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September 12, 2006

Honorable Cruz Bustamante  
State Capitol  
Room 1114  
Sacramento, CA 95814

Dear Lt. Governor and Regent Bustamante,

I am writing to support your effort to bring the issue of continuing to accept tobacco industry funding of research at the University of California before the Regents and to support a policy in which the Regents adopt a policy declining *all* money from the tobacco industry.

This issue is before the Regents because, after a two year debate, the Academic Senate adopted a position that any decision to decline tobacco industry money (or funds from any source based on the nature of the source) should be done on a systemwide level and that “Only the UC Board of Regents has the plenary authority to establish policies on the acceptance of research funding.”

The argument that faculty inside UC – and around the world – made to support a decision to decline funding from the tobacco industry was because of the tobacco industry’s decades-long use of selective funding of academic research to impede scientific and public understanding of the dangers of smoking and, later, secondhand smoke. Given that the purpose of the University – and the reason that we have “academic freedom” – is to protect the search for and dissemination of truth, continuing to accept tobacco industry funding is antithetical to the very purpose of the University.

I was disappointed that the briefing materials that the President prepared for the Board (<http://www.universityofcalifornia.edu/regents/regmeet/sept06/re78.pdf>) did not present this argument directly. It was certainly available to the Administration; it was spelled out in detail in a July 25, 2003 letter from Prof. Neal Benowitz and me to Vice Provost for Research Larry Coleman. The basic argument in this letter still holds today:

This letter is a follow up to our most recent conversation about accepting tobacco industry funding for research conducted on behalf of the University of California Regents, and why we believe that acceptance of such funds may be in violation of current Regents and University policy. We want to address your concerns about the “slippery slope” potential of a policy of allowing individual academic units (or the entire University) to reject such money. As the Regents themselves have recognized, the combination of the deadly

nature of the tobacco industry's products and its well-documented and explicit use of funding of academic research (particularly biomedical research) as a way of preventing the spread of public understanding of the dangers of smoking are unique. The tobacco industry's strategy of funding medical research, developed initially in 1953 in a secret meeting at the Plaza Hotel in New York City, has been successful at protecting the industry for decades, at a cost of the deaths of tens of millions of Americans and even more worldwide.

While universities could be excused from participating in this process because they failed to understand it, that is no longer the case. There is a strong and well-documented ongoing pattern of systematic manipulation of the scientific process to serve the tobacco industry's political and economic needs involving a massive worldwide public relations effort. It is not simply that we are talking about an unpopular industry. **The issue is this: Knowing what we know now, is it consistent with the University's fundamental academic mission and Regents policy to continue as a supporting player with the tobacco industry?**

A complete copy of the letter is attached; I believe that the Regents will find the other details in that letter useful in their deliberations and ask that you share it with your fellow Regents.

This argument became much more compelling on August 17, 2006, when Judge Gladys Kessler ruled that the tobacco industry violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by forming an "Enterprise" in 1953 to defraud the public. The *first* element of the illegal enterprise involved creation of an organization, originally named the "Tobacco Industry Research Committee," with the nominal purpose of supporting independent academic research, but whose real purpose was to slow scientific and public acceptance of the idea that smoking (and later passive smoking) caused disease. She specifically singles out research funded by the tobacco industry at UCLA as an example of the Enterprise's activities and rules that the Philip Morris External Research Program, which is now funding projects at the University of California, as part of the Enterprise. Most important, Judge Kessler ruled that the Enterprise continues to this day and is likely to continue into the indefinite future.

The question before the Regents is whether they wish to continue to accept money from this Enterprise or whether it would better serve the integrity of the University to decline future participation.

Given the importance and direct relevance of this ruling, I was surprised that the Office of the President made no mention of it in the background materials provided to the Regents. I am attaching a summary of the most relevant sections of Judge Kessler's 1700 page opinion. Feel free to share it with the Regents.

I am also concerned about the way that the Office of the President described the Academic Senate's position. The materials sent to the Regents includes a 2004 letter from President Dynes on the subject of tobacco industry funding based on an Academic Council resolution that year. That letter does not reflect the final position that the Academic Senate took in 2005 (attached). The final 2005 position differed in an important way from the 2004 position. The final Senate resolution begins, "Whereas, Only the UC Board of Regents has plenary authority to establish policies on the acceptance of research funding" and ends with the recommendation that UC policy be that "a unit

of the University may not refuse to process, accept or administer a research award based on the source of funds [such as the tobacco industry] ... *except as directed by the UC Board of Regents.*”

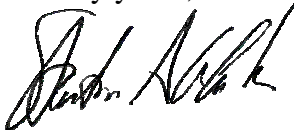
A decision by the Regents to decline money from the tobacco industry would be completely consistent with this Senate position. Indeed, the Senate has explicitly stated that the faculty viewed this matter is a Regental, not a faculty, decision.

I was surprised that the briefing materials from the Office of the President told the Regents that “The University does not have a comprehensive list of all companies with ties to the tobacco industry...” since the Regents have had a policy for many years of not investing in the tobacco industry. Adopting a policy of declining research money (and other gifts and grants) from the tobacco industry is a simple extension of the current investment policy; one would presume that the Office of the President could use the same list as for determining what the “tobacco industry” as it uses for investment purposes.

Finally, I would like to address the question of the scope of a Regental decision to decline all money (research grants and gifts) from the tobacco industry. Limiting this decision to smoking and secondhand smoke research would not protect the University from being drawn into the Enterprise in the future. A review of the record, particularly Judge Kessler’s full ruling, should make it apparent that the tobacco industry Enterprise’s financing of non-tobacco research to shift attention away from smoking and secondhand smoke as an important element of the fraud.

Thank you again for bringing this important issue to the Regents. If I can be of further assistance, please contact me.

Sincerely yours,



Stanton A. Glantz, PhD  
Professor of Medicine

cc: Robert Dynes, President  
Rory Hume, Provost  
John Oakley, Chair Academic Senate  
Michael Brown, Vice Chair, Academic Senate  
J. Michael Bishop, Chancellor UCSF  
David Kessler, Dean, School of Medicine, UCSF  
Bruce Spaulding, Vice Chancellor, UCSF

.encl: Relevant sections from Judge Kessler’s ruling, 2006  
Letter to Vice Provost Larry Coleman, 2003  
Academic Senate Resolution on Funding, 2005

**EXCERPTS FROM JUDGE GLADYS KESSLERS' FINAL OPINION IN  
Civil Action No. 99-2496 (GK) United States v. Philip Morris, et al.\***

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On September 22, 1999, the United States brought this massive lawsuit against nine cigarette manufacturers of cigarettes and two tobacco-related trade organizations. The Government alleged that Defendants have violated, and continue to violate, the Racketeer Influenced and Corrupt Organizations Act (“RICO”) by engaging in a lengthy, unlawful conspiracy to deceive the American public about the health effects of smoking and environmental tobacco smoke, the addictiveness of nicotine, the health benefits from low tar, “light” cigarettes, and their manipulation of the design and composition of cigarettes in order to sustain nicotine addiction. ...

In particular, the Government has argued that, for approximately fifty years, the Defendants have falsely and fraudulently denied: (1) that smoking causes lung cancer and emphysema (also known as chronic obstructive pulmonary disease (“COPD”)), as well as many other types of cancer; (2) that environmental tobacco smoke causes lung cancer and endangers the respiratory and auditory systems of children; (3) that nicotine is a highly addictive drug which they manipulated in order to sustain addiction; (4) that they marketed and promoted low tar/light cigarettes as less harmful when in fact they were not; (5) that they intentionally marketed to young people under the age of twenty one and denied doing so; and (6) that they concealed evidence, destroyed documents, and abused the attorney-client privilege to prevent the public from knowing about the dangers of smoking and to protect the industry from adverse litigation results.

... [T]hat there is overwhelming evidence to support most of the Government’s allegations.

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Finally, a word must be said about the role of lawyers in this fifty-year history of deceiving smokers, potential smokers, and the American public about the hazards of smoking and second hand smoke, and the addictiveness of nicotine. At every stage, lawyers played an absolutely central role in the creation and perpetuation of the Enterprise and the implementation of its fraudulent schemes. They devised and coordinated both national and international strategy; they directed scientists as to what research they should and should not undertake; they vetted scientific research papers and reports as well as public relations materials to ensure that the interests of the Enterprise would be protected; they identified “friendly” scientific witnesses, subsidized them with grants from the Center for Tobacco Research and the Center for Indoor Air Research, paid them enormous fees, and often hid the relationship between those witnesses and the industry; and they devised and carried out document destruction policies and took shelter behind baseless assertions of the attorney client privilege.

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\* The full ruling is available at <http://coop.dcd.uscourts.gov/99-2496-082006a.pdf> . Citations have been deleted and some explanations or names added in [...].

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## **FINDINGS OF FACT**

### **III. CREATION, NATURE, AND OPERATION OF THE ENTERPRISE<sup>s</sup>**

The following Section sets forth in enormous detail the intricate, interlocking, and overlapping web of national and international organizations, committees, affiliations, conferences, research laboratories, funding mechanisms, and repositories for smoking and health information which Defendants established, staffed, and funded in order to accomplish the following goals: counter the growing scientific evidence that smoking causes cancer and other illnesses, avoid liability verdicts in the growing number of plaintiffs' personal injury lawsuits against Defendants, and ensure the future economic viability of the industry.

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#### **B. Creation of the Enterprise**

6. In December 1953, Paul M. Hahn, President of Defendant American, sent telegrams to the presidents of the seven other major tobacco companies and one tobacco growers organization, inviting them to meet and develop an industry response to counter the negative publicity generated by the studies linking cigarette smoking and lung cancer. The telegrams were sent to: Edward A. Darr, President of Defendant Reynolds; Benjamin F. Few, President of Defendant Liggett; William J. Halley, President of Defendant Lorillard; Timothy V. Hartnett, President of Defendant B&W; O. Parker McComas, President of Defendant Philip Morris; Joseph F. Cullman, Jr., President of Benson & Hedges; J.B. Hutson, President of Tobacco Associates, Inc.; and J. Whitney Peterson, President of United States Tobacco Co.

7. Executives from [Reynolds, Brown & Williamson, Philip Morris, Benson & Hedges, Tobacco Associates, Inc., and United States Tobacco Co.] met in New York City at the Plaza Hotel on December 14, 1953. The executives discussed (i) the negative publicity from the recent articles in the media, (ii) responding to the problem by jointly engaging a public relations counsel, and (iii) removing health themes from advertising. They also discussed Liggett's decision not to attend the meeting because "in the course of time the whole thing would blow over." The executives also authorized the five members of the group who had their offices in New York to engage the services of [the public relations firm] Hill & Knowlton on behalf of the whole committee; to meet with John Hill at the Plaza Hotel the next day, December 15th, to discuss the negative publicity problem; and to request that Hill & Knowlton, if it accepted the assignment, submit recommendations to the full committee at a subsequent meeting as to how to proceed. It is clear from all the surrounding circumstances that representatives of Hill & Knowlton had been contacted about taking on this assignment prior to December 14, 1953.

8. The tobacco company executives did not meet, as they have suggested, in an altruistic response to requests from the scientific community that the industry fund research on smoking and health. Rather, they convened a strategy meeting of the highest company officials to formulate an industry-wide response (a) to the public's growing anxiety generated by the negative publicity about the direction of scientific research on cigarettes

and cancer, and (b) to what they accurately understood to be a major threat to their corporations' economic future.

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12. Ten days later, on December 24, 1953, Hill & Knowlton submitted a proposal regarding the tobacco industry's public relations campaign, recommending that the companies form a joint industry research committee that would sponsor independent scientific research on the health effects of smoking and announce the formation of the research committee nationwide as news and in advertisements. Hill & Knowlton also recommended that the companies fund objective research by scientists who were independent of the tobacco industry, and that an advisory board be established composed of a group of distinguished scientists from the fields of medicine, research and education "whose integrity is beyond question."

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14. Four days later, on December 28, 1953, another meeting was held at the Plaza Hotel and was attended by [tobacco company executives] and three people from the public relations firm of Hill & Knowlton, .... The attendees agreed on Tobacco Industry Research Committee ("TIRC") [later renamed the Council for Tobacco Research (CTR)] as the official name of the research committee; chose [a] temporary chairman of the committee; agreed that the search should begin immediately for a qualified director who, together with the companies' research directors, would recommend members for the research advisory board; and reviewed and accepted the Hill & Knowlton proposal regarding the tobacco industry's public relations campaign.

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38. Defendants met frequently to discuss issues facing the Enterprise [that, like organized crime, was created to violate the law]. Beginning in 1954 and until 1970, representatives of member companies met regularly with TIRC/CTR staff. After CTR's incorporation, in 1971 and until 1999, the Enterprise met annually at CTR's meetings of members. At these meetings, representatives of the Enterprise discussed activities of CTR which furthered their goals such as Special Projects [research projects selected by industry lawyers, that bypassed nominal "peer review:" see below], the Literature Retrieval Division, contract research, public relations, the TIRC/CTR Scientific Advisory Board, and scientific conferences.

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60. TIRC focused its energies and resources in two areas -- public relations and scientific research. First, it served as a sophisticated public relations unit for Defendants [tobacco companies engaged in the Enterprise], especially in relation to growing public concern about the risks of smoking, by repeatedly attacking scientific studies that demonstrated the harms of cigarette smoke and insisting on the notion of an "open question" regarding cigarette smoking and health. Second, it developed a scientific research program that focused on basic processes of disease rather than evaluating the risks and harms associated with smoking -- the very subject that the industry had pledged to pursue through TIRC. From the outset, the dual functions of TIRC were intertwined, with the scientific program of TIRC always subservient to the goals of public relations.

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**C. TIRC/CTR – Tobacco Industry Research Committee/Council for Tobacco Research - USA**

21. With the creation of TIRC in January 1954, the Defendants established a sophisticated public relations vehicle -- based on the premise of conducting independent scientific research -- to deny the harms of smoking and reassure the public. That essential strand of their long range strategy was developed and implemented in 1953-54, and guided their activities for more than forty years.

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63. Defendants, through TIRC/CTR and its public relations strategy, were especially effective in identifying and supporting skeptics of the link between smoking and disease. Skeptics were invited to join the Scientific Advisory Board of the TIRC; they and their home institutions were provided with research grants from the TIRC. Their views were effectively solicited and broadcast widely by TIRC and the Tobacco Institute [the enterprise's public relations and political arm].

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**E. Joint Research Activity Directed by Defendants' Executives and Lawyers**  
**1. Witness Development**

213. Defendants Philip Morris, Reynolds, Lorillard, Liggett, B&W, American, CTR, and the Tobacco Institute developed a variety of joint research projects that were dubbed Special Projects. These projects assumed numerous forms and names, including CTR Special Projects, Lawyers Special Projects (projects paid through Lawyers Special Accounts), and Tobacco Institute Special Projects. These projects were exclusively funded by these particular Defendants. The main purpose of these projects, which were primarily lawyer-developed, directed, and supervised, was to obtain and develop witnesses favorable to Defendants for testimony before Congress and other regulatory bodies, for use in litigation, and for support of industry public statements.

214. TIRC/CTR through its "Special Projects" allocated funding on a non-peer reviewed basis for research projects associated with litigation and witness preparation, and were not designed to address smoking and health issues in a way that would be helpful to increasing public knowledge about smoking and disease.

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217. Special Projects were often managed by yet another committee called the Ad Hoc Committee. The Ad Hoc Committee consisted of in-house counsel, litigating lawyers, and other agents such as public relations and research representatives of Defendants directed to conduct long range policy planning with respect to research and witness development.

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228. When a scientist was willing to act as a witness in litigation or before congressional

hearings on behalf of the Enterprise, her work was often funded by CTR Special Projects. For example, on October 3, 1968, in an attempt to funnel names to Hardy as potential witnesses before awarding industry funding to scientists, Alexander Holtzman, General Counsel of Philip Morris, wrote a letter proposing CTR Special Project funding for Richard Hickey. Hickey's application to CTR for \$30,000 had previously been turned down, but Holtzman stated that

Dr. Hickey is willing to prepare a statement for Congress provided that he is put in a position to complete the analysis of data which he has in-hand and he would, in my opinion, make an excellent witness.

Holtzman also wrote that

I think we might be able to persuade him to make additional observations in these papers concerning the implications of his data in relation to the Public Health Service view on the smoking question.

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## **2. CTR Special Projects**

### **a. Nature of CTR Special Projects**

238. CTR Special Projects were a separate category of research projects funded by CTR. Unlike the grant-in-aid category of research, CTR Special Projects were not screened by the CTR Scientific Advisory Board ("SAB"); instead the process was directed by the General Counsels of Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American, as well as attorneys at outside law firms including Jacob, Medinger & Finnegan, and Shook, Hardy & Bacon. The work was specifically commissioned for possible use in litigation.

239. Because of the lawyer involvement and the lack of review by the SAB, there was recognition that CTR Special Projects did not constitute the independent research promised in the Frank Statement [a nationwide advertisement announcing creation of TIRC/CTR in 1953, shortly after creation of the Enterprise]. Janet Brown, retained counsel for CTR, acknowledged the problem in a letter to David Hardy dated June 13, 1974:

Where the industry is itself the arbiter of the amount and nature of research to be done, however, arguments that the research is self serving -- that is, is too little, too late, does not bear reasonable relation to the nature and scope of the problems nor to the industry's market position, sales, profits, advertising expenditures -- gain in force and acceptance. Moreover, the industry may have little, if any leeway to disassociate itself from any results of such research with which it does not agree.

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## **5. Defendants Made Public Promises to Support Independent Research on the Link Between ETS [environmental tobacco smoke, what the tobacco companies call secondhand smoke] and Disease**

3430. In 1982, the Tobacco Institute ran the fifth in its series of advertisements called "Answers to the most asked questions about cigarettes." The advertisements ran in major magazines nationwide, including Newsweek, People, and Sports Illustrated. The advertisement asked, "Does Cigarette Smoke Endanger Nonsmokers?" After disputing the evidence linking passive smoking to lung cancer, the advertisement stated:

Like you, we seek answers.

The tobacco industry has committed more funds for independent research on smoking and health than any non-governmental group. More than the American Cancer Society, the American Heart Association, and the American Lung Association combined. The researchers we fund are encouraged to publish whatever they find. Whatever the outcome. If you'd like more information, write for our booklet, "Answers to the most asked questions about cigarettes."

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3434. These public promises were intended to deceive the American public into believing that there was no risk associated with passive smoking and that Defendants would fund objective research to find definitive answers. Instead, over the decades that followed, Defendants took steps to undermine independent research, to fund research designed and controlled to generate industry favorable results, and to suppress adverse research results.

## **6. Defendants Undertook Joint Efforts to Undermine and Discredit the Scientific Consensus That ETS Causes Disease**

3435. ...Defendants recognized from the mid-1970s forward that the health effects of passive smoking posed a profound threat to industry viability and cigarette profits, through (1) increasing numbers of smoking restrictions; (2) making smoking "socially unacceptable"; and (3) reducing the number of starter smokers. This recognition resulted in concerted, international action by Defendants and other members of the industry to meet the passive smoking threat head on.

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### **(4) 1988-1999: The Center for Indoor Air Research (CIAR)**

3498. At a May 26, 1987 ETSAG [ETS Advisory Group, a committee of industry executives and lawyers] meeting, members decided that a new ETS research coordinating organization for the Defendants should be called the Center for Indoor Air Research ("CIAR") "in order to dissociate it and avoid confusion with the Tobacco Institute."

3499. CIAR was also an important component of the industry's ETS program established at "Operation Downunder" [an industry program to defeat smoking restrictions] in June 1987.

3500. ETSAG proposed "the formal organization of a research organization to deal with

issues relating to indoor air quality,” which became CIAR. The proposal for CIAR, presented to the Tobacco Institute Executive Committee on December 10, 1987, called for the creation of an organization "with its own staff and an increased research budget" for the ongoing ETSAG projects. At the end of the Executive Committee meeting, "it was agreed that Dr. Osdone [a Philip Morris scientific manager] and his group would proceed with the hiring of an Executive Director and the preparatory corporate and other steps for the establishment of the CIAR."

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3504. Defendants first offered the job of CIAR Executive Director to outsider Irwin H. Billick. When Dr. Billick questioned the independence, objectivity, and credibility of the organization because all research funding decisions would be made by the Board of Directors, the offer was withdrawn.

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**(a) CIAR Applied Projects**

3524. In addition to SAB [Scientific Advisory Board, made up of “outside” scientists that nominally oversaw peer review] projects, CIAR funded a class of studies called "Applied Projects," similar to CTR Special Projects, which were approved and directed by the Board of Directors with no review or recommendation by the Scientific Advisory Board. As described below, CIAR Applied Projects were used by Defendants to generate data and conclusions to support the industry's position on passive smoking.

3527. In a May 14, 1992 memorandum to Jim Charles, Pages distinguished "Applied Studies" from CIAR's ordinary research in these terms: The SAB recommends proposals for funding after they have been peer reviewed. Proposals can only be funded subsequent to approval by the Board. A second class of research projects -- Applied Studies -- are also funded if approved by the Board; such projects are not normally reviewed or recommended by the SAB.

3528. Funding for Applied Projects was often billed by CIAR [to the tobacco companies] as "Special Assessments" in addition to the yearly market share-based payments of the companies to CIAR.

3529. CIAR Applied Projects was used by Defendants to fund studies that were previously approved by the TI-ETSAG ...and underway at the time of CIAR's formation in early 1988. These studies included:

- 1. James Enstrom [UCLA] (\$525,000);** this study examined the association between spousal smoking and lung cancer using CPS 1 data.

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3539. In sum, it is clear that although CIAR was publicly billed as an independent scientific entity organized to support research projects addressing indoor-air issues, its

funding was controlled by the tobacco industry, and projects were sought for the purpose of establishing industry-favorable science and potential expert witnesses.

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**(d) The Appearance of "Independence"**

3635. Through their recruiting and training of consultants around the world, Defendants created a cadre of seemingly independent consultants to support the industry's position on secondhand smoke and to create the impression that a legitimate controversy existed among independent scientists. The global effort to create and manage this program required intense coordination among the companies and their counsel [outside lawyers].

3636. The need for seemingly independent consultants emanated in part from an internal recognition that the industry had little credibility with the public and among regulatory bodies. As stated in a July 24, 1991 BATCo summary of the program:

It has been apparent to the industry for some time that we do not have sufficient credibility to put forward a position on ETS (or any other issue for that matter) unless we can identify independent scientists who are saying the same thing. If independent scientists back up our position, it becomes more credible, not only to the general public and the media, but to politicians and other decision-makers. . . . Although it is essential for the industry to speak up about its positions, there are some things that are better left to independent scientists to express.

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**b. Defendants and Their Paid Consultants Controlled ETS Research Findings**

3731. Several projects managed by Defendants as part of their worldwide ETS program illustrate the degree to which Defendants closely supervised and, when necessary, altered the research on the question of ETS and disease. Four of these ETS projects -- the 1995 Japanese Spousal Study, the 1989 Malmfors/SAS paper, the 1992 HBI 585 Building Study, and the 2003 Enstrom/Kabat [UCLA] paper -- are described in detail below.

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**(4) The 2003 Enstrom/Kabat Study [UCLA]**

3781. James Enstrom's May 2003 article, "Environmental tobacco smoke and tobacco related mortality in a prospective study of Californians, 1960-1998," concluded that the association between ETS exposure and lung cancer and CHD "may be considerably weaker than generally believed." This study was CIAR-funded and managed and was published in the British Medical Journal.

3782. A June 25, 1996 Philip Morris e-mail [between PM executives] stated that Enstrom did work for Philip Morris and Reynolds "in the context of the EPA litigation," and that one of his new proposals was "clearly litigation oriented" and should be "pursued, if at all, in the context of attorney work product."

3783. Enstrom then sent his first proposal to perform statistical analyses on data from [a dataset collected by the American Cancer Society known as] CPS I to CIAR on July 15, 1996, stating:

For the past three years I have done consulting and research for Jeffrey L. Furr of Womble Carlyle [a law firm] on behalf of R.J. Reynolds and Philip Morris. This research has found a number of results that raise serious questions about several published findings on the relationship of passive smoking to lung cancer and other diseases.

Enstrom also stated in his July 15, 1996 letter to Eisenberg that his proposed CIAR research would "continue and expand upon" the research done for Womble Carlyle.

3784. At a November 1996 meeting, the CIAR Board of Directors discussed the Enstrom proposal and noted that Philip Morris lead scientist Richard Carchman and Reynolds lead scientist Charles Green (two members of the CIAR Board) had already visited Enstrom at UCLA to discuss the proposal with him personally.

3785. Enstrom wrote a January 15, 1997 letter following up on his proposal but directly to Carchman at Philip Morris, rather than to CIAR or its SAB:

A level of trust must be developed based on my past research on passive smoking and epidemiology in general in order to work out the best way for me to conduct this research. A substantial research commitment on your part is necessary in order for me to effectively compete against the large mountain of epidemiologic data and opinions that already exist regarding the health effects of ETS and active smoking.

3786. According to the minutes of the May 15, 1997 CIAR Board of Directors meeting, CIAR found a co-author collaborator for Enstrom, Geoffrey Kabat.

3787. By letter from Carchman dated April 25, 1997, Philip Morris agreed to fund a precursor study by Enstrom for \$150,000. That same year, Enstrom received funding from CTR, via a letter that proposed paying him an additional \$25,000 in addition to an ongoing CTR grant already in place.

3788. Enstrom's second proposal to CIAR, dated October 20, 1997, resulted in funding of at least \$525,000 from Defendants, a 1998 contract with CIAR as an Applied Project.

3789. As originally planned, the researchers conducted a study using California CPS I data to ascertain rates of reported cases of coronary heart disease, lung cancer, and chronic obstructive pulmonary disease for study participants identified as "never smokers married to smokers." ... the researchers concluded that there is no significant association between passive smoking and tobacco-related diseases in never smokers married to smokers.

3790. When the Enstrom/Kabat paper was published in the May 2003 issue of the British Medical Journal, it was roundly criticized in the scientific community. Members of the 2002 working group on involuntary smoking and cancer for the International Agency for Research on Cancer (IARC) made the following statement:

Enstrom and Kabat's conclusions are not supported by the weak evidence they offer, and although the accompanying editorial alluded to "debate" and "controversy", we judge the issue to be resolved scientifically, even though the "debate" is cynically continued by the tobacco industry.

The American Cancer Society had repeatedly warned Enstrom that using its CPS-I data in the manner he was using it would lead to unreliable results. Enstrom used only a small subset of the overall data, and, more importantly, the data corresponded to participants who enrolled in 1959, a time when exposure to tobacco smoke was common.

3791. Defendants nevertheless promoted the study. For example, in October 2003, BATCo cited the report on its website in support of its position that "the claim that ETS exposure has been shown to be a cause of chronic disease is not supported by the science." BATCo stated that a "very large study published in the British Medical Journal in May 2003 on environmental tobacco smoke in the home has found no increases in risk for the key smoking related diseases." The website provided a hyperlink to BAT's summary of the study:

In our view, this is an important study which confirms that many of the estimates of the risks of public smoking are overstated in the extreme, and that considerable doubts remain as to whether ETS exposure is associated with any risk of chronic diseases such as lung cancer and heart disease. We believe the study illustrates that calls for bans on public smoking cannot be justified on the basis of the suggestion of chronic health risk for non-smokers, although of course we believe that the needs of non-smokers should be also catered for with solutions such as good ventilation.

3792. In the present litigation, Defendants' statistician Edwin Bradley relied on the Enstrom paper as evidence that bias and confounding explain the elevated observed risks in epidemiological studies finding an association between spousal smoking and lung cancer.

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### **8. Defendants Continue to Obscure the Fact that ETS is Hazardous to Non Smokers**

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3836. BATCo's website also claims that the 1998 WHO/IARC study, which reported a increased relative risk of lung cancer of 16% for spousal exposure and 17% for workplace exposure, "found no meaningful increase in lung cancer risk." BATCo

summarizes the 2003 Enstrom study results, but fails to state that the study was funded and managed by the tobacco industry through CIAR and Philip Morris.

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**b. The Philip Morris External Research Program (PMERP)**

3847. Philip Morris has created a new organization called the Philip Morris External Research Program, or PMERP, to continue the scientific research carried out by CIAR.

3848. The MSA [Master Settlement Agreement that ended state litigation against the tobacco industry, including California's case], signed by representatives of certain Defendants on November 23, 1998, required that Defendants shut down and disband CIAR. CIAR's executive director Eisenberg formally dissolved the organization on December 6, 1999.

3849. Prior to CIAR's dissolution, Defendants were already forming a plan to establish a replacement. On November 25, 1998, Lorillard general counsel Arthur Stevens wrote a letter to Philip Morris general counsel Denise Keane with copies to Charles Blixt at Reynolds and Ernie Pepples at B&W. Stevens wrote: "Please call me later in the morning on Monday, November 30, 1998, so that we can discuss the status of the plan to reinstate CIAR. The matter seems to be 'dragging' without direction toward a positive resolution." The CIAR Board of Directors had a similar intent in 1998 to reconstitute CIAR.

3850. On October 11, 1999, Eisenberg faxed Philip Morris a proposal to form an "External Research Program" to administer research with a Scientific Advisory Board, a research agenda, and peer reviewers.

3851. Philip Morris established the PMERP in early 2000, using the same offices in Linthicum, Maryland, that formerly housed CIAR, employing many of the same individuals who were employed by CIAR, and even using the same phone numbers as CIAR had used. The program is administered by an entity called Research Management Group (RMG), set up in 2000 solely to manage the PMERP. RMG has never managed any other program. RMG is headed by Max Eisenberg, the former executive director of CIAR.

3852. Eisenberg and Philip Morris established a "Research Focus" and Request for Applications for PMERP in the same way that the Research Agenda and Request for Applications were established for CIAR. The PMERP utilized a number of former CIAR peer reviewers and grantees, as well as ETSAG project recipients, including James Enstrom, ... All told, 44 out of the 105 peer-reviewers listed by PMERP in its 2000 Request for Applications were drawn from the peer reviewer list in the 1998 CIAR Request for Applications. Moreover, 53 of the peer reviewers were former recipients of CIAR funding. Many researchers funded through CIAR have continued to receive funding through the PMERP. Through the PMERP, Philip Morris continues to manage projects conducted by ETSAG and CIAR researchers [including] James Enstrom, ...

3853. Eisenberg also organized the formation of a Scientific Advisory Board (SAB), similar in structure to the CIAR SAB. The PMERP SAB was originally staffed with two former members of the CIAR SAB.

3854. The subject matter of the research funded through the PMERP is very similar to that funded through CIAR. The first research topic area in the PMERP Research Agenda is "Exposure/Biomarkers/Dosimetry," a subject that includes the very same types of work that were funded as Applied Projects by CIAR. For example, PMERP funds work investigating "area and personal monitoring," "biological monitoring with biomarkers," and exposure assessment.

3855. The PMERP also solicits epidemiological research proposals to study risk factors and confounders in the development of cancer.

3856. As was the case with the CIAR SAB, the PMERP SAB has no authority to sign contracts with researchers or commit funds for any studies.

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### **3. The Enterprise operated through both formal and informal organization**

Like an amoeba, the organization of the Enterprise changed its shape to fit its current needs, adding organizations when necessary and eliminating them when they became obsolete. Whatever the shape or composition of the Enterprise at any given time, again like an amoeba, its core purpose remained constant: survival of the industry. The participants in the Enterprise coordinated and strategized in order to preserve and enhance the cigarette market and, in turn, their individual revenues. The Enterprise created and used formal and informal entities, many with overlapping participants and purposes, to serve Defendants' central mission.

For example, in terms of formal organization, TIRC/CTR and the Tobacco Institute were jointly formed and funded by other Defendant-members of the Enterprise to help the industry execute the strategy devised to achieve their shared goal. TIRC/CTR sponsored and funded research that attacked scientific studies demonstrating the harmful effects of smoking cigarettes but did not itself conduct research addressing the fundamental questions regarding the adverse health effects of smoking. Moreover, attorneys for Defendants initiated and oversaw CTR "Special Projects" -- research projects conceived and directed by industry representatives, including industry lawyers, to support scientists who had shown a willingness and ability to generate data, and provide testimony, that would bolster the industry's litigation position before courts and governmental bodies. Altria executives served on the Board of Directors of CTR, and Altria had, and exercised, approval authority for CTR special projects.

...

Defendants also used numerous other means -- including structures of varying degrees of formality such as CIAR, the Committee of Counsel, the ETS Advisory

Committee, the Ad Hoc Committee, the Research Liaison Committee, the Industry Technical Committee, law firms, and direct communications between and among members of the Enterprise -- to coordinate their activities, ensure continued adherence to the joint strategy, and enable the Enterprise to respond as new threats to the industry arose.

Defendants' claim that the Enterprise no longer has any organization within the meaning of [the RICO law] because all of the "all of the organizational vehicles for the 'enterprise' no longer exist" is unpersuasive. While it is true that CTR and TI were dissolved pursuant to the terms of the MSA, all of the other organizations either still exist or can be readily re-activated. Moreover, the individuals and Defendant-companies participating in these organizations, who, incidentally, often overlapped, still exist. Most importantly, Defendants have an ongoing need to satisfy the same purposes which these organizations met. Put simply, these organizations can be resurrected, recreated, or reincarnated at any time as Defendants wish. For example, Philip Morris currently has PMERP (Philip Morris External Research Program) which operates out of CIAR's former headquarters, is directed by CIAR's former scientific director, Max Eisenberg, and continues to fund many former CIAR projects.

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In addition, each Defendant had some part in directing the affairs of the Enterprise by coordinating and causing the public dissemination of false, misleading or deceptive statements denying the link between smoking cigarettes and adverse health effects, denying the addictiveness of smoking, and by committing related racketeering acts, all in furtherance of the primary, shared objective of the Enterprise. Defendant Altria (f/k/a Philip Morris Companies) argues that, as a parent company to Philip Morris, it did not participate in the affairs of the Enterprise. The Court concludes, however, that Altria did participate in the Enterprise both directly, by joining many of the Enterprise's organizations and by supporting its objective, and indirectly, by controlling the policies and public positions of Philip Morris, the only subsidiary of Altria which manufactures cigarettes. Altria participated directly in the operation and management of the Enterprise through, for example, the Scientific Research Review Committee ("SRRC"), which had responsibility for overseeing "all scientific studies, related to tobacco, smoke and/or smoking, conducted or funded by Philip Morris Companies or any of its subsidiaries around the world" with authority to review and approve all funding of scientific studies related to those topics. ... After the MSA mandated dissolution of CTR and CIAR, the SRRC continued to approve research projects funded by Philip Morris through its "External Research Program" which was created in 2000 to take over the function of funding third-party research and eventually took the place of the SRRC.

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**B. The Enterprise's Scheme to Defraud Presents Continuing Opportunities for Defendants to Commit Violations of 18 U.S.C. 1962 (c) and (d)**

There is a reasonable likelihood that Defendants' RICO violations will continue in most of the areas in which they have committed violations in the past. Defendants' practices have not materially changed in most of the Enterprise's activities, including:

denial that ETS causes disease, denial that Defendants market to youth, denial of the addictiveness of nicotine, denial of manipulation of the design and content of cigarettes, suppression of information and research, and claims that light and low tar cigarettes are less hazardous than full-flavor cigarettes.

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Finally, despite Defendants' claims that they have materially altered their management and are now "new" companies, the evidence demonstrates that they have not changed their policies or personnel in any meaningful way. For example, Philip Morris' current top executive staff is composed entirely of veteran employees with an average of fifteen to twenty years of company experience. The assertion that such longstanding, faithful employees will usher in dramatically new corporate policies seems reasonably unlikely.



CENTER FOR TOBACCO CONTROL RESEARCH AND EDUCATION

July 25, 2003

Lawrence Coleman  
Vice Provost for Research  
1111 Franklin St, 11th Floor  
Oakland, CA 94607  
University of California

Dear Larry,

This letter is a follow up to our most recent conversation about accepting tobacco industry funding for research conducted on behalf of the University of California Regents, and why we believe that acceptance of such funds may be in violation of current Regents and University policy. We want to address your concerns about the “slippery slope” potential of a policy of allowing individual academic units (or the entire University) to reject such money. As the Regents themselves have recognized, the combination of the deadly nature of the tobacco industry's products and its well-documented and explicit use of funding of academic research (particularly biomedical research) as a way of preventing the spread of public understanding of the dangers of smoking are unique. The tobacco industry's strategy of funding medical research, developed initially in 1953 in a secret meeting at the Plaza Hotel in New York City, has been successful at protecting the industry for decades, at a cost of the deaths of tens of millions of Americans and even more worldwide.

While universities could be excused from participating in this process because they failed to understand it, that is no longer the case. There is a strong and well-documented ongoing pattern of systematic manipulation of the scientific process to serve the tobacco industry's political and economic needs involving a massive worldwide public relations effort. It is not simply that we are talking about an unpopular industry. The issue is this: Knowing what we know now, is it consistent with the University's fundamental academic mission and Regents policy to continue as a supporting player with the tobacco industry?

#### Regents Acknowledge Tobacco Industry as Unique

The Regents have voted not to invest in tobacco stocks. While financial issues were important to them, their formal action explicitly noted “the related health issues,” both in the Finance Committee (January 17, 2001) and before the Board (January 18, 2001). The Regents explicitly affirmed this “no tobacco investments” policy because of “the convergence of a number of factors ... *specific* [emphasis added] to this set of facts.”

Regent Hopkinson addressed the question of the “slippery slope” in the context of the investment decision in comments to the *San Francisco Chronicle* on February 12, 2001:

Hopkinson does not believe the regents' vote would set a precedent for other unpopular companies to be considered for exclusion on ethical grounds.

“This has a combination of factors that is pretty unique,” she said. “It will be hard to

match that combination.”

Why would the Regents want to accept money from an industry that they have singled out as the *only* industry in which they would not invest?

### Congruence of Fiscal Policies

The "slippery slope" argument is one that the tobacco industry has routinely raised to oppose policies against its interests, including smokefree policies, decisions by arts and cultural organizations not to accept tobacco money, advertising restrictions, and other policies. These predicted subsequent problems simply have not materialized.

In the specific case of the University of California, the simplest way to avoid a “slippery slope” with regard to research (and other funding) is to recognize the Regents' investment policy, and state that as a matter of policy, the University will not accept funds from industries in which the Regents decline to invest. This would be consistent with the position taken by Regent Bustamante, reported in the February 12, 2001 *San Francisco Chronicle*:

Lt. Gov. Cruz Bustamante, who has been vocally opposed to any investment in tobacco, said it would be hypocritical of the university to buy tobacco stocks.

The university received \$22 million for research on tobacco-related diseases last year from Proposition 99.

### Funding of Biomedical Research Has Been and Remains a Central Element of the Tobacco Industry's Propaganda Campaign to Keep the Public Confused About the Dangers of Smoking and, More Recently, the Effects of Secondhand Smoke on Nonsmokers

The tobacco industry has a long and explicit policy of using the funding of university research—in particular medical research—to inhibit the spread of public understanding of the dangers of smoking and to prevent meaningful regulation of tobacco and tobacco products. (See attached bibliography.) This situation involves the conscious manipulation—almost always in secret—of the scientific process. These activities are antithetical to the fundamental mission of the university as an institution committed to enlightenment.

### UCSF Faculty Acted Appropriately to Defend the University's Academic Mission

Recognition of this fact was explicitly made in the petition signed by over 220 members of the UCSF faculty submitted to Chancellor Bishop on June 6, 2002:

The mission of the University of California is to improve and promote public health. The tobacco industry manufactures and markets products that are injurious to human health when used as intended and has repeatedly acted to interfere with academic freedom and the University's efforts to meet its educational, research, and public service missions. In recognition of the fact that the goals of UCSF and the tobacco industry are fundamentally opposed, we the faculty encourage the University of California, San Francisco to adopt a policy that our campus will reject any financial support from the tobacco industry [defined in the same way that the Regents use in their policy of not investing in the tobacco industry, plus any agencies that the tobacco industry establishes to fund academic research.]

After lengthy discussion and debate, a formal vote of the faculty was conducted by the Academic Senate in December 2002. The proposition: “Should we, the faculty, at UCSF refuse to accept any funding from

the tobacco industry, and the foundations it supports, an agreement that would be binding for all UCSF faculty?" passed with the support of 52% of those voting.\*

### UC Policy Recognizes the Right to Such Defense

Given what we now know about the tobacco industry's careful and decades-long manipulation of biomedical research, implementing the policy, particularly on a health sciences campus, is required by existing Regents' policies, particularly Regents' Regulation 5 (approved on June 15, 1944). That regulation states, "[T]he University assumes the right to prevent exploitation of its prestige by unqualified persons or by those who would use it as a platform for propaganda."

### UCSF Researchers Pioneered Study of Tobacco Industry Manipulation of the Academic Process

The tobacco industry has used universities in exactly the manner proscribed by Regents Regulation 5. A substantial body of scholarly evidence (much of it developed at UCSF and based on the previously secret industry documents now housed at UCSF; see attached bibliography), shows that the tobacco companies have suppressed, manipulated, and distorted scientific research on tobacco and have provided false information on tobacco and health to the public.

The tobacco industry developed this plan for manipulating the scientific community beginning with a secret meeting in New York at the Plaza Hotel in 1953. Tobacco industry executives, their lawyers, and public relations experts met to develop a plan to create controversy about the dangers of smoking as a way of preventing the public from accepting and acting on the evidence that smoking causes cancer. This meeting led directly to the formation of the Tobacco Industry Research Committee (later renamed the Council for Tobacco Research). This meeting and subsequent actions by the tobacco industry have been at the core of litigation against the tobacco industry based on, among other things, the contention that this entire enterprise constituted a fraud on the public.

The Council for Tobacco Research and the Center for Indoor Air Research (a similar organization that sought to generate research to support the industry positions on secondhand smoke) were dissolved as part of the settlement of litigation brought against the tobacco industry by the Attorney General of California, among others. The Philip Morris External Research Program is essentially a reconstituted Center for Indoor Air Research.

While there is no doubt that these organizations did support some high quality peer reviewed research, this work was carefully selected so as not to threaten the tobacco industry's scientific and political position. More important, these operations served as cover for secret "special projects" selected by lawyers and industry executives outside the scientific peer review system to meet specific industry political and propaganda needs. The universities unwittingly allowed their "prestige to be exploited" and allowed the tobacco industry to use them as "platforms for propaganda."

While past acceptance of tobacco industry money by universities could be excused because of a lack of understanding of the tobacco industry's secret procedures, that is no longer the case.

### A Recent Example: The UCLA Study of Secondhand Smoke

The most recent example of how the tobacco industry uses funding of university research as part of its for propaganda campaign is a May 17, 2003 study from UCLA on the health effects of secondhand smoke published in the *British Medical Journal*. This study concluded that secondhand smoke does not increase the risk of lung cancer or heart disease.

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\* The vote included all members of the faculty in all academic series with appointments at 50% or greater (i.e., ladder rank, in residence, clinical X, clinical, adjunct) who would be affected by the policy.

This paper has attracted a storm of scientific criticism, manifest as an unusually large number of criticisms through the *British Medical Journal's* "rapid response" mechanism (available, along with the original paper, at <http://bmj.com/cgi/eletters/326/7398/1057>.) There is little possibility that it will be taken seriously in scientific circles. To this extent, the normal scientific process of open discussion and debate is functioning effectively.

The difficulty is that the discussion of this study is not simply occurring within the academic community. If it were, this paper would go down as one bit of poor research done at a university with a reputation for high quality scholarship that slipped into a good journal because of the foibles of the peer review process. Instead, the paper is already being exploited world-wide in the tobacco industry's public relations and political campaign against effective measures to protect the public from the toxins in secondhand smoke. Public health experts are doing what they can to set the record straight, but the fact remains that the multinational tobacco industry has a much larger megaphone.

Like others reaching similar conclusions, this project was supported by the tobacco industry as a "special reviewed" project selected by industry lawyers and executives. (See the attached bibliography for more examples.) Rather than sharing the University's objective of supporting the best science as part of a larger search for truth, the tobacco industry has a long and well practiced program of using specially reviewed projects to stimulate and support just such studies as part of its propaganda and political activities.

The fact that a poorly conceived study funded by the tobacco industry reaches conclusions that, in contrast to the established literature, support the tobacco industry's agenda is not surprising. It is, however, unseemly and harms the University's reputation.

#### Given What We Now Know, Tobacco Industry Funding Makes Accomplices of Universities

Tobacco companies have deflected attention from the health hazards of tobacco by funding "distracting research." The tobacco industry has used research from industry sponsored meetings and conferences to promote the idea that controversy still exists regarding the adverse health effects of tobacco use and secondhand smoke for decades. Given the strong evidence that the tobacco industry systematically manipulates science, by accepting tobacco industry funds, universities facilitate the tobacco industry's marketing of a lethal product by an industry that has repeatedly undermined the University's core missions.

The University's willingness to accept money for this sort of research could be excused on the basis of ignorance of the larger picture in the past. That is no longer possible.

#### The APM Recognizes that the University is not Obligated to Accept All Offers of Extramural Funding

Many University regulations limit the sources from which researchers may accept funds. Academic Personnel Manual (APM) regulation 1-320 "establishes the basic framework of University policy regarding the types of acceptable activities and conditions under which the university will perform services under contract involving the use of University facilities." The regulation imposes several limitations, such as prohibiting the performance of routine tests, tests of a commercial nature, and tests related to (presumably legal) controversies. The University currently declines funding when there are unmanageable conflicts of interest involving research staff and some campuses limit the kind of financial arrangements that can be made surrounding clinical trials.

APM regulation 1-330 states that "[t]he University enters into certain contracts to carry out research projects for outside agencies *when it is convinced that the project is an appropriate University activity* (emphasis added)." The University does not have a blanket policy of accepting *any* research

support. Assisting the tobacco industry in its propaganda campaigns against the dangers of smoking and passive smoking or the "safety" of its new products is not "an appropriate University activity:"

Moreover, other academic units have implemented policies forgoing funding from specific sources. For example, the Energy Policy Institute rejects funding from energy companies, thus protecting its reputation for impartiality in policy matters. This decision is consistent with APM 1-330. Why is this policy of the Energy Institute acceptable, while other academic units, such as schools at UCSF, are being precluded from making similar determinations regarding the tobacco industry? The Regents have not in any way restricted their investments in the energy industry.

#### Privilege and Tenure Claims Would Not Be Well-Founded

You have raised the issue of an individual faculty member, precluded from applying for tobacco industry funding, filing a complaint with Privilege and Tenure. We do not believe there would be grounds for such action if preclusion were the result of a *general university policy*, as opposed to discrimination directed against an *individual* member of the faculty.

#### Leading Academic Health Sciences Centers Have Already Acted

In light of the current understanding of the tobacco industry's manipulative behavior, several major health sciences institutions, including the Massachusetts General Hospital, Brigham and Women's Hospital, University of Texas MD Anderson Cancer Center, Johns Hopkins School of Hygiene and Public Health, Harvard School of Public Health, University of Arizona School of Public Health, University of North Carolina School of Public Health, and Roswell Park Cancer Center, and the Schools of Nursing, Medicine, and Public Health at Emory University have institutional policies against accepting tobacco industry money.

In an April 2002 letter to alumni of the Harvard School of Public Health, Dean Barry Bloom wrote:

It is a fundamental tenet of academic freedom that our faculty members be able to pursue research that they deem compelling and important to society, regardless of who initiates or funds it. As I see it, it is the School's public responsibility—and our obligation to Harvard University—to ensure that the research is of the absolute highest standard of scholarship. But is there nowhere that we are prepared to draw the line on funding? We know that the greatest cause of preventable illness and death in the U.S. and globally is tobacco, which is estimated by WHO to be responsible for the premature death of four million people worldwide each year. As a school of public health, we have drawn the line on funding from the tobacco industry. I am proud that our faculty, while cherishing the value of academic freedom of inquiry, has nevertheless voted unanimously to forswear accepting research funding from the tobacco industry.

#### Need, Authority, and Precedent Require Rejecting Tobacco Industry Funding

The Regents have already rejected investments in the tobacco industry, in part for health reasons and a decision to refuse to accept funding for research (and other activities) is consistent with both the APM as well as current practices. Through a policy that ties the refusal of tobacco industry research funding to existing policy regarding tobacco industry investments, the university can limit any "slippery slope" possibilities, while demonstrating both fiscal and ethical consistency and responsibility.

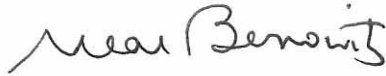
We sincerely hope that this information will convince you that any future acceptance of money from the tobacco industry is inconsistent with existing Regents and University policies. If you believe that we are misunderstanding specific Regents' or University policies or the historical record as it relates

to those policies, we would appreciate a specific response as to how. At the very least, we hope that you will remove your opposition to the implementation of a tobacco free policy at UCSF, a health sciences campus where these issues are particularly cogent.

We look forward to your reply.

Thank you for your consideration.

Sincerely yours,



Neal Benowitz, M.D.  
Professor of Medicine, Psychiatry  
and Biopharmaceutical Sciences



Stanton A. Glantz, Ph.D.  
Professor of Medicine

cc: Chancellor Michael Bishop  
UCSF Senate Chair Dan Bikle  
UCSF Senate Vice Chair Len Zegans  
Academic Council Chair Gayle Binion  
Academic Council Vice Chair Lawrence Pitts  
Executive Vice Chancellor Regis Kelley  
Vice Chancellor Bruce Spaulding  
Dean Haile Debas  
Dean Mary Anne Koda-Kimble  
Dean Kathleen Dracup  
Dean Charles Bertolami  
Vice President Joseph Mullinix  
Vice President Michael Drake

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University of California  
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Oakland, California 94607-5200

May 31, 2005

**ROBERT C. DYNES, PRESIDENT**

**Re: Academic Senate Resolution on Research Funding Sources**

Dear Bob:

I am pleased to inform you that at its May 11, 2005 meeting the Assembly of the Academic Senate adopted the enclosed *Academic Senate Resolution on Research Funding Sources*. The Resolution is an amended version of and supersedes the July 31, 2004 *Academic Council Resolution on Restrictions on Research Funding Sources*. It reflects the outcome of a full Senate review and considerable discussion among faculty members that was carried out over a number of months. I ask that you forward this revised Resolution to the Regents, for their information, and to the Chancellors and Vice Chancellors of Research with the request that it be disseminated to all appropriate individuals or offices on their respective campuses.

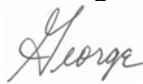
As you may remember, the July 2004 Resolution was originally drafted and presented to the Academic Council by the University Committee on Research Policy (UCORP) as a companion document to their "[Report on Problematic Restrictive Clauses in Contracts, Grants and Gifts for Research](#)." UCORP drafted the Report and the Resolution in fulfillment of a formal charge from the Academic Council to review UC's stance on tobacco funding bans within units of the University, and, more broadly, UC research funding policies and "strings" on research awards. The core argument of the Resolution was aimed at preserving the academic freedom of individual faculty members, and although prompted by faculty votes within individual units of the University to ban "tobacco money," the resolution did not specifically refer to that one source or issue. The Academic Council endorsed both the Report and the Resolution, and they were forwarded to you with the request that they be distributed to the various campus administrations.

Subsequently, though, concerns were raised by some faculty members with regard to both the content of the Resolution and the need for broader consultation on the issues it addresses. The Academic Council felt that these concerns warranted a reconsideration of the Resolution, and therefore in October 2004, sent it out to the Standing Committees of the Assembly and to Divisions for review. Formal responses from all Divisions and from six committees (CCGA, UCAF, UCAP, UCFW, UCORP, and UCPB) showed strong support for the Resolution. Based on this consensus, and taking into account comments indicating the need for some clarifying language, the Academic Council endorsed an amended version on March 31, 2005. In turn, the Assembly's May 11 action adopted the amended Resolution, and simplified its name to the "Resolution on Research Funding Sources."

By adoption of the current version of the resolution, the Academic Senate is expressing its belief that banning certain sources of funds by a majority vote of the faculty within a unit is a fundamental infringement of the academic freedom of the individual UC researcher who may wish to accept such funding and who is otherwise acting in compliance with UC policy. UC policy requires that scholarship be judged solely by professional standards, and the Resolution is aimed at showing that bans based upon judgments regarding the funding source or speculations about how the research might be used, fundamentally interfere with a faculty member's freedom to carry out a research program. The amended Resolution clarifies that the UC Board of Regents have sole authority to set research policy that would ban the acceptance of research funding from a particular source. It also makes clear the right of an agency of the UC Senate to request that the Regents adopt a policy to refuse funding from a particular source, and the path for making such a request.

I know that the administration, the faculty, and a portion of the public have followed this issue with considerable interest, and I am pleased to report that the discussion within the Academic Senate is finally concluded. I do hope that as a product of the collective wisdom of the Academic Senate, the amended Resolution will be viewed as sound in principle and helpful in practice.

Best regards,



George Blumenthal, Chair  
Academic Senate

Copy: Academic Council  
María Bertero-Barceló, Executive Director

Enclosure: Academic Senate Resolution on Research Funding Sources

GB/bgf

**Resolution of the Academic Senate  
On Research Funding Sources  
Adopted by the UC Assembly of the Academic Senate  
May 11, 2005**

**Preamble:** This resolution states that no unit of the University, whether by faculty vote or administrative decision, has the authority to prevent a faculty member from accepting external research funding based solely on the source of the research funds. The authority to set such research policy rests with the UC Board of Regents. Nothing in this resolution would prevent individual faculty members from voluntarily eschewing a particular source of research funding. Agencies of the Academic Senate may, through their divisions, propose that the statewide Academic Senate request, through the President, that the Board of Regents adopt a policy to refuse funding from a particular source.

WHEREAS, Only the UC Board of Regents has the plenary authority to establish policies on the acceptance of research funding; and

WHEREAS, Agencies of the Academic Senate may, through their divisions, propose that the statewide Academic Senate request, through the President, that the Board of Regents adopt a policy to refuse funding from a particular source; and

WHEREAS, No Committee, Faculty, or Division of the Academic Senate of the University of California has the plenary authority either to set aside the principles of academic freedom or to establish policies on the acceptance of research funding; and

WHEREAS, Freedom of inquiry is a fundamental principle of the University of California; and

WHEREAS, The University of California faculty code of conduct requires that “[Professors] respect and defend the free inquiry of associates”; and

WHEREAS, The University of California policy on academic freedom requires that scholarship be judged solely by reference to professional standards, and that researchers “must form their point of view by applying professional standards of inquiry rather than by succumbing to external and illegitimate incentives such as monetary gain or political coercion”; and

WHEREAS, The University of California has existing policies that encourage the highest ethical standards in the conduct of research, require disclosure of conflicts of interest, guarantee the freedom of publication, and prevent misuse of the University's name; and

WHEREAS, Restrictions on accepting research funding from particular sources on the basis of moral or political judgments about the fund source or the propriety of the research, or because of speculations about how the research results might be used, interfere with an individual faculty member's freedom to define and carry out a research program; now, therefore, be it

*Resolved by the University of California Academic Assembly, That the principles of academic freedom and the policies of the University of California require that individual faculty members be free to accept or refuse research support from any source consistent with their individual judgment and conscience and with University policy. Therefore, a unit of the University may not refuse to process, accept, or administer a research award based on the source of the funds; nor may such a unit encumber a faculty member's ability to solicit or accept awards based on the source of the funds, except as directed by the UC Board of Regents.*