction.

Secondhand Smoke Exposure

We believe that all NYC residents deserve protection from exposure to secondhand smoke. This is especially true at hospitals where the objective is to make people well not sick. It is unacceptable for any individual to be exposed to cigarette smoke on the grounds of a hospital. Smoke free hospital grounds protect: (1) the health of visitors on hospital grounds (2) the health of all patients, especially those with asthma, COPD, and heart disease (3) the health of hospital workers who would be exposed to second hand smoke. Smoke free hospital bans, when supported with cessation resources, decrease smoking prevalence among staff members. It's a win-win.

We applaud this Committee's efforts in seeking to protect the health of all New Yorkers. The elimination of enticing flavors additives, tobacco advertising, and secondhand smoke exposure on hospital grounds can significantly diminish the promotion and use of tobacco's deadly products among our most vulnerable residents.

Thank you for your time and concern.

NYC City Council Meeting Health Committee Hearing, May 21, 2009

Int. No: 433-A, Int. No. 642-A, Res. No. 293 and Res. No. 1927

Testimony provided by: Esmirna Latorre, Parent, The Bronx

My name is Esmirna Latorre and I am the parent of two teenagers, a boy and a girl, ages 14 and 17. I have lived in the South Bronx for over 20 years and have noticed a steady increase in tobacco advertisements in my neighborhood, particularly over the past few years. It seems as though there is no escape from them.

I live 3 blocks away from a building that houses two high schools and it makes me so angry to see ads all along the route my kids use to walk to school every day. It would not be okay for stores to be covered in pornographic ads. Why is it ok that they are covered in ads for a deadly product that steals precious years people have with their families? How can we protect our children from the dangers of this product when they are bombarded with the message that smoking is glamorous?

When I go to the store, I see cigarettes with flavors like vanilla, strawberry, and mint. The packaging looks exactly like candy. It is scary when kids these days can't even tell the difference between candy and cigarettes. It sends the message that cigarettes are as harmless as candy when in reality flavored tobacco is as harmless as addiction and cancer.

As I parent, I work hard to teach my children right from wrong. I hope that they can go out into the world and make good decisions, but because I work, I am not always around to guide them. We owe our children the opportunity to live in a community where they are not constantly under siege by negative influences.

We expect you, as leaders in our community, to protect the health and well-being of our children. We're counting on you to support families like ours and rid our neighborhoods of advertisements & endorsements of tobacco products.

Stickers, Candy and Tobacco?

Tobacco Ads Lure NYC Kids at Their Neighborhood Bodegas



On a sticker and temporary tattoo dispensing machine
Washington Heights, Manhattan



Positioned at eye level to attract kids' attention
Longwood, Bronx



Located where kids park their bikes
Longwood, Bronx



Strategically placed under bright packages of candy
Washington Heights, Manhattan

Stickers, Candy and Tobacco?

Tobacco Ads Lure NYC Kids at Their Neighborhood Bodegas



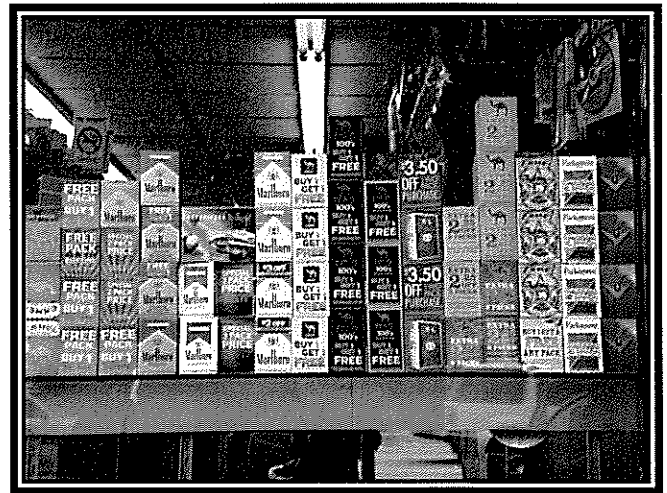
Smokeless tobacco ads placed near magazines and snacks
Midtown, Manhattan



Sweet flavors and enticing packaging look a lot like candy
Chelsea, Manhattan



Bodega plastered with ads
Jackson Heights, Queens



An eye-catching wall of brightly colored cigarette packs
Chelsea, Manhattan

NYC City Council Meeting Health Committee Hearing, May 21, 2009

Int. No: 433-A, Int. No. 642-A, Res. No. 293 and Res. No. 1927

Testimony provided by: Jessica Safier, New York City Coalition for a Smoke Free City)

Good Morning. I would like to thank the City Council Health Committee for the opportunity to speak today. My name is Jessica Safier and I'm the Program Manager of Youth Initiatives at the New York City Coalition for a Smoke Free City. I work directly with teens in the boroughs of Queens, the Bronx, and Manhattan to educate and empower them about social justice in their neighborhoods. The youth we mentor have held press conferences, written letters to newspapers, met with local government, and created a documentary film to speak out about the impact of tobacco in their communities. I am here today to express what we have documented in relation to flavored cigarettes and retail tobacco advertising.

During our meetings, teens often express concern about what their younger brothers and sisters see on a daily basis. They can't stop by their local bodega to pick up some snacks or a carton of milk, without routinely and explicitly being encouraged to take up a deadly habit.

The tobacco industry must recuperate lost profits due to the thousands of former customers each year who quit or pass away due to smoking related illness. Therefore, more often than not, they rely on deceptive marketing strategies to recruit a new generation of addicts: our children.

For instance, through grassroots community-based store surveys, our youth have uncovered several harmful trends. Tobacco industry sales representatives enter stores and strategically place advertisements:

- At the eye level of children
- Below counter-tops
- Next to candy, comic books, toys and other child-friendly items

In order to entice children, they have also created specific products with candy-flavors. In attempt to appear innocuous, they incorporate bright colors, catchy names and clever packaging. While they claim that they do not advertise to children, we cannot possibly be expected to believe that products with names like Frost, and Spice are aimed at adult markets.

(The pictures displayed are photographs we have taken in the city over the last 5 months depicting our findings).

Currently, the teens in our organization work to educate store owners about the dangers of tobacco ads. Often the owners themselves have children and are supportive of the work that we do to prevent kids from developing an addiction to tobacco. Many times they remove ads, only to have the tobacco sales reps put them back up a few weeks later, undoing the efforts of our kids.

There are numerous advantages to growing up in a city as diverse and vibrant as NYC, including the ability youth have to participate in social change. Please support their efforts and the belief that they can make a difference.