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(SECRET)

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Senator Kennedy has made various proposals for governmental action with respect to cigarettes on four different occasions since May, 1967: (i) In a speech delivered on the Senate floor on May 17, 1967, in support of a bill introduced by Senator Magnuson and co-sponsored by Senator Kennedy; (ii) in a letter to each of the cigarette manufacturers dated August 22, 1967; (iii) in an address to the "World Conference on Smoking and Health" in New York on September 11, 1967, and (iv) in three bills introduced by him in the Senate on September 12, 1967 (S. 2394, 2395, and 2396). Copies of these documents are in the Appendix to this handbook.

This handbook contains at the outset a summary of all the proposals made by Senator Kennedy. We have then taken each of his recommendations, and we have set out the substance of a very brief response which might be made at a meeting with him.

SUMMARY OF PROPOSALS WITH RESPECT TO CIGARETTES  
MADE BY SENATOR KENNEDY SINCE MAY, 1967

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1. The caution notice on the label should be revised to read as follows: "Warning: Cigarette Smoking Is Dangerous To Health And May Cause Death From Cancer And Other Diseases."

2. The average tar and nicotine yield per cigarette should be stated on the label.

3. The revised caution notice and a statement as to tar and nicotine yield should appear "on the face" of every package.

4. The manufacturers should be required to include the caution notice and a statement of tar and nicotine yield in all cigarette advertising.

5. Congress should repeal the provision in the Cigarette Labeling and Advertising Act which prohibits the F.T.C. until July 1, 1969, from requiring any statement relating to smoking and health in cigarette advertising (the so-called "moratorium provision").

6. Congress should repeal the provision in the Cigarette Labeling and Advertising Act which prohibits the states until July 1, 1969: (a) from requiring a

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statement relating to smoking and health in cigarette advertising; or (b) from requiring any statement on the label other than the presently required caution notice (the so-called "preemption provision").

7. (a) 100 millimeter cigarettes should be banned;

(b) The Secretary of Health, Education and Welfare should be given power (in cooperation with the F.T.C.) to establish a maximum length for cigarettes.

8. The Federal Communications Commission should be authorized to prohibit advertising between certain hours and on certain type programs which might influence children.

9. (a) The F.C.C. should be authorized to regulate the total amount of advertising broadcast for the purpose of protecting the public health and particularly children.

(b) The networks should reduce the present volume of cigarette advertising.

10. There should be an experimental one-year ban on all cigarette advertising on radio and television.

11. Cigarette advertising on radio and television should be prohibited before 9 p.m.

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12. Cigarette advertisements should be prohibited on programs which young people are likely to watch.

13. A greater effort should be made not to depict smoking in ways uniquely attractive to young people.

14. There should be a sliding scale tax on cigarettes based on tar and nicotine content. The tax should be \$4 per thousand on cigarettes with a tar content of 10 mg. or less, and \$15 per thousand on cigarettes with a tar content of more than 30 mg. The tar and nicotine yield should be determined for each brand by the F.T.C. and certified to the Secretary of the Treasury.

15. (a) The airlines should stop distributing free cigarettes to their passengers.

(b) The government should consider forbidding smoking on facilities operated by it.

16. The government should expand its educational activities concerning the hazards of cigarette smoking. The appropriation for the National Clearinghouse should be at least tripled: from \$2 million annually to \$6 million.

Senator Kennedy's proposal:

"The caution notice on the label should be revised to read as follows: 'Warning: Cigarette Smoking Is Dangerous To Health And May Cause Death From Cancer And Other Diseases.'"

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Any caution notice should be phrased in a fair and factual manner. The fact is that there is no laboratory or clinical scientific evidence of the relationship between smoking and disease. The proposed caution notice would go far beyond present reliable scientific evidence. It is not a fair and factual notice. It reflects an extremist viewpoint.

The caution notice was designed to inform consumers of possible health hazards connected with smoking; there is no doubt that the notice in its present form has served that purpose. A recent Public Health survey established that more than 90% of persons who smoke are aware of the notice.

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Senator Kennedy's proposal:

"The average tar and nicotine yield per cigarette should be stated on the label."

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1. The amount of tar and nicotine yield has no proven health significance. The Surgeon General's 1964 report expressly stated this conclusion, and at the 1965 Congressional Hearings on the Cigarette Labeling and Advertising Act the Public Health Service, Federal Trade Commission, Department of Commerce and Department of Agriculture all concurred in this view.

2. There has been no change in the state of scientific knowledge since 1965 which would justify mandatory tar and nicotine labeling. As recently as August, 1967, Dr. E. Cuyler Hammond of the American Cancer Society, told the Senate Commerce Committee that we "are a long way from getting objective evidence" that "reducing tar and nicotine [reduces] the harmful effects" of smoking (Hearings Transcript, pp. 349-50).

3. Since there is no proof that tar or nicotine from cigarette smoke are significant at all, obviously

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there is no way of knowing what amount of each might be important, much less whether the minute variations in amounts that would be shown on labels could be significant. Differences of  $1/10$  of a milligram, or one milligram or even of a few milligrams (one milligram amounting to only  $1/28,000$  of an ounce) would probably in fact be totally insignificant. There is no evidence that a cigarette with 20 mg. is more hazardous than a cigarette with 15 mg. Yet, if labeling were required by law, any such differences would no doubt be considered by the public to be important, and the public would thus be misled.

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Senator Kennedy's proposal:

"The revised caution notice and a statement as to tar and nicotine yield should appear 'on the face' of every package."

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This is an extremely ambiguous requirement. On many cigarette packages, the front and back are identical. Further, what is the point of requiring the notice on the "face?" It is conspicuous in its present position. Surely, there can be no doubt that consumers see the caution notice on the side panel, and that consumers are fully informed that cigarette smoking may be hazardous to your health. A recent Public Health survey indicated that more than 90% of persons who smoke have seen or heard about the caution notice on the side panel.

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Senator Kennedy's proposal:

"The manufacturers should be required to include the caution notice and a statement of tar and nicotine yield in all cigarette advertising."

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The proposal that a warning be required in all cigarette advertising is punitive. It cannot be defended on the ground that consumers need to be informed of health hazards. There is certainly no doubt -- as governmental surveys prove -- that the vast majority of consumers are fully aware that smoking may be hazardous to your health. (A U. S. Public Health survey showed that 93% of current smokers had seen or heard of the caution notice.) As a practical matter, a law requiring a warning of this type in advertising probably would result in the elimination of advertising; obviously, no businessman will spend his company's money for a self-defeating purpose.

There are several points which should be carefully considered by those industry critics who advocate a ban on cigarette advertising. Cigarette advertising

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is preeminently brand advertising -- it is designed to persuade persons who already smoke to buy one brand rather than another. A prohibition on advertising would largely destroy competition; it would furnish security to the larger companies in their present market position and permanently condemn smaller companies to an inferior status.

There is another aspect of this matter which should be of concern to persons who advocate efforts to develop "less hazardous" cigarettes. What incentive would there be for a cigarette manufacturer to spend the large sums of money required to "improve" a product if he could not then effectively advertise and promote it? And how are consumers to be made aware of new developments if manufacturers are foreclosed from advertising?

A requirement that tar and nicotine yields be stated in advertising would result in misleading the public since there is no scientific proof that tar and nicotine are hazardous ingredients.

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Senator Kennedy's proposal:

"Congress should repeal the provision in the Cigarette Labeling and Advertising Act which prohibits the F.T.C. until July 1, 1969, from requiring any statement relating to smoking and health in cigarette advertising (the so-called 'moratorium provision')."

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Advertising and labeling requirements in the smoking and health field should be prescribed by Congress, not by a single administrative agency. A great diversity of interests is involved: not only cigarette manufacturers, but farmers, growers and other suppliers, processors, distributors, retail merchants, the mass advertising media, and even the Federal and State Governments themselves, by virtue of the importance of cigarette tax revenues. It is wholly inappropriate for a decision of this scope to be made by any single federal administrative agency, whose jurisdiction and expertise are confined to one particular phase of this complex problem.

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Senator Kennedy's proposal:

"Congress should repeal the provision in the Cigarette Labeling and Advertising Act which prohibits the states until July 1, 1969: (a) from requiring a statement relating to smoking and health in cigarette advertising; or (b) from requiring any statement on the label other than the presently required caution notice (the so-called 'preemption provision')."

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There are cogent reasons against state regulation of cigarette labeling and advertising. The problems relating to cigarette advertising and labeling are national in scope. Cigarettes are advertised to a large extent on national media -- network television, network radio, and magazines of national circulation -- and are sold in every state in the Union. A multiplicity of state or municipal laws in this field would produce chaos.

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Senator Kennedy's proposal:

"(a) 100 millimeter cigarettes should be banned;

"(b) The Secretary of Health, Education and Welfare should be given power (in cooperation with the F.T.C.) to establish a maximum length for cigarettes."

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There is no clinical or laboratory evidence proving that 100 millimeter cigarettes are more hazardous than cigarettes of lesser length. If the controlling test is tar and nicotine yield, it can be demonstrated that some 100 millimeter cigarette brands have a lower tar and nicotine content than some 85 millimeter cigarette brands.

It is proposed that the Secretary of H.E.W. should be given power to prescribe the maximum length for cigarettes. But what standards should he employ in making this determination? For example, on what basis could the Secretary rationally conclude that 100 millimeters is an "unsafe" length, but 85, 90 or 95 millimeters is a "safe" length? The present state of scientific

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knowledge in the smoking-and-health area is not sufficiently refined to justify any fine mathematical distinctions of the type called for by this proposal.

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Senator Kennedy's proposal:

"The Federal Communications Commission should be authorized to prohibit advertising between certain hours and on certain type programs which might influence children."

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The cigarette and broadcasting industries themselves have already taken steps to deal with this problem. The Cigarette Advertising Code provides that cigarette advertising shall not appear on TV and radio programs directed primarily to persons under 21 years of age. The NAB Radio and Television Codes and the guidelines announced by the NAB's Code Authority prohibit advertising presented in such a manner as to indicate to young people that smoking is a habit worthy of imitation. The provisions of these Codes are being enforced. If further action is required, it should be channeled, at least in the first instance, through these existing, self-regulatory agencies.

In addition, there are many practical difficulties associated with a prohibition based on the time of broadcast. For example, a prohibition against the appearance

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of any cigarette advertising before 9 p.m. would extend  
to many programs which have little appeal to juveniles.

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Senator Kennedy's proposal:

"(a) The F.C.C. should be authorized to regulate the total amount of advertising broadcast for the purpose of protecting the public health and particularly children.

"(b) The networks should reduce the present volume of cigarette advertising."

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Anyone advocating a governmentally imposed limitation on the volume of cigarette advertising should consider the following:

1. Cigarette advertising is preeminently brand advertising -- it is designed to persuade persons who already smoke to buy one brand rather than another. TV and radio are, of course, the most important media. Limitations on cigarette advertising on these media have implications with respect to competition which should be carefully considered.

2. Limitations on the amount of cigarette advertising might also impede innovations -- including those encouraged by advocates of the development of a "less

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hazardous" cigarette. It is well recognized that special advertising efforts are needed to promote new types of cigarettes. What incentive is there for manufacturers to spend large sums in new developments if they cannot effectively merchandise those developments?

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Senator Kennedy's proposal:

"There should be an experimental one-year ban on all cigarette advertising on radio and television."

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There are several points which should be carefully considered by those industry critics who advocate a ban on cigarette advertising on radio and television. Cigarette advertising is preeminently brand advertising -- it is designed to persuade persons who already smoke to buy one brand rather than another. A prohibition on advertising would largely destroy competition; it would furnish security to the larger companies in their present market position and permanently condemn smaller companies to an inferior status.

There is another aspect of this matter which should be of concern to persons who advocate efforts to develop "less hazardous" cigarettes. What incentive would there be for a cigarette manufacturer to spend the large sums of money required to "improve" a product if he could not then effectively advertise and promote it? And how

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are consumers to be made aware of new developments if  
manufacturers are foreclosed from access to radio and  
TV -- by far the most effective communications medium?

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Senator Kennedy's proposals:

Cigarette advertising on radio and television should be restricted as follows:

"Cigarette advertising on radio and television should be prohibited before 9 p.m.

"Cigarette advertisements should be prohibited on programs which young people are likely to watch.

"A greater effort should be made not to depict smoking in ways uniquely attractive to young people."

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1. Established agencies for dealing with the problem of cigarette advertising and youth are already in existence -- i.e., the Cigarette Advertising Code and the National Association of Broadcasters' Codes. These codes have done much toward the goals that smoking not be depicted in ways uniquely attractive to young people and that cigarette advertising not be carried on programs young people are particularly likely to watch. For example, testimonials by celebrities, athletes, or persons appearing to engage in athletic activity have been eliminated. The Cigarette Code provides that any person depicted as a

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smoker shall be at least twenty-five years old. It also provides that cigarette advertising shall not represent that smoking is essential to social prominence, distinction, success, or sexual attraction. These provisions have been strictly enforced by the Code Administrator, and similar regulations have been put into effect under the NAB Codes.

If it is felt that there are deficiencies in the Codes or in their enforcement, the proper course would be to address suggestions for improvements to the Code authorities themselves, rather than to attempt to bypass them.

2. A flat rule prohibiting cigarette advertising before 9 p.m. would run into time zone complications; when it is 9 p.m. on the East Coast, it is only 6 p.m. in California. Moreover, this arbitrary cutoff point is not rationally based. There are numerous programs -- for example, newscasts and documentaries -- which are typically broadcast prior to 9 p.m., and which attract almost entirely an adult audience. And there may be programs broadcast

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after 9 p.m. which, under the standards of the Cigarette Advertising Code, are primarily directed to persons under 21 years old.

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Senator Kennedy's proposal:

"There should be a sliding scale tax on cigarettes based on tar and nicotine content. The tax should be \$4 per thousand on cigarettes with a tar content of 10 mg. or less, and \$15 per thousand on cigarettes with a tar content of more than 30 mg. The tar and nicotine yield should be determined for each brand by the F.T.C. and certified to the Secretary of the Treasury."

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Tar and nicotine yield does not constitute a rational tax standard. There is presently no scientific proof that tar and nicotine yield has any health significance. Certainly, as the Surgeon General and others active in the smoking-and-health area recently made clear to the Senate Commerce Committee, there is no proof that any particular increment in tar and nicotine content makes a cigarette substantially more or less hazardous. There is no proof that a cigarette with 25 mg. is more hazardous than a 20 mg. cigarette. There is no valid basis for imposing a greater tax on some cigarettes because of a miniscule difference in tar and nicotine yield.

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The method for measuring tar and nicotine adopted by the Federal Trade Commission cannot, and does not purport to, produce a precise measurement of the tar or nicotine in any package of cigarettes -- much less the amount taken in by any particular smoker. To translate these approximate figures into possible price differences would be misleading to the consumer.

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Senator Kennedy's proposals:

"(a) The airlines should stop distributing free cigarettes to their passengers.

"(b) The government should consider forbidding smoking on facilities operated by it."

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These proposals smack of prohibition. There is no basis for the government's depriving anyone of the right to make the personal decision whether or not to smoke, and there is certainly no basis for inflicting such a restriction on special classes of individuals, such as servicemen, federal civil servants, or persons wishing to transact business with their government. Airline passengers are free to accept or to reject cigarettes offered to them. Why should the airlines be prohibited from satisfying the desires and convenience of passengers who desire to smoke?

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Senator Kennedy's proposal:

"The government should expand its educational activities concerning the hazards of cigarette smoking. The appropriation for the National Clearinghouse should be at least tripled: from \$2 million annually to \$6 million."

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The cigarette industry is not opposed to truthful government information programs in the smoking and health field. The industry does stand opposed, however, to propaganda activities and to attempts by governmental agencies to manipulate smoking behavior. The industry believes that adults should be free to smoke or not to smoke as they choose, and that it is not the business of government to be a "Great White Father."

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