

# SF Weekly

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Who needs pollsters? Dog Bites gets a Hollywood psychic to handicap the mayor's race.

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## Opening Pandora's BOX

By Bernice Yeung

ONCE-SECRET DOCUMENTS REVEAL THE TOBACCO INDUSTRY'S FIVE-YEAR BATTLE TO GUT ANTI-SMOKING EDUCATION IN CALIFORNIA. FORMER ASSEMBLY SPEAKER WILLIE BROWN AND FORMER GOV. PETE WILSON HELPED.

Matt Isaacs on a former CIA operative whose macabre exploits draw comparisons to *Apocalypse Now*



Peter Byrne on Mayor Brown's evasiveness with tax returns

Mark Athitakis on Tom Armstrong's move from punk rock to honky-tonk



# Opening Pandora's Box

## **Lee Sanders leans back in a leather chair.**

An attorney in a prosperous Oakland law firm, Sanders is in the midst of a minitirade on good government, civic virtue, and political integrity. Most conversations eventually lead Sanders to these very subjects, and as he speaks, Sanders raises his hands to his forehead and vigorously massages his temples, as if to coax forth every shred of historical evidence that he has dutifully committed to memory.

In these moments of intense political philosophizing, when his eyes begin to flash almost menacingly, it seems certain that Sanders believes he was put on this Earth to fight the good fight, to unerringly revere every letter of the law. Former President Richard Nixon, whom Sanders tried to eject from office while a Common Cause organizer during Watergate, is the poster child of all that Sanders reviles about a corrupted republic. When Sanders witnesses what he considers a subversion of democracy, he becomes personally insulted.

It is precisely this combination of righteousness and faith in civic virtue that prompted the 59-year-old lawyer to sue the state of California five years ago when he became convinced that something untoward was happening with the way state lawmakers were spending money from a special, voter-approved tax on cigarettes.

When he filed his suit, Sanders did not know he would stumble upon damning evidence of a secret tobacco industry plan to subvert the law and protect its lucrative California market.

The scheme was born in 1988, when public health and anti-smoking groups — frustrated that they had been unable to get any sort of cigarette tax through the state Legislature — went straight to the voters with Proposition 99, an initiative to raise the price of a pack of cigarettes by 25 cents. The tax was expected to generate almost \$1.5 billion in its first year, and the money would be earmarked for various things, including smoking-related medical care and tobacco research. A substantial chunk of the money would go toward a public education campaign. Voters approved Prop. 99, and the state of California was poised, for the first time, to launch a well-funded advertising blitz aimed at persuading people not to smoke.

Terrified that taxpayer money was about to be spent on an aggressive advertising campaign that would drive away its customers, the tobacco industry launched a secret plan — dubbed “Project California” in one internal tobacco industry memo — to gut the public education program. The tobacco industry set out to ensure that as much of the money as possible would be diverted from the education campaign to medical programs that, while commendable, posed no threat to the industry’s bottom line.

For more than five years, with the help of Govs. George Deukmejian and Pete Wilson and Assembly Speaker Willie Brown, the industry’s scheme was partially successful. Compliant state lawmakers took about \$140 million in cigarette tax money that should have gone to the anti-smoking campaign, and diverted it to other uses.

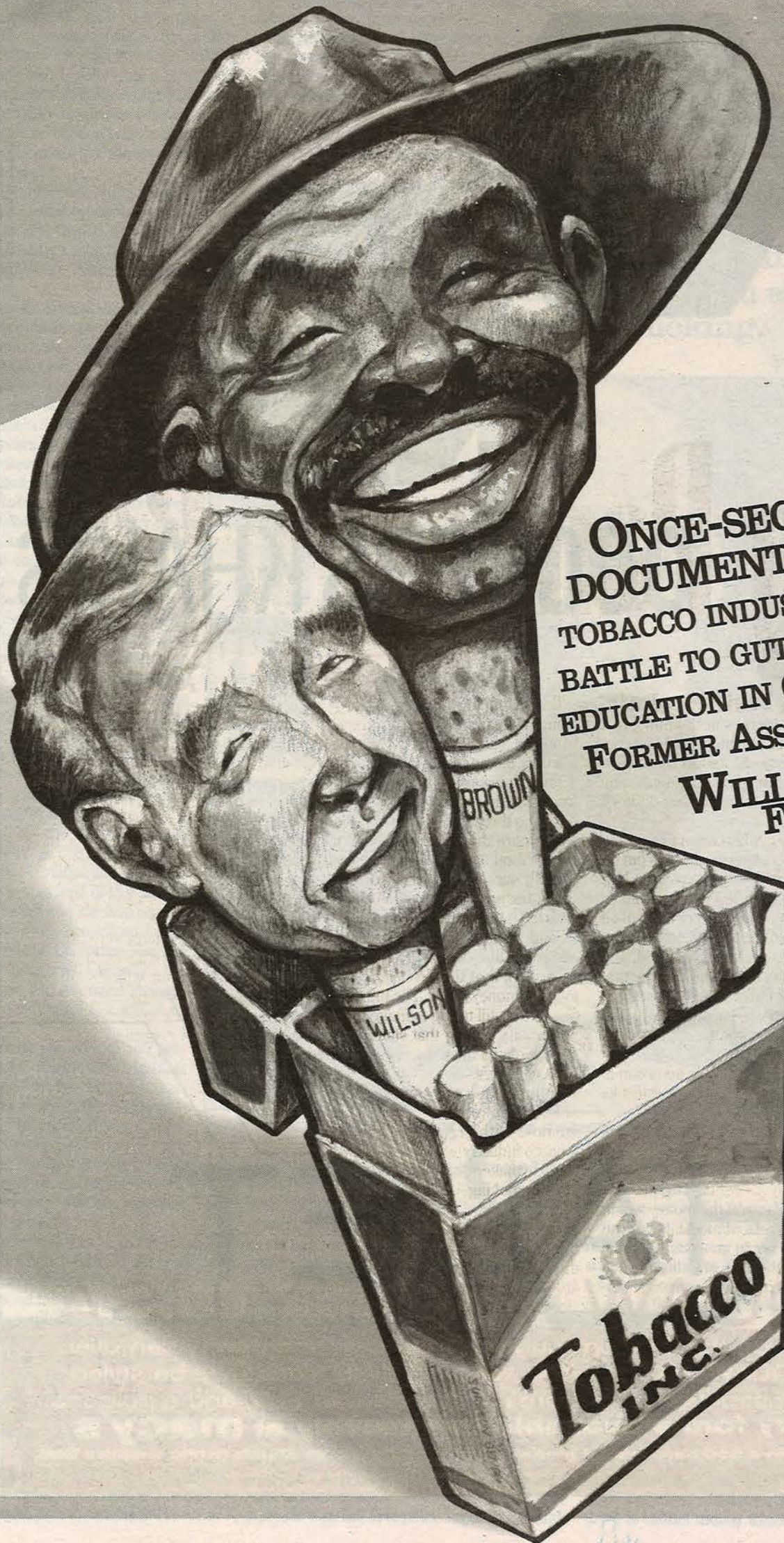
Sanders and many anti-smoking activists say the diversions were illegal, and so far one court has agreed in part. Sanders’ lawsuit is still pending, and he argues that the diversions were a corruption of public will, driven by tobacco money and duplicitous behind-the-scenes maneuvering. To this day, Sanders is still trying to make the state put the money back into anti-smoking education, arguing that state politicians, fed on tobacco campaign contributions, violated the California Constitution when they rerouted the tens of millions of dollars.

In the course of the lawsuit, Sanders has managed to amass some compelling evidence for his case, much in the form of once-secret industry memos. With great stealth and political savvy, the documents show, the tobacco industry was able to strike alliances, dole out campaign money, pressure lawmakers, and partially undo the will of the voters, all in an effort to keep people smoking.

**Big Tobacco’s political fortunes have plummeted** dramatically in the 11 years since California voters approved Prop. 99. Back then, the public had yet to see secret industry documents on the health hazards of smoking. There had been no incriminating congressional hearings aired on national television, in which the **Continued on page 15**

B Y B E R N I C E Y E U N G





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## Tobacco

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leaders of the nation's largest tobacco firms made fools of themselves by swearing under oath, one by one, that they did not believe nicotine was addictive.

The tobacco industry had lost no major lawsuits filed by ill smokers or the families of dead ones. There were few signs that, within a decade, tobacco would become Public Health Enemy No. 1, with state and federal governments filing multibillion-dollar lawsuits against the industry to recover medical costs. Or that the tobacco wars would spawn a popular movie like the recently released *The Insider*.

Back then, politicians still accepted hefty tobacco campaign contributions without apology, and the political clout of the industry's lobbyists ranked up there with the National Rifle Association.

By virtue of its size, California was one of tobacco's largest and most important markets — a "bellwether state," as tobacco industry executives described it in a memo. And the industry had been quite successful at protecting its interests in the Golden State.

In the 21 years before Prop. 99 was put to the voters, more than 30 bills were introduced in the state Legislature to increase tobacco taxes, and every one was shot down. By 1986, every state in the union had increased its tobacco taxes at least once since the 1960s — except Virginia and California.

In 1987, state Assemblyman Lloyd Connelly of Sacramento tried again, introducing legislation that contained most of the provisions that would later become Prop. 99. The bill died instantly in an Assembly Revenue and Taxation Committee meeting when Connelly could not recruit even one additional supporter for it, recalls John Miller, a former legislative staffer. "That's how solidly the industry owned the Legislature," Miller says.

Frustrated by the fire wall that tobacco had built in the Statehouse, a group called the Coalition for a Healthy California — comprised of the state's major public health and medical organizations such as the American Lung Association and the California Medical Association — converted Connelly's bill into an initiative and gathered enough signatures to put it on the ballot in November 1988.

The tax increase passed with 58.2 percent of the vote, despite a \$21 million campaign waged by the tobacco industry to defeat it. Wary of Big Tobacco's political clout, the coalition was careful to include language in Prop. 99 that clearly spelled out how the new tax money was to be divided up among anti-tobacco education, medical care, tobacco research, and environmental projects.

Set to take effect on Jan. 1, 1989, Prop. 99 specifically stated the share of tax revenues that each purpose should receive every year in percentages, on the theory that as smoking decreased, so would the revenues. Almost half the money was earmarked for medical care for smoking-related illnesses. Twenty percent of the new tax revenue — \$2 out of every \$10 raised — was supposed to go to an anti-tobacco public education campaign to persuade smokers to stop, and nonsmokers not to start.

Changing any of the percentages specified in Prop. 99's language required a four-fifths vote by the Legislature to amend the law, and

even then any amendments were supposed to be consistent with the purposes of Prop. 99, the text of the initiative said.

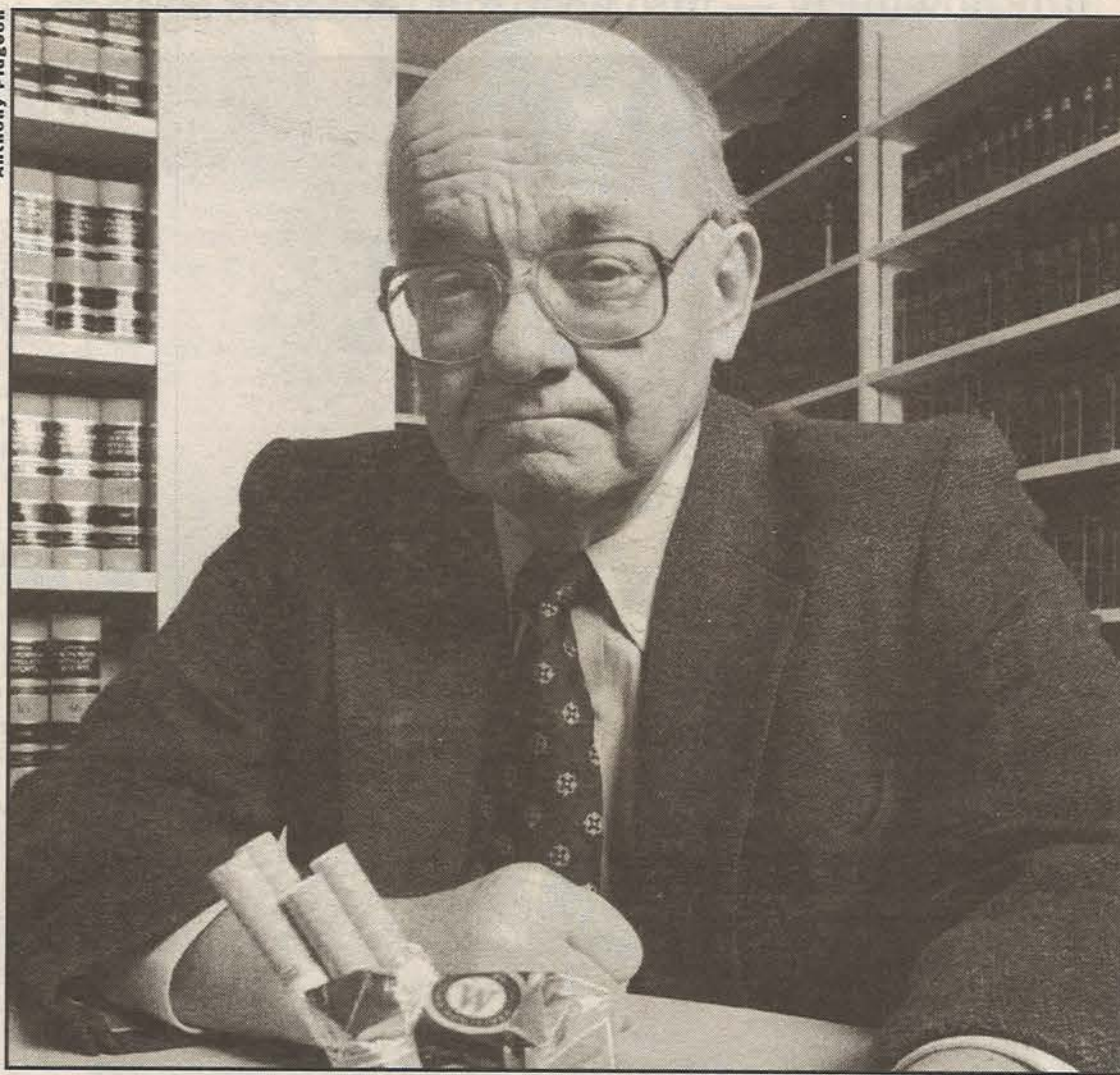
With Prop. 99 funds, California was set to embark on the first comprehensive, statewide anti-tobacco education program in the country, sponsoring ad blitzes, community activities, and school programs.

But the tobacco industry wasn't about to sit idly by while its profit potential was attacked. Within weeks of the passage of Prop. 99, internal industry documents show, a campaign

call to get tobacco's side of any story. Though it was often portrayed as the industry's harmless public relations and trade organization, the Tobacco Institute was truly a powerful private interest group, pooling the resources and influence of companies like R.J. Reynolds and Phillip Morris.

The institute offered up its own research to refute scientific evidence showing that smoking caused health problems, and it also formulated industrywide political strategies and lobbied aggressively. In 1998, the institute was

**With great stealth and political savvy, documents show, the tobacco industry was able to strike alliances, dole out campaign money, pressure lawmakers, and partially undo the will of the voters, all in an effort to keep people smoking.**



Oakland attorney Lee Sanders accuses Big Tobacco of subverting the law with its secret diversion plan.

was born to raid the money earmarked for anti-tobacco education. The plan was quite insidious, designed to hide the tobacco industry's true agenda and entice other groups — knowingly or unknowingly — into abetting tobacco's agenda.

**Mention the now-defunct Tobacco Institute** to an anti-smoking activist, and he will sneer, grumbling angrily at the "front group" that used to spearhead Big Tobacco's political operations.

Indeed, for 40 years, the Washington, D.C.-based Tobacco Institute was the voice of the industry, representing Big Tobacco publicly and politically. Before it was closed in January — as part of a 1998 settlement of state lawsuits against tobacco — the industry-funded institute was the first place reporters would

ranked 34th in national lobbying power by *Fortune* magazine.

Along with the New York City-based Council for Tobacco Research, which was also closed this year in the settlement of the states' lawsuits, the Tobacco Institute championed smokers' rights and challenged research that showed tobacco caused health problems.

Though the institute's pro-tobacco arguments sometimes seemed to defy common sense, the industry was skillful in shaping public opinion. More important, the institute knew how to throw money around, and pressure lawmakers.

As soon as Prop. 99 passed, the Tobacco Institute jumped into California politics with unprecedented resources, spearheading the drive to funnel money away from the public

education campaign voters had approved.

In December 1988, the Tobacco Institute received a memo from Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, a California law firm and lobbying powerhouse that often represents big businesses and conservative clients, including former Gov. Pete Wilson. The memo was apparently the first document to lay out the plan that would become the foundation of the tobacco industry's diversion campaign. It suggested that tobacco lobbyists push lawmakers to take

money from public education and channel it to indigent health care programs, programs that any compassionate human being would have a hard time objecting to.

"There may be pressure to allocate some of the educational money to the Department of Health Services," the memo says, referring to the agency that would head the anti-tobacco education program. "If Health Services 'must' receive some portion of this money, 'Maternal and Child Health Care' ... or 'Child Health Disability Prevention' ... could be considered."

The Nielsen Merksamer memo is the first known document to suggest that medical care for poor women and children would be an "appropriate" place to steer Prop. 99 money that was supposed to go for anti-tobacco education. The initials of Vigo Nielsen, one of Nielsen Merksamer's founders, appear at the bottom of the memo. Although he says he "doesn't remember" writing the memo, Nielsen says it was probably in response to legal or political questions from a client. At the time, Nielsen Merksamer represented both the Tobacco Institute and medical interests.

The strategy suggestion was a slick one. It would take money from health education and give it to medical care for poor women and children — benefiting two of Nielsen Merksamer's clients — without raising any public outcry.

Marc Burgat, lobbyist for the American Heart Association, says rerouting money to laudable causes was one of Big Tobacco's favorite strategies. "The tobacco industry wanted money diverted from the health education campaign and the way to do that was to send that money to medical interests," says Burgat. "Medical care for underinsured, uninsured, and poor kids — who could possibly be

opposed to that? That's [the tobacco industry's] modus operandi: divert money from successful anti-tobacco programs and put money into issues that are difficult to oppose."

The plan was refined in February 1989 when the Tobacco Institute devised "Project California," the secret blueprint for its diversion strategy. The industry had already deemed anti-tobacco education and research as "major trouble spots" in a January strategy memo, and with Project California, it outlined what it deemed "acceptable" and "unacceptable" uses for the Prop. 99 cigarette tax revenues. "The Anti-Smoking Health Education program (\$176 million) is an 'unacceptable' program to receive funds," the memo says. "We must do everything possible to prevent these revenues from being used in a vigorous

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## Tobacco

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anti-smoking public relations or media program." (Emphasis in original.)

Project California envisioned the tobacco industry "strengthening ties" with medical organizations that might be receptive to the idea of diverting more money to medical programs. It also mapped out the industry's "offensive strategy," which was to "focus on ensuring that Prop 99 revenues are distributed to programs 'acceptable' to the industry, and on tightening restrictions on those 'unacceptable' programs which do receive funding."

"In [the tobacco industry's] arrogance, they felt they could define for the public what was acceptable, that they could substitute their judgment for what the voters had wanted," attorney Sanders fumes.

Spokespersons for Phillip Morris U.S.A. and R.J. Reynolds Tobacco Co., whose internal memos reveal that they were aware of Project California, both said that it would be inappropriate for them to comment on the memos since the documents are being used in a lawsuit to which they are not a party. There is no one left to speak for the Tobacco Institute, since it closed in January.

But the internal documents were only a battle plan, Sanders points out. It took agreeable state lawmakers to make the Tobacco Institute's strategy work.

**When California lawmakers** convened for the 1989 budget session, the state faced a grim fiscal picture. "In beginning its work on the state budget for 1989-90, the Legislature faces the most adverse set of fiscal circumstances it has faced since the recession of 1981-82," read a memo given to state lawmakers when they arrived that year.

According to the report, California did not have a single cent in its budget reserve, and \$500 million had to be found just to maintain the state's current level of service. California was in the midst of a fiscal crisis, and the governor and Legislature were scrambling for funds.

When Prop. 99 tax money began flowing into state coffers that year, it created a new pot of money that lawmakers eyed hungrily. The state's perilous financial situation played to the advantage of tobacco lobbyists, who calculated, correctly, that lawmakers would be receptive to the idea of diverting Prop. 99's public education funds to other uses.

When it came time for the state Legislature to actually appropriate the Prop. 99 revenues, the tobacco industry made sure its voice was well heard in Sacramento by embarking on a lobbying frenzy. Tobacco interests upped their expenditures for lobbyists dramatically, pouring more than \$960,000 into lobbyist fees in 1989 alone. The years before and after, the industry spent about \$600,000 per year, UCSF research shows. Total lobbying expenditures — including lobbyist fees, entertainment expenses, and other costs — for the session topped \$3 million. Dozens of contract lobbyists were hired, and John Miller, Sen. Diane Watson's former staffer, says that when the Prop. 99 funding bill made it onto the Assembly floor, the pack of tobacco lobbyists was so thick, it was impossible to get through the doors.

Prior to the Legislature's vote on how to allocate the Prop. 99 money, the industry also flooded the campaign coffers of most of California's legislators, donating an average of \$8,500 per Assembly member and \$11,000 per senator. Tobacco lobbyists were flown in from

Washington, D.C., Miller says, and tobacco researcher and author Edith Balbach says that one of her friends, a lobbyist at the time, joked that tobacco would have hired her cat if her cat had been available.

In 1989 alone, then-Speaker of the Assembly Willie Brown received about \$126,000 in tobacco campaign contributions. (Brown remains the undisputed champion of California politics when it comes to accepting tobacco donations, according to figures compiled by anti-smoking activists.)

Finally, in September 1989, after more than half a year of legislative debate, a six-member,

health education — was legally suspect to many legislators, who knew that Prop. 99 had been very specific, says Eugene Erbin, a former staffer to Sens. Lloyd Connelly and Isenberg, both Sacramento Democrats. As early as February 1989, Assemblyman John Vasconcellos of Santa Clara wrote a letter to the nonpartisan Legal Council asking if medical care for indigents, which was usually funded by the General Fund, could be paid for by Prop. 99 money. Deputy Legislative Counsel Charles Asbill responded that Prop. 99 revenues should never be used for programs normally funded by the General Fund

would be better spent on the poor and ailing than on airing a bunch of anti-smoking ads on television.

The tobacco industry instantly jumped at cultivating this mutual interest. "There is the feeling that the CMA, though they would probably deny it, did the tobacco industry's dirty work when it came to rerouting health education funds to their account," says Sheryl Magzamen, a postgraduate researcher with the UCSF Institute for Health Policy Studies. "Because the CMA wanted funds so they can help the people that they help, they took money from the media campaign to do it, which is also what the tobacco industry wanted."

Steve Thompson, chief lobbyist for the CMA, contends that the association did not strike any deals with the tobacco lobby, and was not duped into pursuing tobacco's agenda. The unlikely allies simply had the same goals, he says. Instead of advertising or public education, the CMA wanted health programs that would include warnings about smoking.

"If we believed that providing a health screening that included an anti-tobacco message was better than speculative anti-tobacco education, and if that's something tobacco took advantage of, we can't stop that," Thompson says.

Former Assemblyman Isenberg, who carried the Prop. 99 allocation bill, asserts that uncouth politics had nothing to do with the distribution of funds. "We were trying to figure out how to divide a pot of money and we had left the anti-tobacco, pro-tobacco politics long ago," he says. "The theory that CMA was conspiring with tobacco — I saw no evidence of that. It was clear that CMA wanted money for health screening. In a rational world, that's not an unethical request."

The program that wound up receiving the bulk of the diverted health education money was Child Health Disability Prevention (CHDP), a program that Brown had pushed through the Legislature in 1973. The CHDP was one of Brown's pet programs, says Stanton Glantz, a UCSF professor and noted anti-tobacco activist, and there is little doubt that Brown's powerful role as speaker had influenced the way the money landed.

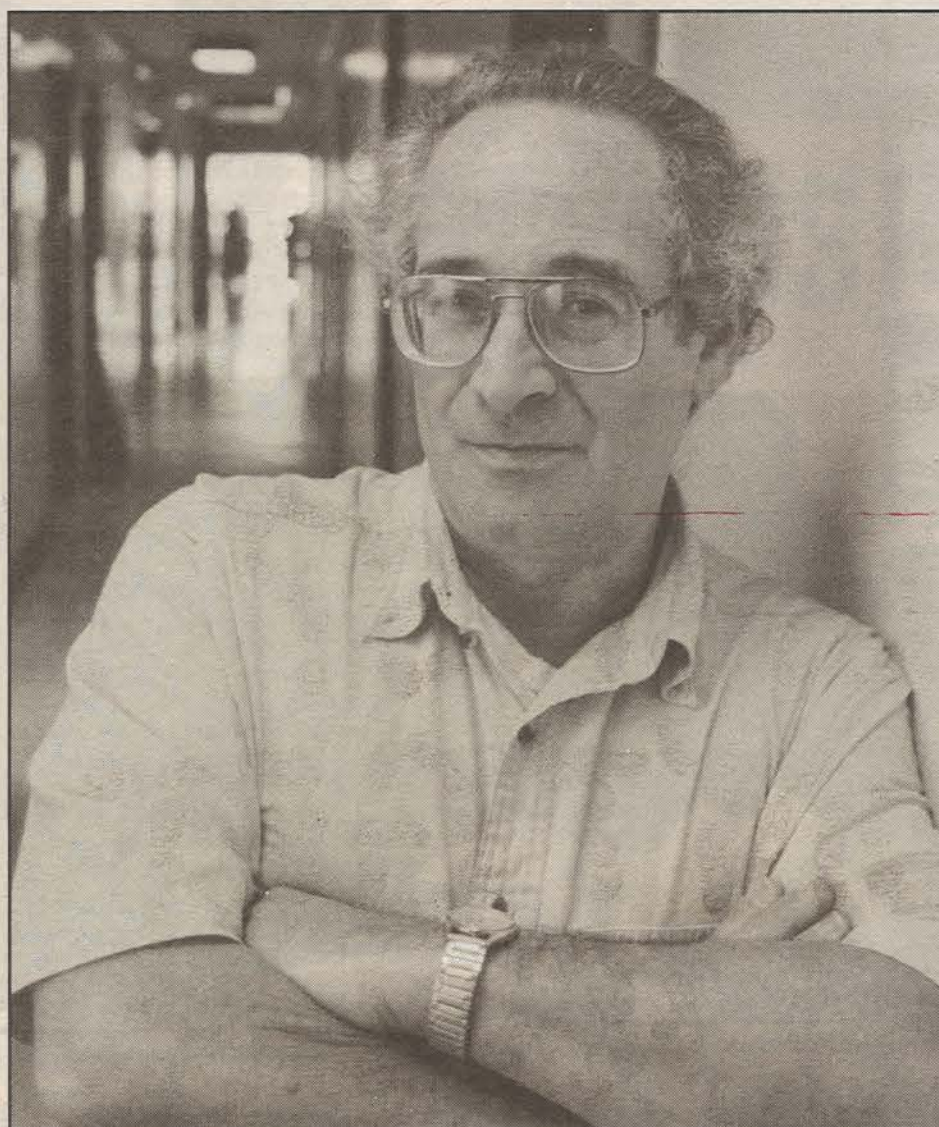
Miller, staffer to the staunchly anti-tobacco Sen. Watson, points out that as speaker, Brown could have easily stopped all money from going to anti-tobacco education, but he didn't. A well-known rumor at the state Capitol was that Brown, too, didn't like the idea of kids — especially black kids — getting hooked on cigarettes.

Still, the fact that Brown received hefty tobacco campaign contributions, and that the diversion of Prop. 99 money beefed up one of his favorite programs by almost \$46 million, is simply too much of a coincidence, says former UCSF researcher Edith Balbach. Add to the mix that Thompson, the chief lobbyist for the CMA, was Brown's former chief of staff and drafted the CHDP legislation in the '70s, and something begins to smell funny.

"Willie Brown took more tobacco money than any other politician, and one of his favorite programs was the CHDP," says Balbach. "I don't find it at all surprising that the first program that the [Prop. 99] money was diverted to, the one that ended up sucking up the most money, and the program that was picked early, was a favorite program of Willie Brown and Steve Thompson. There's a huge coincidence of interest."

Repeated efforts by *SF Weekly* to reach Brown for comment were unsuccessful. Miller, who is now staff director of the

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UCSF professor and anti-tobacco activist Dr. Stanton Glantz discovered the "Project California" diversion conspiracy memo with co-researcher Edith Balbach in 1998.

bipartisan conference committee came up with the final plan for spending Prop. 99 money. The conference committee was chaired by Assemblyman Phil Isenberg, a former Brown aide and chief of staff on the Ways and Means Committee when Brown was chair. The plan included taking about \$46 million from public health education over two years and using it instead for medical services for the poor. That left about \$230 million in the education budget.

Sending education money to medical services — and changing the amount spent on

because Prop. 99 stated that money must "be used for specified limited purposes."

Still, the bill passed easily through both houses, and was signed by Gov. Deukmejian in October 1989.

**In its battle to limit anti-tobacco** education funding, the tobacco industry developed an unlikely ally — the California Medical Association. The CMA's interests and the tobacco industry's merged, because the medical association believed that, in those financially strapped times, money



Senate Health and Human Services Committee, doubts Brown played a major role in the diversions, but doesn't completely absolve the CMA. "Clearly there was collusion early on [between the CMA and tobacco]," Miller says. "It's hard to say who is Steve Thompson and who was Willie Brown. They were very close and they both loved the CHDP. In my negotiations, the speaker was not a prominent player."

Despite the industry's best efforts, about \$230 million in Prop. 99 money still went where it was supposed to go — funding the creation of the state's Tobacco Control Program. The money would be split several ways, funding community and school education efforts and the anti-tobacco media campaign. Just over \$14 million was slated specifically for the anti-smoking media campaign — that is, producing and airing advertisements to discourage smoking.

In addition, the Tobacco Education Oversight Committee (TEOC) was formed with the first Prop. 99 funding bill to appease the public health organizations and anti-tobacco advocates in the Legislature. The TEOC, which would be responsible for monitoring the Tobacco Control Program, declared a goal of reducing smoking in California by 75 percent by 1999.

The education program would become the tobacco industry's worst nightmare. Cigarette tax money was used to shape one of the most ambitious advertising campaigns ever launched against smoking.

**About a dozen tobacco industry executives** are congregated in a dim, smoke-filled boardroom, discussing in raspy two-pack-a-day tones their need to maintain the industry's bottom line by recruiting new smokers to replace the 3,000 who quit or

die daily. "We're not in this business for our health," one silver-haired exec wheezes. Sinister chuckles erupt from around the table. And the TV screen fades to black.

Titled "Industry Spokesperson," the ad was the first Prop. 99-funded TV spot to hit the airwaves, on April 10, 1990. It launched a series of tough anti-tobacco messages aimed at exposing the manipulative nature of the tobacco industry.

The anti-tobacco ad campaign was the most visible health education expenditure of Prop. 99 funds, and was the largest such paid, public health media campaign in the country.



Channeling money from anti-tobacco education to less profit-threatening programs is a common Big Tobacco strategy, say American Lung Association lobbyist Tony Najera (left) and American Heart Association lobbyist Marc Burgat (right).

With Prop. 99 money, the state was able to hire well-respected ad agencies to produce spots slick enough to compete with the

tobacco industry. California's anti-tobacco ads continue to be highly touted, and are now being launched internationally by the United Nation's World Health Organization.

Along with local and school programs, the media campaign's aggressive, tobacco-attacking strategy proved initially successful. From 1989 to 1995 smoking among California adults declined steadily from about 27 percent to nearly 16 percent. But by 1996, the number of adult smokers in the state had risen to 18.6 percent. Annual reports by the TEOC attributed the increase in smoking in part to the continued diversion of Prop. 99 money.



ing smoking by 75 percent by 1999. As early as 1993, the TEOC beseeched the Legislature to follow the will of the voters and fully fund anti-tobacco education, to no avail.

"Unless full funding is restored ... this program will simply disappear or be so racked with erratic and abrupt funding shifts that the momentum will dissipate," the TEOC's 1993 annual report said.

**Though the tobacco industry** had successfully redirected some of Prop. 99's health education money in 1989, it had only won a small battle. The Legislature would continue to hand out Prop. 99 money in a budget session every two years, so the industry had to maintain its vigilance. The anti-tobacco media campaign would remain a major battleground.

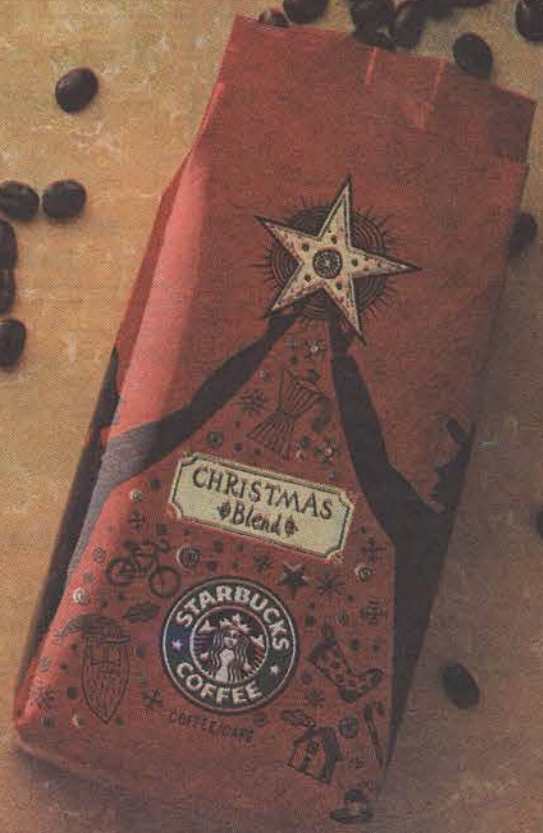
When the first anti-tobacco media ads aired in April 1990, the tobacco industry immediately counterattacked by spending over a million dollars a day on its own advertising.

On April 11, 1990, the day after the state ad campaign was launched, Tobacco Institute President Sam Chilcote circulated a memo that bemoaned the industry's inability to eliminate the education money completely. "Despite Herculean efforts, our goal of completely eliminating the media dedication was not met," Chilcote writes. "But through our work, the media component was sliced to \$14.3 million for fiscal year 1989-90."

Still, the industry hoped to do better the second time around, when lawmakers again carved up the state budget in 1991. A strategy to kill — or at least tone down — the advertising campaign began to emerge in industry documents. Three key allies were sought: California legislators, the governor, and "third-party allies" like medical organiza-

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## Tobacco

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tions, or minority groups that the industry thought might be offended by ethnically targeted ads.

Readying for the second round, the tobacco industry began to strengthen its ties with medical organizations. An April 18 Tobacco Institute memo reveals that the industry knew it could continue to benefit from the interests of the medical groups because "the doctor and hospital segments appear to believe the media funds would be better spent to pay medical costs."

Later tobacco memos reveal how the diversion scheme was solidified. By May 1990, an internal Tobacco Institute memo to Chilcote from a staffer stated quite plainly its goal of using medical organizations such as the CMA to lead efforts to "attach an amendment to a vehicle bill to redirect the media — and perhaps other 'educational' — funds to pressing health care concerns."

Tobacco again planned to use the state's ever-worsening financial situation to its advantage. With California in the midst of a recession, the staffer wrote, "it is likely that the Governor will have to recommend funding cuts for many popular, existing health care and other programs. Our plan to redirect Prop 99 funds could possibly meet with greater support once health care ... providers realize that a redistribution of existing funds may be the only way to keep current budgets in place."

There was good reason for the tobacco industry to fear the state's anti-tobacco media campaign. A year after the 25-cent tax was implemented, tobacco manufacturers saw retail sales decline by 8.4 percent. By 1992, tobacco use had fallen by almost 7 percent in California, translating into a nearly \$286 million drop in profits for the tobacco industry, internal documents show.

Even though the industry had succeeded in diverting some of the Prop. 99 money, the state's ad campaign was still striking fear in the hearts of tobacco executives. A January 1990 plan noted that the industry's "ability to conduct business in the state — and smokers' ability to consume tobacco products — is at risk."

The 15-page plan offered two long-term "strategies." First, the industry would try to redirect even more Prop. 99 money away from anti-tobacco activities. Second, it would try to stop the spending of Prop. 99 monies entirely.

Tactics for redirecting money were quite detailed and included "assigning individual industry lobbyists or staff to the task of moving allocated funds to alternate categories," as well as "encourag[ing] allies and other interest groups to request Prop 99 funds for other worthwhile projects. Encourage allies to apply for Prop 99 grants and/or encourage creation of groups with legitimate claims on Prop 99 funding."

**As the second round of budget fights** loomed in 1991, the tobacco industry found itself with another ally. Republican Pete Wilson had just been elected governor, and was sympathetic to tobacco interests. Though Wilson did not receive a large amount of tobacco campaign contributions directly, the industry offered thousands to the California Republican Party.

With an ally in the Governor's Office, Big Tobacco was able to pursue its diversion plan even more aggressively, lobbying madly to move funds for anti-tobacco activities to other categories in the next fiscal year.

The tobacco industry's total lobbying expenditures in 1992 increased by almost 13

**The fact that then-Assembly Speaker Willie Brown received hefty tobacco campaign contributions, and that the diversion of Prop. 99 money beefed up one of his favorite programs by almost \$46 million, is simply too much of a coincidence, says former UCSF researcher Edith Balbach.**

percent from the previous election cycle. Taken together, the industry's fees paid to lobbyists, entertainment expenses, and other costs totaled more than \$3.4 million.

Although specific amounts to lawmakers varied — and some received no money at all

— the tobacco industry donated to political campaigns the equivalent of \$13,000 for each Assembly member and \$17,000 for each senator. Eight of the 103 state lawmakers did not take tobacco money that year. Only the California Medical Association's political

action committee made greater donations to state officeholders.

This time out, however, tobacco lobbyists were more discreet. The press had lambasted the industry for its over-the-top lobbying display during the last budgetary session, so the industry went straight to the governor, Miller says.

When Wilson released his first budget, it slashed health programs, and suggested taking close to \$300 million from Prop. 99 revenues to help defray the cuts. Legislators knew the proposal was probably illegal, but they had to scramble to appease the governor, the advocates of the threatened programs, and the law.

Wilson also wanted to implement Access for Infants and Mothers (AIM), a new prenatal care program for low-income women that was

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## Tobacco

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more expensive and less politically progressive than the state's existing Medi-Cal program. A Ways and Means Committee analysis states that Wilson suggested taking over \$50 million from Prop. 99 anti-tobacco education funds to pay for AIM. The 1992 budget bill that Gov. Wilson signed did exactly that.

Like Willie Brown, Wilson had ties to the tobacco industry. He had been named in a March 4, 1990, Phillip Morris memo as being "pro-tobacco," and Wilson actively tried to kill off the state's fledgling anti-tobacco advertising campaign by refusing to sign ad agency contracts in 1992. And, like Brown, Wilson's pet program, AIM, received a large chunk of diverted Prop. 99 health education money.

Wilson did not respond to repeated efforts to contact him.

Miller says that late during the budgeting process, he and Tony Najera of the American Lung Association were pulled into a meeting with administration officials such as Director of the Department of Health Services Kimberly Belshe, who both Miller and Najera say was acting on behalf of the governor. In that meeting, Miller and Najera say they were simply told that anti-tobacco education money was going to be used for programs that the governor wanted, such as AIM.

"They said, 'You are going to agree to it, and if you do not, we're going to administer the Tobacco Control Program to death,'" Miller recalls indignantly. "They said, 'We'll find the most incompetent bureaucrats and put them in charge and this program will never achieve anything, so you decide.' There was not a lot we could do in that circumstance. It was that heavy-handed."

"It was portrayed as budget woes, but we know that it was really tobacco influence," adds Najera.

With the second Prop. 99 funding bill, the tobacco industry was even more successful than it had been the first time in persuading lawmakers to divert Prop. 99 revenues. More than \$112 million over three years was taken away from anti-tobacco education and used instead for medical care programs.

The second rerouting of Prop. 99 money was easier than the first, because the groundwork had already been laid, says Balbach. "The debate the [public health organizations] should have used was that we must follow the will of the voters," says Balbach, currently Tufts University's director of the Community Health Department. "But the debate became 'take care of sick children or fund tobacco education,' and it's hard for the [public health organizations] to win that one. There were powerful allies on the sick children side of the debate."

But the second diversion would also be the last. Fed up with the Legislature's — and governor's — willingness to listen to tobacco lobbyists instead of voters, anti-smoking activists began going to court. Ultimately, three lawsuits were filed, the first by Sanders, one at Sanders' urging by a coalition of public health organizations including the American Lung Association and American Cancer Society, and one by the Americans for Non-Smokers' Rights.

Though they would meet with varied success in the courtroom, the suits did accomplish their goal of derailing future diversions of Prop. 99 revenues.

**Between the lawsuits, media attention, and waning influence of the tobacco industry, there have been no further successful efforts to divert Prop. 99 money. Some \$30 million that was left unappropriated after the 1996 lawsuit is still sitting unused in a restricted reserve.**

**Stanton Glantz is shoveling a salad** into his mouth at the cafeteria in one of the many UCSF buildings that line Parnassus Avenue. With a stocky frame and a shock of silver, mad-scientist hair, the UCSF cardiology professor is

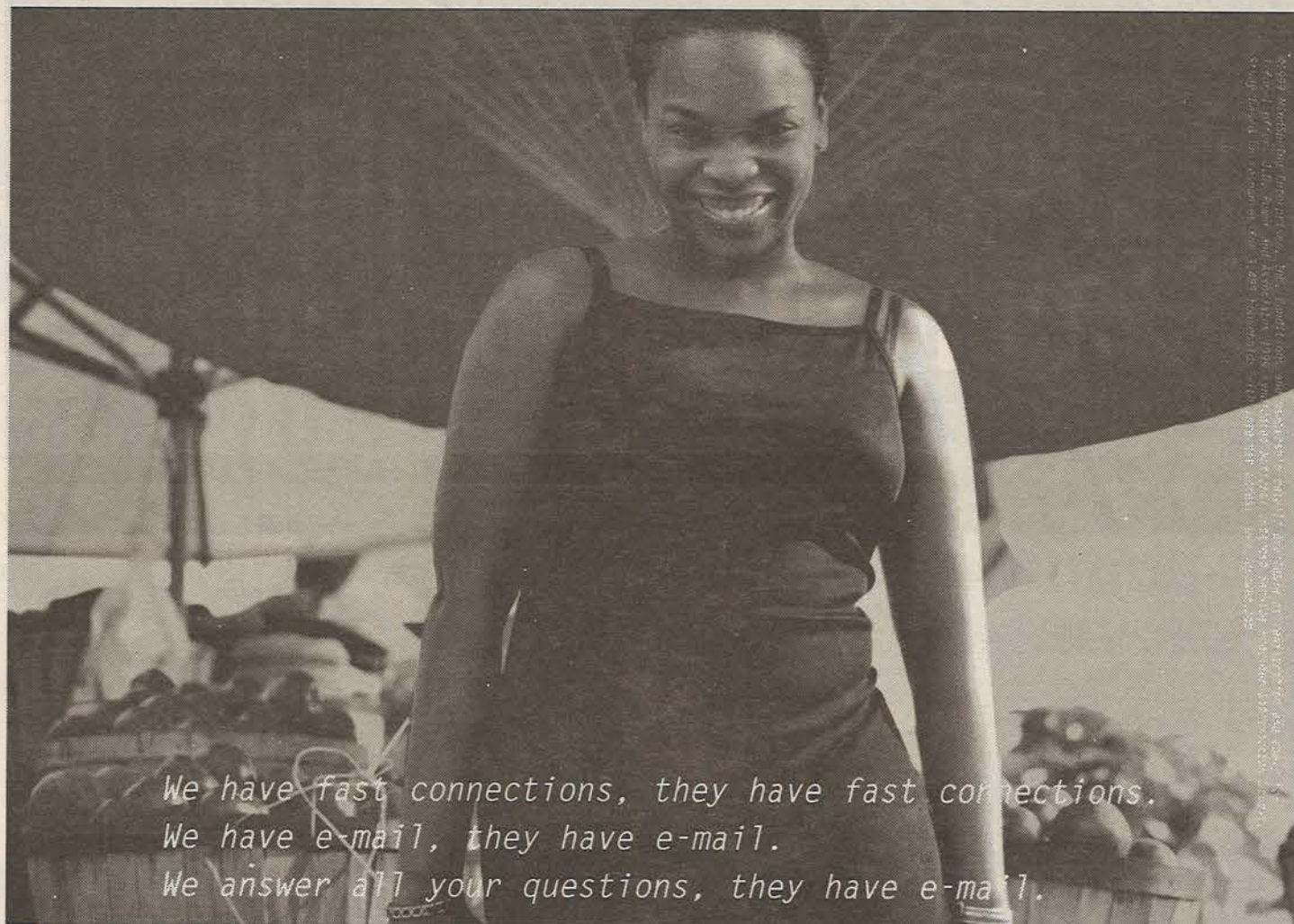
unassuming. He wears an unprescribed shirt and trousers, and pickled beet juice runs down his chin as he speaks.

This image of a disheveled, too brilliant academic is an ironic contrast to the picture of a fiery anti-tobacco activist for

which Glantz is known best. As the tobacco industry's admitted nemesis, Glantz has pledged his life to crusading against Big Tobacco, contributing to research that secondhand smoke causes heart disease and publishing extensively on tobacco influence in politics. Brash and outspoken, Glantz began critically observing the tobacco industry in 1978, and has become a one-man spokesperson for national anti-tobacco activity, endearing himself to the media by consistently delivering punchy, hard-hitting quotes on anything anti-tobacco.

Glantz is perhaps best known for penning *The Cigarette Papers*, a book that used confidential tobacco industry memos to expose 30 years of sinister activities by tobacco company Brown & Williamson.

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## Tobacco

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The documents were the first wholesale airing of tobacco insider memos.

Having watched tobacco politics for so long, Glantz was certain that Big Tobacco was behind the Prop. 99 diversions all along. But it took nearly 10 years for Glantz to get hard proof.

In April 1998, word spread that 39,000 pages of confidential tobacco industry memos were being made public through a lawsuit that the state of Minnesota had filed against the tobacco companies. Glantz was just putting the finishing touches on a book about California tobacco politics to be published by the end of 1999. Spotting a chance to unearth more clues on the industry's political scheming, co-author Edith Balbach immediately

booked a cheap flight to the records depository in southeast Minneapolis. When she returned to San Francisco four days later, she brought back dozens of memos that confirmed what she and Glantz had suspected all along — that the tobacco industry had orchestrated the diversion of Prop. 99 money.

Glantz gave copies of the memos to an attorney he knew in Oakland — Lee Sanders, who had already filed his lawsuit against the state seeking to restore the diverted Prop. 99 funds. Piecing the memos together, Sanders found powerful ammunition for his claims of a conspiracy, charging that California legislators, plied with tobacco dollars, were puppets to tobacco industry interests.

## The Prop. 99 anti-tobacco

education diversions stopped in 1996 after a lawsuit filed jointly by Berkeley's Americans for Non-Smokers' Rights and the major public health organizations convinced a judge that redirecting Prop. 99 money violated state law because it subverted an initiative approved by voters. The courts found that programs like Brown's CHDP did not have legitimate anti-smoking purposes, and taking Prop. 99 money to fund them was not justified.

Wilson rebelled against the 1996 ruling, sending a letter to the Legislature asking it to disregard the judgment, or find a way around it. The state was simply in too much of a financial downward spiral to not have access to Prop. 99 funds, he wrote.

The Legislature followed Wilson's directions and tried to amend Prop. 99 to reduce the percentage of funds dedicated

to the education campaign. The Americans for Non-Smokers' Rights filed another lawsuit to block the change. Though they would eventually lose the case, they managed to prolong the fight long enough to stop the Legislature from diverting any more money.

Between the lawsuits, media attention, and waning influence of the tobacco industry, there have been no further successful efforts to divert Prop. 99 money. Some \$30 million that was left unappropriated after the 1996 lawsuit is still sitting unused in a restricted reserve.

But while the diversion may have stopped, the quest for accountability from the state — and the tobacco industry — continues in the form of Lee Sanders' lawsuit. In the suit, Sanders claims that the state violated the re-enactment clause of the California Constitution, by failing to make it clear to legislators that they were, effectively, rewriting Prop. 99 when they diverted money.

The suit is filed on behalf of an unincorporated group of individuals, the Just Say No to Tobacco Dough Campaign, but it is truly Sanders' case. And Sanders wants accountability, from both Big Tobacco and the state.

"I want the whole story to be known to the judicial system," Sanders says. "You can't know the whole story unless you know how the tobacco industry buys influence in Sacramento with campaign contributions."

"This litigation has two facets," Sanders continues. "One is public health and the second is civic virtue. The tobacco industry kills 42,000 people [in California] a year for money. Industries like tobacco should not be able to buy legislators and influence public policy like they do."

But even with an unending string of anti-tobacco statistics that he can pull from his memory at will, and a pile of exhibits over 2 feet tall, Sanders' case has never seen a day in court. After it was filed in 1994, the suit was put on hold, pending the outcome of the two Americans for Non-Smokers' Rights lawsuits. When Sanders' case was reinstated in 1998, it was refused by the California Superior Court, and Sanders immediately filed an appeal in the 3rd District Court. He is currently awaiting notification to file an opening brief. In the meantime, Sanders has amended his complaint twice, once to include the tobacco industry memos and again to include campaign contribution statistics, a somewhat unusual tactic since the tobacco industry isn't even named as a defendant in the case.

Critics say Sanders has little chance of winning the case. It will be difficult to convince the court that the judicial branch can tell the legislative branch how to spend money — a possible violation of the separation of powers. And unlike the lawsuits that ended the diversions in 1996, Sanders' case is asking the court to put millions of dollars that have already been spent back into anti-tobacco education. Former legislators like Isenberg also say Sanders is chasing after ethical windmills — he simply doesn't understand that crafting the state budget takes compromise.

Sanders, however, remains unfazed. "[The diversion] was wrong," he maintains. "So I filed my lawsuit, and I don't give a shit who says I can't win. When a democracy is run by the interests of the wealthy, we have a problem. This is a lesson on how democracy can fail, and the consequences are horrendous." **SF**

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