



FROM THE DIRECTOR

On May 17, 2007, Maryland Governor Martin O'Malley signed the Maryland Clean Indoor Air Act, which took effect on February 1, 2008. Advocates who had worked for years to gain passage of the bill celebrated briefly, then turned to the next step—agency regulations required for implementation of the law. For almost nine months, advocates worked to ensure that the intent of the legislature was maintained in the regulations. And the Department of Health and Mental Hygiene worked methodically to assure an open process and final regulations that both reflect the legislature's intent and make compliance with and enforcement of the law manageable. Center staff assisted the agency at every step and will continue to support local health departments as they consider applications for waivers and answer questions on compliance.

The 2007 Special Session of the General Assembly also provided an opportunity for the Center to respond immediately to a problem raised by the Baltimore City Health Department regarding youth use of Black and Mild small cigars. That work continues today. We are also continuing to develop our resources to assist residents of multi-unit housing who are suffering from secondhand smoke drift. Networking at the National Conference on Tobacco or Health and the Smoke-Free Multi-Unit Housing Ancillary Meeting provided us with ideas on how to advance our smoke-free housing initiative in Maryland. The bottom line: Even with the Clean Indoor Act in place, there is much to do in tobacco control.

Kathleen Hoke Dachille
Director, Legal Resource Center for
Tobacco Regulation, Litigation &
Advocacy

Center Contributes to the 2007

National Conference on Tobacco or Health

The smokefree City of Minneapolis hosted the 2007 National Conference on Tobacco or Health from October 24 to 26. The conference took place over an upbeat three days in which tobacco control advocates shared successes and challenges and learned about innovative and effective policies in tobacco cessation and prevention. Entitled "Reaching Our Goal in Tobacco Control," the conference opened with a frank discussion of the Department of Justice lawsuit against "Big Tobacco" and concluded with encouraging words about achieving our short-term and long-term goals. Between these opening and closing remarks were dozens of engaging presentations by leading tobacco control experts.

As in past years staff of the Center contributed to and learned much from the national conference. As part of a panel discussion entitled "Smoke-Free Housing: The Next Frontier is Here," Center Director Kathleen Dachille informed attendees of the causes of action available to a tenant or owner experiencing a smoke drift problem in an apartment or condominium. Dachille reviewed the scant case law on the issue and explained why certain legal claims

are more successful than others. Co-presenters Karen Blumenfeld of New Jersey GASP, Robin Salsburg of the Public Health Institute, and Susan Schoenmarklin of the Smoke-Free Environments Law Project, addressed specific claims in more detail, urging attendees to seek advice from legal counsel when assisting individuals negatively affected by smoke drift in their multi-unit dwellings.

Center Research Fellow Jacqueline McNamara and Staff Attorney Erin Smith engaged attendees with their poster presentation, "Regulation of Secondhand Smoke in Public Parks." The presentation explained the reasons why a state or local jurisdiction should consider imposing a smoking ban in public parks, including decreasing the risk of fire, eliminating cigarette litter, and protecting young people from exposure to smoking behavior. With a list of smokefree parks policies from across the country, including a fine example from the host state, Minnesota, the poster demonstrated to attendees that smokefree parks is an attainable tobacco control goal.

During the three-day conference, Center staff reconnected with tobacco control advocates and

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attorneys from across the country and forged new relationships with individuals working on policy development consistent with that of the Center. As noted by the Conference Steering Committee in its welcome letter to attendees, “[o]ne of the hallmarks of the tobacco control movement has been its ongoing sense of community, offering mutual support and assistance across geographic boundaries in ways that are sometimes hard to quantify.” The National Conference again offered that opportunity to tobacco control advocates and succeeded in educating and invigorating the community to reach its tobacco control goals. The next National Conference will be held in Phoenix, Arizona, from June 10-12, 2009.

NATIONAL NEWS

Smoke-Free Housing Ancillary Meeting Succeeds in Educating and Connecting Advocates

In advance of the National Conference on Tobacco or Health, Center Director Kathleen Dachille and Staff Attorney Erin Smith attended the Smoke-Free Multi-Unit Housing Ancillary Meeting. As a continuation of the work of the International Smoke-Free Multi-Housing Coalition, the meeting served to educate members about legal and policy developments in smoke-free multi-unit housing and

to provide the opportunity to learn about what programs are in place and effective in reducing smoke drift in apartments and condominiums.¹ Dachille engaged attendees in a lively discussion about whether and when an apartment or condominium resident can use the common law tort of nuisance against a neighbor, landlord, management company, condominium board, or fellow condo owner when smoke drifts into the resident’s unit from an adjacent unit. Because existing case law is not encouraging, Dachille addressed whether statutory changes in nuisance law are necessary and appropriate. Fielding numerous questions from the audience, Dachille explained the benefits and drawbacks of statutory changes and explained how existing laws may be sufficient in certain cases.

Following Dachille, Tina Pettingill of the Smoke-Free Housing Coalition of Maine, and Robin Salsburg of the Public Health Institute, presented “Two Approaches to Achieving Smoke-Free Multi-Unit Dwellings: Voluntary and Legislative—Is One Preferable to the Other?” Maine’s success in securing smoke-free multi-unit housing for public housing and market-rate residents came as a result of hard work by the Smoke-Free Housing Coalition, supported by Maine’s Attorney General, Steven Rowe; legislative change was not necessary. Yet, in several local jurisdictions in California, smoke-free multi-unit housing became available as a result of legislation passed after significant advocacy by tobacco control and public health advocates. The dynamic discussion that followed Pettingill’s and

Salsburg’s presentations revealed that knowing the options available and pursuing those appropriate for a particular jurisdiction are critical to success.

The afternoon session included presentations on how to engage management companies and public housing authorities on the issue of smoke-free multi-unit housing. Several states and local jurisdictions have succeeded in convincing management companies to adopt smoking policies that reduce the likelihood of smoke drift in apartments and condominiums. Others have persuaded public housing authorities to adopt rigorous smoking policies that prohibit smoking inside public housing buildings, including individual units. Presenters explained how these accomplishments were achieved and how other jurisdictions can secure similar policies. Participants were also provided with ample time to contribute their own success stories and challenges and to network with colleagues working toward smoke-free multi-unit housing.

In addition to attending and participating in the ancillary meeting, Smith also attended a small group meeting at which the critical problem faced by those seeking to assist multi-unit housing residents was discussed: Whether and how smoke drift between individual units within multi-unit housing can be measured effectively and what standards can be used to determine whether the smoke drift is actionable. Although measuring the smoke drift is not easy, there are tools available to do so. But, determining what level of

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smoke drift creates a nuisance or health hazard is an open question that will continue to be addressed by the small group. The Center will continue to participate in efforts to answer this question and will continue its active membership in the International Smoke-Free Multi-Housing Coalition.

Footnotes

¹ Information about and PowerPoint presentations from the meeting are available online at http://www.tcsg.org/sfelp/Powerpoint_Sfelp.htm.

What's New in Smokefree Multi-Unit Housing

*Center Deputy Director, Michael Strande spoke at the National Multi Housing Council conference held in Dallas, Texas, in late October. Along with Rob Couch, President of First Centrum, Strande explained why multi-unit housing owners should consider adopting smoking policies that reduce smoke drift between units. Coming at the end of the day-long conference, the presentation simply raised the issue for owners and pointed them to appropriate resources to help them develop an effective smoking policy.

*Belmont, CA – On October 9, 2007, Belmont, California became the first jurisdiction to prohibit smoking in all public and privately owned multi-unit housing. The 3-2 vote by the Belmont City Council created the strongest smoking ban in the nation, including all apartments, condominiums, and townhouses that share common floors or ceilings with other

units; smoking is also prohibited within 20 feet from all buildings in which smoking is prohibited. Current tenants are grandfathered in for fourteen months or until the tenants vacate the unit. Smoking is permitted only in designated outdoor areas of multi-unit housing. The ordinance also declared the uninvited presence of secondhand smoke on property a nuisance and a trespass, giving those exposed a potential legal cause of action against the smoker.

Resources for Smokefree Housing

California - <http://www.smokefreeapartments.org/>

<http://www.respect-ala.org/drift.htm>

<http://ccap.etr.org/index.cfm?fuseaction=resources.multiHousing>

<http://talc.phlaw.org/pubs/publications.php?choice=newbrowse&search=1#housing>

<http://www.californialung.org/thecenter/SmokefreeHousingTheNewFrontier.htm>

Colorado - http://www.gaspforair.org/gasp/housing/housing_issues.php

Hawaii - <http://hawaiiismokefreehomes.org/>

Ohio - <http://www.ohiosmokefreehousing.com/>

Oregon - <http://www.smokefreeoregon.com/> or <http://smokefreehousingnw.com/>

Maine - <http://www.smokefreeforme.org/>

Maryland - <http://mdsmokefreeapartments.org/> - Coming Soon!

Michigan - <http://www.mismokefreeapartment.org/>

Minnesota - <http://www.mnsmokefreehousing.org/>

Nevada - http://www.gethealthyclarkcounty.org/tobacco/smkfree_apartments.html#two

Texas - <http://www.s-fhc.com/>

Utah - <http://www.tobaccofreeutah.org/aptcondoguide.html>

Washington - <http://smokefreehousingnw.com/>

http://www.kitsapcountyhealth.com/community_health/health_promotion/tp_fresh_air_housing.htm

West Virginia - <http://www.wvsmokefreehousing.com/>

Wisconsin - http://www.tobaccofreedanecounty.org/resources/smoke_free_apts.asp

National - <http://www.no-smoke.org/goingsmokefree.php?dp=d11>
<http://www.tobaccolawcenter.org/>

<http://www.wmitchell.edu/TobaccoLaw/resources/SchoenmarklinWeb.pdf>

TCLC Ancillary Meeting: Finding the Boundaries of Tobacco Regulation

As a precursor to the National Conference on Tobacco or Health, the Tobacco Control Legal Consortium (TCLC) hosted a symposium, “Going Too Far?: Exploring the Limits of Smoking Regulation.” Held at the William Mitchell College of Law, home of the Tobacco Law Center, the symposium featured prominent national and international experts on the science, law, and policy of tobacco and smoking regulation.

Presenters Simon Chapman, professor and director of research at the University of Sydney, Australia, and James Repace, a biophysicist from Tufts University, Massachusetts, debated laws, regulations, and policies imposing smoking restrictions in outdoor areas such as beaches, parks, and outdoor cafés. Chapman and Repace soundly defended their respective positions. Chapman argued that outdoor smoking restrictions should only be sought for environmental or social behavior modification reasons, not for the protection of public health. Because research demonstrates that outdoor exposure to secondhand smoke does not present health risks, Chapman asserted that pursuing outdoor smoking bans for public health reasons is without sufficient scientific support and contributes to the public perception of tobacco control advocates as irrational and single-minded. Countering Chapman, Repace presented data collected from

outdoor areas in which smoking was present and absent, showing that in the smoking areas, non-smokers are exposed to measurable and potentially harmful levels of secondhand smoke. While Repace acknowledged the need for continuing research, he argued that existing evidence is a sufficient basis for regulation. After an engaging discussion with the audience, comprised mainly of tobacco control attorneys, Chapman and Repace yielded the floor for the next debate.

The second debate focused on whether, when, and how an employer should impose smoking restrictions on employees. Lewis Maltby of the National Workrights Institute in Princeton, New Jersey, vigorously opposed employer policies that discriminate against employees or applicants who smoke. Maltby argued that employees’ lawful conduct outside of work should not form the basis for employment decisions. He lauded the many states that have enacted laws protecting employees from negative employment actions based on smoking status. Dr. Robert Crane, a physician from Columbus, Ohio, who has engaged in public health advocacy, argued that employers may and should consider smoking status in deciding whom to

hire and whether and to what extent employee health benefits should be available to smokers. Dr. Crane presented economic data on the impact on health care costs and productivity of smoking employees, suggesting that for financial reasons, employers should consider hiring only non-smokers or charging smokers more for health benefits. Moreover, Dr. Crane suggested that such employment policies will encourage smokers to quit, improving individual health along with making improvements to public health. Intense questions from attendees made clear that advocates and policymakers have strong and disparate opinions on this issue. It is clear, however, that as health care costs increase, more employers will consider such policies. Tobacco control attorneys and policymakers must be prepared to address this issue.

According to Doug Blanke, Executive Director of TCLC, “[t]he purpose of the symposium was to provide a highly interactive environment in which participants could improve their understanding of divergent views and identify areas of consensus as well as pitfalls for policy initiatives.” That goal was accomplished and the symposium has inspired further discussion on these important issues.



Jacqueline McNamara, *center*, looks on as Kathleen Dachille speaks at TCLC’s ancillary meeting.

Good News from R.J. Reynolds?

The second largest tobacco company in the United States—and frequent opponent of tobacco control legislation—issued several announcements in 2007 that may have a positive impact on public health and safety. In October, R.J. Reynolds Tobacco Company announced that all cigarettes it manufactures for sale in the U.S. will meet cigarette fire safety standards by the end of 2009.¹ While 22 states have passed laws requiring cigarette manufacturers to meet the standards, efforts for a national law have failed in Congress.² The National Fire Protection Association and the Coalition for Fire-Safe Cigarettes applauded the tobacco company's decision and encouraged other cigarette manufacturers to adopt the same policy.³ Because cigarettes cause most of the residential fire deaths and injuries in the U.S. and because of the quantity of Reynolds' products on the market, this policy should have a positive impact on public safety.

Reynolds also announced in November that the company will no longer advertise in print media, meaning consumer magazines or newspapers.⁴ All such ads will cease in 2008. Although the company denied any link, the self-imposed ban may have been a result of constant complaint and litigation by State Attorneys General (AGs) over Reynolds' popular, youth-centric marketing campaigns.⁵ The announcement that the company will no longer utilize print media came on

the heels of public criticism by elected officials and others over the company's Camel No. 9 campaign. This campaign features packaging in black, bright pink, and teal with lettering strikingly similar to the Chanel No. 5 perfume box; giveaways such as pink rhinestones for decorating a cell phone; berry-flavored lip balm; and magazine ads in *Glamour*, *Elle*, *Vogue*, and other leading women's magazines popular with teenage girls. Regardless of whether the ad ban was in response to criticism of the Camel No. 9 campaign, young consumers will not be exposed to Reynolds' tobacco ads in magazines in 2008. Tobacco control and public health advocates expect that Reynolds' print media budget will be shifted to direct-mail and Internet-based campaigns such that the impact of this change cannot be measured in the near term.

One popular Internet-based campaign will not likely be revived in 2008, however. Having been sued by several AGs, including Maryland's AG, Douglas Gansler,⁶ R.J. Reynolds suspended its indie rock campaign, Camel "the Farm." "The Farm" campaign was a nine-page advertisement in *Rolling Stone* magazine, in which Camel purported to support independent record labels and rock bands and had a significant online presence with additional exposure at indie rock venues. The AGs alleged that the advertisement promoting Camel "the Farm", and thereby Camel cigarettes, contained cartoons, which is a violation of the Master Settlement Agreement (MSA). Further, CDs containing

indie rock music and given away as part of the Camel "the Farm" campaign constituted brand merchandise distributed in violation of the MSA. In mid-December, Reynolds suspended the campaign and the funky, music-infused website was taken down.⁷ Reynolds' voluntary action indicates that the Camel "the Farm" campaign has been abandoned. Although it is certain that the marketing magic of Reynolds will continue to produce effective and innovative campaigns that skirt at youth targeting, the elimination of print ads and the Camel No. 9 and Camel "the Farm" campaigns takes these particular schemes out of the public domain.

Footnotes

¹ R.J. Reynolds Tobacco Company, State and Local Regulation, Fire-Safe Compliant Cigarettes, <http://www.rjrt.com/legal/stateFireSafety.asp>.

² For a complete list of state laws, visit the website of the Coalition for Fire-Safe Cigarettes at <http://www.firesafecigarettes.org/categoryList.asp?categoryID=77&URL=Legislative%20updates/Adoptions>. Maryland's Cigarette Fire Safety Performance Standards and Firefighter Protection Act becomes effective July 1, 2008. Laws of Maryland, Chapter 497 (2007); codified at Maryland Business Regulation Article, §§ 16-601 to 610.

³ See NFPA/Coalition for Fire-Safe Cigarettes Press Release, Nov. 19, 2007, <http://www.nfpa.org/newsReleaseDetails.asp?categoryID=488&itemID=36908&rss=NFPAnewsrelease s&cookie%5Ftest=1>

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“We congratulate R.J. Reynolds for its leadership and ask other cigarette manufacturers to follow suit.”).

⁴ See S. Elliott, *Once a Mainstay of Magazines, Cigarette Makers Drop Print Ads*, *New York Times*, Nov. 29, 2007, available at http://www.nytimes.com/2007/11/29/business/media/29adco.html?_r=1&oref=slogin. The article notes that Philip Morris USA discontinued print ads approximately three years ago.

⁵ See American Legacy Foundation, Press Release, Nov. 27, 2007, “Under Fire, R.J. Reynolds Pulls Print Advertising in 2008” available at <http://www.americanlegacy.org/854.htm>.

⁶ See Press Release, Office of the Attorney General of Maryland, “Attorney General Gansler Sues R.J. Reynolds: Use of Cartoons and CDs in Advertising a Violation of the Master Settlement Agreement,” Dec. 4, 2007, available at <http://www.oag.state.md.us/Press/2007/120407.htm>. The press release contains a link to photos of the ad and the CD. A copy of the Complaint is on file with the Center.

⁷ Reynolds was also sued by two of the bands featured in the ad; the plaintiff bands allege unauthorized use of artists’ names and unfair business practices. See *Stewart v. Reynolds*, Superior Court of California, Alameda County, Case No. RG07361627, filed Dec. 17, 2007. A copy of the Complaint is on file with the Center.

Supreme Court Hears Arguments in Maine Internet Case

At the urging of the State of Maine, several other states and many public health and tobacco control advocates, the U.S. Supreme Court agreed to hear a challenge to Maine’s law regulating the sale of tobacco over the internet.¹ The specific question presented in *Rowe v. New Hampshire Motor Transport Association* is whether, as applied to common carriers, the Maine law is preempted by the Federal Aviation Administration Authorization Act (FAAAA) of 1994.² The First Circuit Court of Appeals concluded that significant elements of the Maine tobacco delivery law were preempted by the FAAAA because those provisions require a common carrier to alter its standard operations to comply with the law. Having granted certiorari in June, the Supreme Court heard oral arguments in the case on November 28, 2007.³

Arguing on behalf of the State of Maine, Deputy Attorney General Paul Stern faced an active and sometimes hostile bench. From the start, Chief Justice Roberts made his position known: “[The Maine law] talks about what carriers have to do . . . in connection with delivery, so it relates to the service of the motor carrier.”⁴ Mr. Stern explained that the law has only a minimal impact on common carriers and that this modest incidental impact should not

work to ameliorate the state’s public health police powers, as the law was enacted for the purpose of preventing youth access to tobacco. He offered that signature-required deliveries and special package markings, procedures required by the Maine law, are services currently available from many common carriers such that compliance with the law may impose an additional cost to the vendor shipping the tobacco, but does not place a burden on the common carrier. Unconvinced, Justice Breyer opined that it would be a “nightmare” if states passed varying laws governing how shipment of certain products must be conducted. Despite the intense questioning, Mr. Stern remained focused and left the Court with the clear understanding that Maine is committed to reducing youth access to tobacco at all venues.

The Center filed an amicus brief in support of Maine at the certiorari and merits phases of the *Rowe* case.

Beth Brinkman, counsel representing the common carrier respondents, argued that allowing Maine’s law to survive challenge would be contrary to Congress’ intent in passing the FAAAA because the law would diminish the efficiency and cost savings contemplated by the FAAAA. Although unable to distinguish voluntary restrictions some carriers agreed to in settlement with several Attorneys General and those set forth by the Maine law, Ms. Brinkman faced little obvious opposition from the bench.⁵

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Although the Supreme Court has not yet issued an opinion, the Justices' apparent disposition against the Maine statute and in favor of preemption provides little hope to Maine. Perhaps, as a result, Maine will ban the sale of tobacco products except during face-to-face transactions, eliminating all tobacco product shipments into and within the state. Interestingly, such a ban would not face challenge based on the FAAAA and would likely survive a Commerce Clause challenge as long as in-state and out-of-state sellers are subject to the same restrictions.⁶

Footnotes

¹ *New Hampshire Motor Transport Association v. Rowe*, 448 F.3d 66 (1st Cir. 2006), cert. granted, 127 S.Ct. 3037 (2007). The Center filed an *amicus curiae* brief in support of Maine's petition on behalf of the Tobacco Control Legal Consortium, American Lung Association, American Cancer Society, and Campaign for Tobacco-Free Kids.

² Pub. L. No. 103-305, § 601, 108 Stat. 1569, 1605 (1994); specific provisions codified at 49 U.S.C. §§ 14501(c)(1) and 41713(b)(4)(A).

³ The Center filed an *amicus curiae* brief in support of Maine on behalf of the Tobacco Control Legal Consortium, American Lung Association, American Cancer Society, Campaign for Tobacco-Free Kids, American Lung Association of Maine, American Heart Association, American Legacy Foundation, Americans for Nonsmokers' Rights, American Medical Association, and the Maine Medical Association.

⁴ A transcript of the oral argument in the case is available at http://www.supremecourtus.gov/oral_arguments/argument_transcripts/06-457.pdf.

⁵ The United States filed an *amicus brief* in support of the respondents. At oral

argument, Assistant Solicitor Douglas Hallward-Driemeier briefly explained to the Court why the federal government concluded that the Maine law is preempted by the FAAAA.

⁶ See *Brown & Williamson Tobacco Corp. v. Pataki*, 320 F.3d 300 (2d. Cir. 2003) (finding no Commerce Clause problems with New York State's ban on the sale of tobacco except by face-to-face transaction or delivery directly by the seller).

California Passes Two Laws Aimed at Protecting Children

In October, California passed two laws that demonstrate the state's continued success in tobacco control. One law will serve to reduce youth exposure to secondhand smoke, diminishing injury, illness, and likelihood of smoking initiation. The other law will reduce youth access to tobacco products, contributing to a decline in youth smoking prevalence.

Following the lead of Arkansas and Louisiana, California became the third state to prohibit smoking in cars when a child is in the vehicle. While Arkansas and Louisiana limit the prohibition to cars carrying children under thirteen years of age and six years old or younger, respectively,¹ California's law prohibits smoking when riding with anyone under the age of eighteen.² As of January 1, 2008, California motorists may be subject to a \$100 fine for violating the law. Because the law is a secondary offense,

officers may only cite a driver for smoking around minors once the car has been stopped for a primary traffic violation, such as speeding. Maine and New York lawmakers are expected to consider similar laws in the coming months.

California Governor Arnold Schwarzenegger also signed into law a bill prohibiting gift certificates, gift cards, and similar offers when used in the distribution of free tobacco products.³ This law closes a loophole the tobacco industry had been using to skirt existing law prohibiting tobacco giveaways at public places and events. The law also clarifies that tobacco companies that distribute free tobacco products through the mail must verify that the recipient of the product is at least eighteen years old. As with the smoking in cars bill, this law became effective on January 1, 2008. California and Massachusetts are the only states to prohibit this form of product distribution.

Footnotes

¹ Ark. Code Ann. §20-27-1903 (smoking is prohibited unless the child is at least six years of age and 60 pounds, the Arkansas standard for use of a car seat or booster seat); La. Stat. Ann. §32:300.4 (smoking is prohibited if the child is less than thirteen years of age, the Louisiana standard for certain car restraints).

² Cal. Health & Safety Code Ann. §118948.

³ Cal. Health & Safety Code Ann. §118950.

STATE AND LOCAL NEWS

And The Winner Is . . . The Quitters: Success of EX[®]

In fall 2007, the American Legacy Foundation released the results of EX[®], a unique smoking-cessation campaign. Legacy developed the campaign in partnership with the Mayo Clinic's Nicotine Dependence Center and piloted the campaign in four cities—including Baltimore, Maryland—between September 2006 and June 2007. See “Baltimore City Hopes Pilot Program Will Create More ‘EX[®]’ Smokers,” *Tobacco Regulation Review*, Vol. 6, Issue 1, at p. 15 (April 2007). In addition to Baltimore, Legacy test-marketed EX[®] in Buffalo, New York; San Antonio, Texas; and Grand Rapids, Michigan. These cities were chosen based on their location in the U.S., adult smoking prevalence, and the potential to reach “priority populations”—i.e., smokers disproportionately impacted by tobacco-related disease and subjected to intense marketing by the tobacco industry.

Speaking to smokers in a language they can understand—that of fellow smokers—EX[®] enhances conventional marketing and smoking cessation techniques with innovative tools to change the way smokers think and feel about the difficult process of quitting smoking. The campaign features a comprehensive manual and easy-access telephone

quitline. Evaluation of the campaign and these tools, specifically, is essential to improving effectiveness for smokers ready to quit.

The evaluation yielded an overall positive response to EX[®] television and radio ads, which are designed to steer smokers who are committed to quitting, but do not know where to start, to various EX[®] cessation services. In particular, the evaluation demonstrated an ability to increase consumer demand for EX[®]'s nationwide quitline, 1-800-QUIT-NOW, and website, www.BecomeAnEX.org. The quitline experienced between a five-fold (in Baltimore) and eleven-fold (in Grand Rapids) increase in call volume when direct-response ads were televised. In addition, the website received about 27,000 “hits” from new visitors, who spent an average of six minutes viewing nine pages. Legacy is looking into ways to improve continued participation in the online quitting plan, however, after discovering that many registrants discontinued use of the plan after completing the first session.

The EX[®] Quit Manual, written by a former smoker, was well received but did not yield higher quit rates than comparable New York State cessation materials. Legacy, therefore, intends to revise the Manual to improve efficiency and cost-effectiveness.

Overall, among those with “confirmed awareness of the campaign,” EX[®] was received favorably across all groups in all four

pilot cities. Among African-Americans in the Baltimore test market, 76 percent reported that the second-phase EX[®] ads, which focus on shifting smokers' knowledge, attitudes, and beliefs about quitting smoking, said something important to them, and 72 percent reported that the ads were convincing. Sixty-eight percent of Grand Rapids smokers familiar with these EX[®] ads believed that the program had information that could be helpful in their next attempt to quit smoking, while 69 percent reported that EX[®] presented a new way to look at smoking cessation.

Legacy will use these findings in deciding how to proceed with launching the EX[®] campaign nationwide, an initiative Legacy appears devoted to launch to turn more smokers into quitters.

For additional information about these results or to learn more about the future of EX[®], please contact Bill Furmanski at (202) 454-5752.

Bethany Beach is Latest Seaside Town to Consider Banning Butts on its Shores

On November 16, 2007, the Town Council of Bethany Beach, Delaware, held a public hearing on whether to ban cigarette smoking on the town's beaches, in the ocean, on the boardwalk and bandstand, and in town parks. Center Research Fellow Jackie McNamara, and School of Law Clinical Instructor Chris Bostic, made the trip "down to the ocean" to testify in support of the proposed ban. McNamara, who vacationed in Bethany Beach in August 2007, was the first of approximately sixteen members of the public to testify. McNamara first discussed the impact smoking has on children in a family-oriented setting like Bethany Beach. When children observe adults smoking in outdoor settings like beaches, boardwalks, parks, or playgrounds, children tend to view the adult behavior as normal, acceptable, and even healthy, and tend to imitate that behavior when they get to adolescence.¹ Exposure to secondhand smoke can be harmful to others—especially children—even in outdoor settings, if the smoker is situated close enough to the nonsmoker.² McNamara assured the Council that although such a ban would be the first of its kind in the mid-Atlantic region, the family-friendly legislation would ultimately be one of many in the area.

Chris Bostic was the second to testify. Bostic initially emphasized the environmental and public health harms caused by cigarette-related litter, especially from improperly discarded cigarette butts.³ Cigarette butts account for most of the trash picked up during coastal beach cleanups in Delaware and around the world.⁴ Birds and marine life are harmed when they mistake butts for food. Even more alarming is that toddlers ingest discarded cigarette butts, along with the toxic chemicals they contain. Adopting a smoking ban would greatly reduce this unsightly and dangerous form of litter. Assuaging potential legal concerns, Bostic assured the Council that enacting the proposed ban is lawful and that there is no constitutional right to smoke.

Of those who testified, those opposed slightly outnumbered those in favor. Most of the concerns involved individual rights of smokers and how the ban will be enforced and by whom. The Council has received numerous letters from beachgoers who support the ban; a

number of those may have resulted from the Center making local advocates aware of the proposal.

The Council was scheduled to vote on the ban at its February meeting.

Footnotes

¹ See Brian A. Primack et al., *Improving Measurement of Normative Beliefs Involving Smoking Among Adolescents*, 161 ARCHIVES OF PEDIATRICS & ADOLESCENT MEDICINE 434-439 (May 2007) (perceived prevalence and popularity of smoking affects adolescents' susceptibility to initiate smoking).

² See generally Neil E. Klepeis et al., *Real-Time Measurement of Outdoor Tobacco Smoke Particles*, 57 J. AIR & WASTE MGMT. ASSOC. 522-534 (May 2007).

³ For detailed information on cigarette butts and smoking-related litter, see generally Clean Virginia Waterways, *Cigarette Butt Litter*, at <http://www.longwood.edu/cleanva/cigarettelitterhome.html>.

⁴ See, e.g., INTERNATIONAL COASTAL CLEANUP REPORT 50 (2006) available at http://www.oceanconservancy.org/site/DocServer/Final_ICC_report_2007_release.pdf?docID=2841.



Baltimore City Troubled by Black and Mild Cigars

In the wake of research conducted by the Johns Hopkins School of Public Health, the Baltimore City Health Department issued a report, "Black and Milds in Baltimore," describing the negative public health implications of the prevalence of Black and Mild cigar use in the City.¹ The report explains the dynamics of the problem: Users, particularly minors, misperceive the health risks associated with cigar use; single sales at less than \$1 make the product attractive to youth and young adults; and sweet flavors lure young people to try the product. In follow-up to the report, the Health Department hosted a community forum on October 15. At that event, young people who formerly smoked or continue to smoke Black and Mild cigars explained why that product is attractive to them and their peers in Baltimore City. The ability to buy a single cigar at a low price (rather than a pack or box), enticing flavors, and social norms were repeatedly identified as the bases for selecting Black and Milds.

Center Director Kathleen Dachille spoke to the group about the legal issues surrounding the manufacture and sale of products like Black and Mild. Noting that the sale of single cigarettes is prohibited by state and local law, Dachille explained that the sale of single cigars is permissible; legislation passed by the Maryland General Assembly may be necessary to change that. Dachille also explained that by marketing intriguing flavors that mask the

harshness of the tobacco, the manufacturer appears to be targeting minors.² Again, legislative change at the state level could prohibit the sale of flavored tobacco products in Maryland, including in Baltimore City. An invited guest, Delegate Shawn Tarrant of the Maryland House of Delegates agreed that legislative action was appropriate and necessary and he pledged to pursue and support such legislation during the 2008 session.³ Center staff will continue to work with the Baltimore City Health Department, Delegate Tarrant, and other legislators to address the problem posed by the prevalent use of Black and Mild cigars.

Footnotes

¹ Baltimore City Health Department, "Black and Mild in Baltimore City," October 2007, available at http://www.baltimorehealth.org/info/2007_10_09_blackmilds.pdf.

² At the time of the community forum, Black and Mild cigars were manufactured by John Middleton, Incorporated. In November, however, Altria/Philip Morris purchased John Middleton. Altria Group Incorporated, Press Release, "Altria Group, Inc. Agrees to Acquire John Middleton, Inc. for \$2.9 Billion", November 1, 2007, available at http://www.altria.com/media/02_00_NewsDetail.asp?reqid=1070876.

³ Delegate Tarrant introduced relevant legislation during the 2007 Special Session of the Maryland General Assembly, but that legislation failed. See "Special Session Brings Cigarette Tax Increase and Attention to Little Cigars" on this page.

Special Session Brings Cigarette Tax Increase and Attention to Little Cigars

With a \$1.7 billion budget deficit looming, Governor Martin O'Malley called the Maryland General Assembly into Special Session on October 27, 2007. Although any legislation may be introduced during a Special Session, lawmakers principally focused on the budget and how to increase revenue and decrease expenditures. Myriad tax increases were considered along with many proposals for how the state should regulate slot machines to maximize revenue and minimize the impact on relevant communities. While legislators avoided the slots debate by placing approval of slots with Maryland voters, many tax increases were approved and became law on January 1, 2008.

One of the tax proposals included in the Governor's package was an increase in the cigarette tax from \$1 to \$2 per pack. Although cigarette retailers, wholesalers, and others opposed the increase, the legislature voted in favor of the new tax. Effective January 1, 2008, the cigarette tax in Maryland is \$2 per pack, a 100% increase that places the state in the top ten for cigarette taxes.¹ Cigarette tax increase proposals that failed in prior sessions called for the revenue increase to fund a variety of health-related programs; however, this increase is not earmarked for any particular

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purpose and will enrich the General Fund.

The General Assembly also considered increasing the tax on “little cigars” and requiring that little cigars be sold in packages of at least five, with little cigars being defined to include Black and Mild cigars. House Bill 20, sponsored by Delegate Tarrant, and Senate Bill 23, sponsored by Senator McFadden, were favorably received by many legislators, particularly those on the House Ways and Means and Senate Budget and Taxation Committees.² Delegate Tarrant had become aware of the problems faced in Baltimore City due to the ready availability of Black and Mild cigars sold singly and for less than \$1. (See “Baltimore City Troubled by Black and Mild” at p. 11). Through House Bill 20, Delegate Tarrant sought to reduce the public health problem faced by the city. Senator McFadden agreed to sponsor the Senate version for the same reasons. In conjunction with the sponsors, Center staff worked feverishly during the three-week session to convince legislators to take action to reduce the prevalence of little cigar use. Nevertheless, in the flurry of last-minute changes, the little cigar tax increase and minimum pack size requirement were removed from the Tax Reform Act. With more time to prepare and make their case, Delegate Tarrant and Senator McFadden will likely introduce similar legislation in the 2008 regular session.

Footnotes

¹ See House Bill 5 (Special Session 2007), available at <http://mlis.state.md.us/2007s1/bills/hb/hb0005e.pdf>. The new tax is codified at Maryland Tax-General Article, §12-105. The Campaign for Tobacco-Free Kids maintains a reliable list of state cigarette taxes. See State Cigarette Excise Tax Rates and Rankings, available at <http://www.tobaccofreekids.org/research/factsheets/pdf/0097.pdf>.

² House Bill 20 (Special Session 2007) is available at <http://mlis.state.md.us/2007s1/billfile/hb0020.htm>; Senate Bill 23 (Special Session 2007) is available at <http://mlis.state.md.us/2007s1/billfile/sb0023.htm>.

Washington Area Hospitals Implement Tobacco-Free Grounds

On November 15, 2007, a dozen hospitals in the Washington, D.C., metropolitan area implemented policies prohibiting the use of any tobacco product on all hospital grounds. The new policies will apply to employees, patients, and visitors alike.

The policy change, which took effect the day of the American Cancer Society’s 31st annual Great American Smokeout, follows a nationwide trend meant to amplify the message about tobacco use and its dangers. “To permit an act to occur on our campuses that is recognized as the single most common cause of death and disease was simply a disconnect that none of us could allow to continue,” explained Thomas A. Kleinhanzl,

president of Frederick Memorial Hospital.

The change affects six Maryland facilities: Frederick Memorial Hospital and all five hospitals in Montgomery County. The cooperative effort is meant to bolster the legitimacy of the policy and enforcement efforts.

Recognizing that tobacco use is an addiction, the hospitals have pledged to be compassionate but firm on enforcement. To that end, the hospitals prepared for implementation by providing significant advance notice to employees and patients, conducting expert training for on-site tobacco cessation counselors and, in many cases, offering free access to certain cessation tools, such as stop-smoking classes, nicotine patches, and prescription medications.

With this change, more than seventeen of Maryland’s hospitals have completely smoke-free campuses. For more information and tool kits, please see http://www.mdhospitals.org/mha/Community_Health_Resources/Smoke_Free_Hospital_Campuses.shtml.