

DAN BURTON, INDIANA,
CHAIRMAN

BENJAMIN A. GILMAN, NEW YORK
CONSTANCE A. MORELLA, MARYLAND
CHRISTOPHER SHAYS, CONNECTICUT
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. MCHUGH, NEW YORK
STEPHEN HORN, CALIFORNIA
JOHN L. MICA, FLORIDA
THOMAS M. DAVIS, VIRGINIA
MARK E. SOUDER, INDIANA
STEVEN C. LATOURETTE, OHIO
BOB BARR, GEORGIA
DAN MILLER, FLORIDA
DOUG OSE, CALIFORNIA
RON LEWIS, KENTUCKY
JO ANN DAVIS, VIRGINIA
TODD RUSSELL PLATTIS, PENNSYLVANIA
DAVE WELDON, FLORIDA
CHRIS CANNON, UTAH
ADAM H. PUTNAM, FLORIDA
C.L. "BUTCH" OTTER, IDAHO
EDWARD L. SCHROCK, VIRGINIA
JOHN J. DUNCAN, JR., TENNESSEE

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

www.house.gov/reform

December 6, 2001

HENRY A. WAXMAN, CALIFORNIA,
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
PATSY T. MINK, HAWAII
CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
ROD R. BLAGOJEVICH, ILLINOIS
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
JIM TURNER, TEXAS
THOMAS H. ALLEN, MAINE
JANICE D. SCHAKOWSKY, ILLINOIS
WM. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA

BERNARD SANDERS, VERMONT,
INDEPENDENT

The Honorable John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Ashcroft:

I am writing to bring to your attention new evidence of serious wrongdoing by the tobacco industry. I believe that this evidence, which comes from a person with extensive first-hand experience in the industry, warrants thorough investigation by the Department of Justice. The new information is relevant to the Justice Department's lawsuit against the tobacco industry, *United States v. Philip Morris*, and, if accurate, provides evidence that the industry engaged in numerous illegal activities.

The new information is contained in documents that were apparently produced to the Department of Justice by Philip Morris, Inc., and that were recently made available to the public online at www.pmdocs.com. The primary source of the information is a longtime tobacco executive named Ron Tully. If accurate, the information from Mr. Tully provides evidence that the tobacco industry engaged in: obstruction of justice, including the deliberate destruction of documents and the making of false statements to litigants; suppression of information about the health effects of tobacco; bribery; violations of antitrust law; and numerous other illegal or unethical activities.

Background

In the 1980s, Mr. Tully began working for Infotab (International Tobacco Information Center), a tobacco-industry consortium with offices in Switzerland. Infotab's board of directors included senior officials from Philip Morris, R.J. Reynolds, British American Tobacco, and Reemtsma, a German-based cigarette company. Infotab served as a collective monitoring and lobbying organization for the tobacco industry throughout the 1980s.¹

¹See, e.g., Committee of Experts on Tobacco Industry Documents, *Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization* (July

When Infotab closed down at the end of the decade, Mr. Tully went to work for its U.K.-based successor, the Tobacco Documentation Centre (TDC), where he served as chief executive. TDC's members included Philip Morris and R.J. Reynolds. According to the documents, its purpose was to serve as a "clearing house for . . . publicly available information on tobacco-related issues."² Mr. Tully worked at TDC from 1990 to 1997, when he left to work for the Santa Fe Natural Tobacco Co. in Santa Fe, N.M.

After his departure from TDC, Mr. Tully wrote two letters to Marion Funck, General Counsel of Reemtsma, on September 17, 1998, and September 25, 1998. These letters detail numerous instances in which Mr. Tully observed or took part in illegal or unethical activities for the tobacco industry. Mr. Tully explains in the September 25 letter: "[O]nce any can of worms is opened, it always amazes people what happens to crawl out. In the case of TDC, there are still many cans to [be] opened, and many worms to be dissected!"³

In his letters, which were also distributed to executives within Philip Morris,⁴ Mr. Tully states that he "had hoped that my departure from TDC would prove to be an amicable parting, combining both a convenient loss of memory on my part, and recognition from the Board of a job well done."⁵ He writes, however, that he learned from friends in the industry that an audit of the organization's accounts might assign him blame for financial improprieties. He expresses his anger at having "my own personal character assaulted by the very people who are attempting to maintain an ongoing deception themselves."⁶ And he indicates that the purpose of the letters is to "fight my corner in whatever way I need to maintain my own credibility and sense of honesty in this industry."⁷

The letters from Mr. Tully indicate that from the outset of his employment with the

2000).

²*An Introduction to the Tobacco Documentation Centre*, 2046265975-5989 at 5976.

³Letter from Ron Tully to Marion Funck, 2070478711-8715 at 8714 (Sept. 25, 1998).

⁴Inter-Office Correspondence from from Timothy J. Lindon to Christopher Devereux, Daniel Donahue, James Seddon, and Neil Withington of Philip Morris Management Corp., 2070478698 (Oct. 8, 1998).

⁵Letter from Ron Tully to Marion Funck, 2070478711-8715 at 8713-8714 (Sept. 25, 1998).

⁶Letter from Ron Tully to Marion Funck, 2070478711-8715 at 8714 (Sept. 25, 1998).

⁷Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8709 (Sept. 17, 1998).

tobacco industry, he was told that he was entering an industry that employed a “different way” of operating. Mr. Tully explains in his September 17 letter that upon joining Infotab it was made clear to him:

by the senior officers of the Association that I was now working in an industry that did things in rather a different way to other industries. Further, I was told that I would be privy to matters which could compromise both the Association, its officers and its Board. As a relatively naive newcomer to tobacco, I was ultimately surprised at the things I was asked to do in the name of the industry.⁸

The letters then proceed to describe many instances of illegal or unethical conduct that Mr. Tully observed or engaged in during his employment with the tobacco industry. These instances include destruction of documents, suppression of health information, bribery, and possible antitrust violations. These activities are described in detail below.

Other documents provide a partial picture of the tobacco industry’s response to Mr. Tully’s allegations. On September 29, 1998, a draft of an Arthur Andersen audit of Mr. Tully was forwarded to, among others, a senior executive of Philip Morris, one of TDC’s members.⁹ The next day, Philip Morris apparently expressed interest in acquiring Mr. Tully’s employer, Santa Fe Natural Tobacco.¹⁰ A Philip Morris memorandum dated October 8, 1998, scheduled a strategy meeting for October 14 to respond to the allegations made by and against Mr. Tully.¹¹

Handwritten notes apparently found in the files of Philip Morris’s general counsel, dated November 4, 1998, and titled “Santa Fe,” refer cryptically to “litigation.”¹² Another Philip Morris memorandum, dated November 11, 1998, said that Mr. Tully was asking “for direction on how to respond if approached by plaintiffs’ lawyers” since his “name has come up in depositions

⁸Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8702 (Sept. 17, 1998).

⁹Letter from Marion Funck to David Bacon of BAT Limited, I.E. Birks of Gallaher Group Plc, Adam Bryan-Brown of RJ Reynolds International Inc., Wendy Burrell of Philip Morris International Inc., and Jacqueline Smithson of Rothmans International Services Ltd., 2070478716 (Sept. 29, 1998).

¹⁰Letter from David Beran, Senior Vice President of Philip Morris USA, to Robin Sommers, Santa Fe Natural Tobacco Company, 2070478633-8634 (Nov. 25, 1998).

¹¹Inter-Office Correspondence from from Timothy J. Lindon to Christopher Devereux, Daniel Donahue, James Seddon, and Neil Withington of Philip Morris Management Corp., 2070478698 (Oct. 8, 1998).

¹²Handwritten Notes entitled Santa Fe, 2070478632 (Nov. 4, 1998).

in the *Iron Workers* case.”¹³ Philip Morris formally withdrew its indication of interest in the Santa Fe deal by letter on November 25, 1998.¹⁴ The letter specified an unusual arrangement for the storage of sealed boxes of documents by Santa Fe at an off-site location at the expense of Philip Morris.

Evidence of Obstruction of Justice

Mr. Tully’s allegations provide direct evidence that he and other persons and organizations obstructed justice by destroying incriminating documents and by misleading U.S. litigants.

Mr. Tully accuses the TDC board of acting “inappropriately in approving destruction of documentation which ‘may’ have proved relevant to plaintiffs in pursuit of their claims.”¹⁵ He admits taking part in the destruction of documents so as to “identify and remove all documents which could be viewed as ‘problematic,’ damaging, or useful to plaintiffs in any ongoing industry litigation” and adds that “such document destruction is a serious matter for the courts.”¹⁶ Mr. Tully says that he “authorized the destruction of close to 1 million individual pages in my seven years at TDC.”¹⁷

Specifically, Mr. Tully writes:

The Board has acted inappropriately in approving destruction of documentation which “may” have proved relevant to plaintiffs in pursuit of their claims:

I should advise you that I was requested by three of the largest Board Members to prepare a Board paper, which could be used as the justification for the systematic destruction of pertinent documentation (from Infotab and the TDC). The aim of the document destruction exercise was to identify and remove all documents which could be viewed as

¹³Inter-Office Correspondence from Timothy J. Lindon, Philip Morris Management Corp, 2070478651 (Nov. 11, 1998). The reference is apparently to *Iron Workers Local Union No. 17 Insurance Fund, et al., v. Philip Morris Inc., et al.*, a class-action lawsuit brought against the tobacco industry by labor union health and welfare insurance trust funds in 1997.

¹⁴Letter from David Beran, Senior Vice President of Philip Morris USA, to Robin Sommers, Santa Fe Natural Tobacco Company, 2070478633-8634 (Nov. 25, 1998).

¹⁵Letter from Ron Tully to Marion Funck, 2070478711-8715 at 8713 (Sept. 25, 1998).

¹⁶Letter from Ron Tully to Marion Funck, 2070478711-8715 at 8713 (Sept. 25, 1998).

¹⁷Letter from Ron Tully to Marion Funck, 2070478711-8715 at 8713 (Sept. 25, 1998).

“problematic”, damaging, or useful to plaintiffs in any ongoing industry litigation. I have to admit that I undertook a complete document review and reduced the Infotab papers to only the bare statutory minimum. This was done under the guise that Infotab had been liquidated, and that from a commercial legal standpoint, only the statutory papers needed to be retained. I should advise you that I authorized the destruction of close to 1 million individual pages in my seven years at TDC, and that in my last week at TDC, I spent most of my time dealing with around 5,000 key documents from Infotab Working Groups, ICOSI [an industry organization that existed prior to Infotab] and general correspondence and notes of meeting and discussions between senior industry executives (some of which proved useful refreshers for me!).

As you are aware, such document destruction is a serious matter for the courts, and I would not have undertaken such a systematic purge of paperwork, had I not been sure of the legal support these companies would have brought to me in the unlikely event that the TDC was named as a party to a lawsuit. I am sure that those Board members who requested this “service” will deny any discussion with me on such matters (I would in their position!), and would also suggest that this was done without their approval, or knowledge. But, the fact is, I wrote the Board paper on this, it was approved by the full Board (not as a policy, but a procedure) and I completed the task that was requested of me before I departed the TDC.¹⁸

These actions implicate 18 U.S.C. § 1503, which makes it a crime to corruptly influence, obstruct, or impede the due administration of justice, or to attempt to do so. There can be no doubt that the deliberate destruction of documentary evidence can constitute a violation of § 1503.¹⁹ In order to prove a case under § 1503, the government must also show that the defendant was aware of a pending judicial proceeding.²⁰ In this case, Mr. Tully’s admission that the intent of the destruction was to remove documents “useful to plaintiffs in any ongoing industry litigation” indicates that he and others were indeed well aware of pending proceedings.

In addition, Mr. Tully asserts that actions taken by the TDC board and its members, as well as the document-retention procedures approved by the board, “may have resulted in a misstatement of the purpose and nature of the TDC to US litigants who sought discovery on various

¹⁸Letter from Ron Tully to Marion Funck, 2070478711-8715 at 8713 (Sept. 25, 1998).

¹⁹*See, e.g., United States v. Monus*, 128 F.3d 376 (6th Cir. 1997).

²⁰“[A] person is not sufficiently charged with obstructing or impeding the due administration of justice in a court unless it appears that he knew or had notice that justice was being administered in such court.” *United States v. Aguilar*, 515 U.S. 593, 599 (1995), quoting *Pettibone v. United States*, 148 U.S. 197, 206 (1893).

industry Associations in 1996.”²¹ These are also potentially criminal acts. 18 U.S.C. § 1621 prohibits presenting material false statements under oath in official federal proceedings, while 18 U.S.C. § 1623 bars presenting material false statements under oath before or ancillary to federal court proceedings (for example, in a deposition).

Besides providing evidence of criminal conduct by the tobacco industry, Mr. Tully’s allegations of document destruction are directly relevant to the Justice Department’s lawsuit against the tobacco industry. In its complaint, the Justice Department accuses the tobacco industry of a “common scheme of deception and fraud in lawsuits, including, among other things, destroying and concealing documents.”²² The complaint also accuses the industry of making false representations in court.²³ Mr. Tully’s admissions appear to directly validate the government’s claims.

Evidence of RICO Violations

Several of Mr. Tully’s allegations also buttress the government’s claim in *United States v. Philip Morris* that the tobacco industry violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by, among other things, seeking to suppress information about the health effects of smoking.

The Justice Department’s complaint accuses the tobacco industry of attempting “to create false doubt about the health effects of smoking” and suppressing research into the harmfulness of smoking.²⁴ One of the racketeering acts that the complaint identifies in support of its RICO claim is “concealing and suppressing material information regarding the health consequences associated with smoking.”²⁵

Mr. Tully provides evidence that the tobacco industry sought to mislead the public about the dangers of smoking. He alleges that he was authorized to discuss “incentives” to encourage one tobacco expert and anti-smoking advocate to “‘temper’ his assault on tobacco manufacturers in Europe.”²⁶ Mr. Tully also admits to taking part in efforts to gain information about leading

²¹Letter from Ron Tully to Marion Funck, 2070478711-8715 at 8713 (Sept. 25, 1998).

²²Complaint for Damages and Injunctive and Declaratory Relief at 16, *United States v. Philip Morris, et al.* (D.D.C.) (No. 99-CV-02496) (hereinafter “Complaint”).

²³Complaint at 27.

²⁴Complaint at 17, 23-25.

²⁵Complaint at 77.

²⁶Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8703 (Sept. 17, 1998).

anti-tobacco advocates and groups in order to discredit those persons and groups; these efforts included a concerted campaign to interfere with the World Conference on Tobacco Or Health in 1992.²⁷ Mr. Tully further alleges that manufacturers undertook “specific unethical ‘actions’” in order to “subdu[e]” international non-governmental organizations.²⁸ Mr. Tully also admits that he was instructed by a board member to threaten a former employee against “using her knowledge of matters relating to Infotab in any public forum.”²⁹

Allegations of Bribery

Mr. Tully’s allegations present possible violations of the Foreign Corrupt Practices Act. Further investigation is needed to determine whether that Act was indeed violated and whether the alleged violations could be prosecuted.

Mr. Tully claims knowledge of a “‘selective disbursement fund,’ established by the TDC members for use in developing ‘support’ in tobacco growing countries.”³⁰ And he asserts that he is “aware of payments that were made, both in kind and cash, to senior health ministry positions in Malawi and to senior officials at the Food and Agricultural Organisation of the United Nations.”³¹

Mr. Tully also provides evidence of a possible conspiracy to bribe the then-head of the World Health Organization (WHO), Hiroshi Nakajima. He alleges that in October 1988, a meeting between the Secretary General of Infotab and members of two industry law firms “led to the suggestion that Dr. Nakajima should be offered an ‘incentive’ by Infotab, to assist the passage” of a proposal to tone down the WHO’s assault on the tobacco industry.³² Mr. Tully states that he was given the task of writing a briefing paper for the Infotab executive who was to meet privately with Dr. Nakajima.³³ It is not clear whether or not the “incentive” was indeed offered.

²⁷Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8703 and 8705 (Sept. 17, 1998).

²⁸Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8703 (Sept. 17, 1998).

²⁹Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8707 (Sept. 17, 1998).

³⁰Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8702 (Sept. 17, 1998).

³¹Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8702 (Sept. 17, 1998).

³²Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8702 (Sept. 17, 1998).

³³Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8702 (Sept. 17, 1998).

The Foreign Corrupt Practices Act, as amended, makes it illegal for any “domestic concern . . . to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money” to any foreign official for purposes of “influencing any act or decision of such foreign official in his official capacity” or “securing any improper advantage.”³⁴ The Act also makes it illegal for any U.S. national or corporation or partnership “to corruptly do any act outside the United States in furtherance of” such an offer, payment, or promise to pay.³⁵ As the Justice Department has pointed out, “a U.S. company or national may be held liable for a corrupt payment authorized by employees or agents operating entirely outside the United States, using money from foreign bank accounts, and without any involvement by personnel located within the United States.”³⁶ Violations of the Act can be punished criminally by fines of up to \$2 million (\$100,000 for people) and jail terms of up to five years.³⁷ The Department may also bring civil actions, with fines of up to \$10,000.³⁸

The activities that Mr. Tully describes appear to satisfy at least some of the elements of the Act. As officers of a foreign government or public international organization, Dr. Nakajima and the unnamed Malawian and U.N. officials qualify as “foreign officials” under the Act.³⁹ The contemplated offer to Dr. Nakajima was apparently intended, according to Mr. Tully, to influence an official act or decision. It is likely, though not definite, that the other payments described by Mr. Tully were also made to influence official acts or to secure an “improper advantage.”

Allegations of Antitrust Violations

Mr. Tully states that he attended meetings where senior Infotab officers and company executives discussed pricing policy in certain markets and held private discussions on

³⁴15 U.S.C. § 78dd-2(a).

³⁵15 U.S.C. § 78dd-2(i).

³⁶U.S. Department of Justice, *Foreign Corrupt Practices Act: Anti-Bribery Provisions* (on-line at <http://www.usdoj.gov/criminal/fraud/fcpa/dojdocb.htm>).

³⁷15 U.S.C. § 78dd-2(g).

³⁸15 U.S.C. § 78dd-2(g).

³⁹The Act defines “foreign official” as “any officer or employee of a foreign government” or “public international organization.” 15 U.S.C. § 78dd-2(h)(2). For purposes of the Act, a “public international organization” is “an organization that is designated by Executive Order pursuant to section 1 of the International Organizations Immunities Act.” The WHO and the Food and Agriculture Organization were thus designated by Executive Order 10025, issued December 30, 1948, and Executive Order 9698, issued February 19, 1946, respectively.

The Honorable John Ashcroft
December 6, 2001
Page 9

international company bidding strategies.⁴⁰ He writes that “[t]here are numerous meetings I attended at which I was ‘asked to close my ears’, -- although I am not a lawyer, I could conclude such discussions breached basic anti-trust law for both European and US companies.”⁴¹

Other Allegations

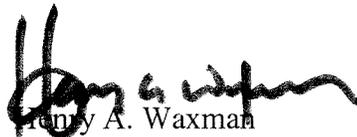
Mr. Tully accuses TDC and Infotab of gross mismanagement. He charges TDC -- which he calls “an organisation in crisis”⁴² -- with “operating in breach of both UK and Swiss Company law.”⁴³ He claims to be aware of “financial mechanisms” used by Infotab “to pay for things through the association, in order to obviate personal taxation obligations.”⁴⁴ And he cites numerous instances in which he was instructed to use Infotab or TDC corporate funds and assets for the personal benefit of board members, corporate officers, or other individuals. For example, Mr. Tully describes requests from Board members for him to charge fine wines and champagnes, computer equipment, art work, expensive dinners, limousine service, and theater tickets to industry accounts.⁴⁵

Conclusion

It is impossible to gauge the veracity of Mr. Tully’s allegations without further investigation. Nevertheless, the detailed, methodical manner in which he makes his allegations, the seriousness of those allegations, the relevance of those allegations to the government’s lawsuit against the tobacco industry, and the tobacco industry’s long record of malfeasance make it clear that Mr. Tully’s allegations are worthy of further investigation.

I hope that you will ensure that this matter receives prompt and thorough attention.

Sincerely,


Henry A. Waxman
Ranking Minority Member

⁴⁰Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8704 (Sept. 17, 1998).

⁴¹Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8702 (Sept. 17, 1998).

⁴²Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8708 (Sept. 17, 1998).

⁴³Letter from Ron Tully to Marion Funck, 2070478711-8715 at 8712 (Sept. 25, 1998).

⁴⁴Letter from Ron Tully to Marion Funck, 2070478701-8710 at 8704 (Sept. 17, 1998).

⁴⁵Letter from Ron Tully to Marion Funck, 2070478701-8710 (Sept. 17, 1998).