

# Public Health Under Attack: The American Stop Smoking Intervention Study (ASSIST) and the Tobacco Industry

Jenny White, MSc, MPH, and Lisa A. Bero, PhD

We describe the tobacco industry's response to the American Stop Smoking Intervention Study (ASSIST). Tobacco industry documents from the University of California, San Francisco/Legacy Tobacco Documents Library and industry Web sites were analyzed. LexisNexis and the Library of Congress's Thomas Web site were searched for legislative history.

We found that the tobacco industry considered ASSIST a major threat because of its emphasis on policy and creation of local tobacco control infrastructures. The industry mobilized resources for a well-coordinated attack on ASSIST. Although industry executives were sometimes frustrated in their efforts, they ultimately had a chilling effect on ASSIST.

This evidence suggests that tobacco control advocates should expect a vigorous response from the tobacco industry to policy advocacy efforts, particularly at the local level. (*Am J Public Health*. 2004;94:240–250)

Internal tobacco industry documents provide an unprecedented look at tobacco industry motives, strategies, and operations—information that is not available from any other source. In 1994, the first tobacco industry documents became public knowledge when documents from Brown & Williamson Tobacco Corporation and its parent company, British American Tobacco Company, were released by a tobacco industry whistle-blower. Additional documents became available during congressional hearings and from tobacco litigation cases. In 1998, the availability of tobacco industry documents increased as a result of the settlement of a suit by the State of Minnesota and Blue Cross/Blue Shield against the major tobacco companies. The Master Settlement Agreement between the attorneys general of 46 states and Brown & Williamson/British American Tobacco, Lorillard, Philip Morris, RJ Reynolds, the Council for Tobacco Research, and The Tobacco Institute released millions of additional documents. The documents describe an industry whose actions are directed at initiating and sustaining tobacco use.<sup>1</sup>

The American Stop Smoking Intervention Study (ASSIST) was the largest, most comprehensive tobacco control intervention trial ever conducted in the United States. A \$165 million project of the National Cancer Institute

partnered with the American Cancer Society, ASSIST awarded contracts to 17 state health departments to develop and implement the program in collaboration with local organizations and community coalitions. From its launch in 1991 through 1999, ASSIST had a conceptual framework that called for 3 types of interventions: policy (which received the greatest emphasis), media, and program services (which had the least emphasis). Interventions were to be delivered through 5 “channels”: community environment, work-sites, schools, health care settings, and community groups.<sup>2</sup> Because of ASSIST's potential to decrease tobacco use, we hypothesized that the tobacco industry would make major efforts to undermine it.

## METHODS

To understand the tobacco industry's reaction to ASSIST, we searched the Legacy Tobacco Documents Library of the University of California, San Francisco (<http://legacy.library.ucsf.edu>), 3 tobacco industry document Web sites (<http://www.pmdocs.com>, <http://www.tobaccoinstitute.com>, and <http://www.rjrtdocs.com>), and Tobacco Documents Online (<http://tobaccodocuments.org>) between June 10, 2002, and June 6, 2003. We applied a snowball search method and used keywords

such as “ASSIST,” “lobbying,” and “confidential.” This method locates additional documents related to the topic by searching on bates numbers which are adjacent to that of the first document identified. Bates numbers are unique numerical identifiers assigned to the documents during litigation.

We reviewed approximately 1400 documents and analyzed 221. We inductively coded these documents according to type of strategy, implementation, industry evaluation of their own efforts, and date.

We searched LexisNexis (<http://web.lexis-nexis.com/congcomp>) for legislative history and the Library of Congress's Thomas Web site (<http://thomas.loc.gov>) for congressional hearing transcripts, testimony, bills, and laws.

## RESULTS

In the mid-1990s, a number of tobacco control initiatives were introduced nationwide, including ASSIST. As a Philip Morris executive put it, “The simple fact is we are at war, and we currently face the most critical challenges our industry has ever met.”<sup>3</sup> The tobacco industry considered ASSIST a major threat because of its scope, its emphasis on public and private policy change, and its fostering of local tobacco control coalitions and infrastructures.<sup>3–7</sup> The tobacco lobby had played a powerful role in state legislatures.<sup>8</sup> ASSIST was shifting the arena of the debate, as a Tobacco Institute strategist pointed out:

Clearly, there is a well-orchestrated effort among the anti-tobacco leadership to strike where it perceives the tobacco industry to be most vulnerable: the local level. . . . During the 1980s and until very recently . . . the clear priority for the industry was in the state capitals; local activities always took a back seat. . . . Today [ASSIST] guarantees that local matters will take increasing portions of our time and effort. . . . Our local plan is crucial.<sup>9</sup>

### Excerpts From Tobacco Institute's Initial Plan of Action Regarding ASSIST, October 9, 1991

"We have filed a Freedom of Information Act request and will review the documents we obtain for 'public policy' activities which could spark state or local legislation on tobacco issues."

"Members of Congress have been asked to protest to the Administration this use of federal taxpayer dollars in an era of mounting deficits."

"In addition, we are pursuing the possibility of including in the Department of Health and Human Services Appropriations Bills for Fiscal 1992 language that would prohibit use of NCI funds for influencing state or local legislation. . . ."

"Concepts being explored: . . ."

"Work with state administrative and legislative leaders to ensure that those applying for grants meet stringent state guidelines for the use of ASSIST funds and face regular and rigorous state auditing processes."

"Work to limit state health departments' authority to fund com-

munity coalitions which pursue adoption of legislation or regulation; and limit state funding of anti-tobacco programs by amounts received under the federal ASSIST program. . . ."

"Identify appropriate local business and other groups in the 17 states to apprise them of the ASSIST grant program so that they might be better positioned to join a community-based ASSIST coalition and apply for grants. . . ."

"Focus special attention on the industry's youth programs in the 17 ASSIST states. . . ."

"Expand current monitoring of the activity of anti-tobacco groups in the states to ensure that misuses of ASSIST funds are made known in a timely fashion to state leaders and the public."

"Promote . . . independent scholarly works that call into question the motives and operating techniques of certain voluntary health organizations."

*Note.* ASSIST=American Stop Smoking Intervention Study.

*Source.* Chilcote.<sup>12</sup>

A Philip Morris executive described ASSIST's local focus as "a Pac-Man approach, gobbling up our ability to market a small piece at a time until suddenly this patchwork of marketing regulations coalesces into a crazy quilt that is as effective as a national ban."<sup>3</sup>

Within 2 days of the launch of the ASSIST program in October 1991,<sup>9</sup> tobacco industry executives were communicating about a broad range of strategies to "manage the situation."<sup>10</sup> The box on this page shows the Tobacco Institute's initial "plan of attack on the ASSIST program."<sup>11,12</sup> Numerous additional strategy papers, memos, and briefings on ASSIST were developed and discussed by industry executives and by public relations and legal firms with whom they contracted.<sup>3,5,13-27</sup> We describe the major strategies below.

#### Strategy 1: Gather Information on ASSIST and Monitor Its Activities

Tobacco industry strategists agreed that a crucial first step was to gather extensive information on the ASSIST programs, primarily through "aggressive open records efforts"<sup>21</sup> using the federal Freedom of Information Act (FOIA) and similar state legislation,<sup>11,13,20,24,28-32</sup> but also using materials gathered by private investigators,<sup>22</sup> spies,<sup>33</sup> and infiltrators.<sup>11,13</sup> In the fall of 1991, the Tobacco Institute filed a comprehensive request for the contracting documents for the national

ASSIST program and the 17 state ASSIST programs<sup>27,30,34,35</sup>; the first batch of documents was received in early November.<sup>34</sup> Industry lawyers<sup>32,36-41</sup> and front groups, including lobbyists<sup>42</sup> and consultants,<sup>43,44</sup> also filed document requests. Some of these requests were extraordinarily detailed and demanding, requiring a considerable amount of staff time to meet.<sup>36,39,44</sup>

The primary purpose of information gathering was to obtain intelligence on ASSIST programs and plans to develop industry counteractivities.<sup>20,24,34,41,44-46</sup> Thomas Briant, a lawyer from Minneapolis who was a lobbyist for the Tobacco Institute during the ASSIST era,<sup>47</sup> wrote that "the documents are like a road map because they indicate what cities are being targeted for ordinances, when the ASSIST groups will attempt to pass the ordinance and what kind of restrictions will be proposed to the city council of the targeted locality."<sup>48</sup>

A second purpose of information gathering was to find evidence of "illegal lobbying," the term used by the industry to describe ASSIST policy initiatives in the Community Environment Channel.<sup>49-62</sup> (The Community Environment Channel is the venue through which local and state ASSIST coalitions developed and advocated for policy initiatives, and publicized them through the media.) "Illegal lobbying" was determined early on to be one of ASSIST's most vulnerable areas. As

the Tobacco Institute's Susan Stuntz told the institute's Executive Committee in 1992, "We think that catching the ASSIST coalitions in lobbying activities offers our best shot at working through Congress, or in the states to redirect the anti-smokers' activity."<sup>7</sup>

A third major purpose was to expose alleged waste and inefficiency in ASSIST programs,<sup>22,24,51,58,63</sup> conflicts of interest,<sup>22,64</sup> and lack of compliance with rules.<sup>65</sup> A fourth was to use information obtained to develop counterproposals. In Minnesota, lobbyist Briant pointed out that "the retail associations [backed by the Tobacco Institute] submitted another grant proposal about three weeks ago for the 96-98 ASSIST years. The ASSIST documents obtained through the FOIA requests are helpful in drafting the retail ASSIST grant proposal."<sup>48</sup> In addition, the industry saw the value of obtaining proposals submitted by states that were *not* awarded ASSIST grants. As Karen Fernicola Suhr of Philip Morris wrote in 1992, "Although these states have not received ASSIST funds, they'll probably be using their proposals as blueprints for at least limited anti-smoking activities anyway, having gone through the trouble of developing them. So, a review of these proposals at some point would probably be useful."<sup>35</sup>

Thus, not only did these states fail to receive ASSIST funds, they also were forced to expose their plans to the tobacco industry.

Briant described the “chilling effect” the FOIA requests had on ASSIST activities:

The survey results show a reduction in the number of cities actually being contacted by the ASSIST groups even though the grants require [them] to attempt to pass a local ordinance in the targeted cities. . . . One reason for the reduction may be the chilling effect the document requests have had and the greater sensitivity of the Dept not to allow ASSIST funds to be used for lobbying activities.<sup>48</sup>

In some states, the tobacco industry planned to infiltrate ASSIST coalitions,<sup>11,13,26,48,66,67</sup> a tactic it has used against other public health groups as well.<sup>68</sup> Industry operatives took advantage of the openness with which ASSIST coalitions welcomed new members. Thomas Briant included the following in his analysis of the Minnesota ASSIST proposal:

As indicated in the Best and Final Offer Proposal, “any organization desiring to join [the ASSIST Coalition] will be welcomed.” Given this open membership, I would recommend that business groups which would be effected [sic] by the ASSIST study . . . become members of the Minnesota ASSIST Coalition.<sup>69</sup>

The one example of outright infiltration by tobacco industry operatives occurred in Colorado in 1992, where an individual apparently working for the Denver public relations firm of Karsh & Hagan reported on a meeting of an ASSIST coalition in Fort Collins:

I arrived after the meeting commenced and despite my effort to remain invisible, ended up seated at the head of the table. I signed in as a student and hoped that my baggy clothes and backpack would make this credible. . . . Would advise future “plants” to arrive late and leave early, avoiding the awkward small talk with other attendees that might create suspicion.<sup>33</sup>

By 1996, the Tobacco Institute had prepared comprehensive analyses of ASSIST programs in most ASSIST states,<sup>44,51,54,60,63,70,71</sup> including detailed reports on “lobbying activities” by all 17 ASSIST states.<sup>59</sup> RJ Reynolds<sup>57,72–75</sup> and Philip Morris<sup>76–78</sup> also prepared state-based analyses. The documents reflect an extremely well-coordinated effort, conducted at considerable expense to the industry.<sup>16,21,59</sup> A set of e-mail correspondence within Philip Morris in October 1995 indicates the tremendous workload industry operatives had in keeping track of the ASSIST program:

Tina Walls to Lance Pressl and Scott Fisher, [October 4, 1995]: “Quite frankly the issues group has been overwhelmed . . . and under staffed.” [October 5, 1995], Pressl to Josh Slavitt: “What do we need to do to get this jump started?” [October 5, 1995], Slavitt to Pressl: “I’m not sure what you mean by jump starting . . . this is a time consuming process fraught with delays and snags as the states attempt to avoid answering . . . questions. . . . ASSIST expires in 1997—what else CAN we do to jump start this?”<sup>79</sup>

## Strategy 2: Build and Use Alliances and Networks

*Political allies.* Industry strategists saw a number of ways in which their allies in Congress, governor’s offices, and state legislatures could help with the assault on ASSIST.<sup>14,20,22,80</sup> Industry staff helped their allies by writing text for interrogations of ASSIST leadership at congressional hearings. They also wrote letters for state and federal legislators to sign.<sup>65,81–87</sup> In the words of 1 Philip Morris strategist, political allies who took on ASSIST would “have to be prepared for criticism. . . . ASSIST has a ‘mother-pie’ veneer. . . . [However, if] framed

right, it’s a ‘good government’ story for reform-minded politicians. Fiscal watchdogs are interested in taking on this issue. The Republicans need an issue with the Democratic controlled Congress and White House—abuse of public funds is viewed as a haymaker.”<sup>16</sup>

On August 10, 1992, Republican US Senators Malcolm Wallop (Wyoming), Orrin Hatch (Utah), and Mitch McConnell (Kentucky) sent a letter to Health and Human Services Secretary Louis Sullivan complaining “that federal funds made available through the National Cancer Institute will be used to fund lobbying activities. . . . Given the disturbing precedent that this would establish . . . we ask that you take necessary steps to stop this practice immediately.”<sup>88</sup> As shown in Figure 1, parts of the letter are identical to an RJ Reynolds document (undated but with a fax date of March 24, 1992—4 months earlier).<sup>81</sup> Peter Greenwald, director of the Division of Cancer Prevention and Control of the National Cancer Institute, sent a detailed response to the senators on August 3, 1993, explaining that the

“The Department of Health and Human Services will spend \$115 million over seven years on the ASSIST program. An additional \$25 to \$30 million will be provided by the American Cancer Society. Moreover, the Department also will spend approximately \$20 million for national coordination and evaluation. . . .

“The model program does include a disclaimer on lobbying, but then includes in each of the grants awarded to the states a form entitled, ‘Disclosure of Lobbying Activities’ . . .

“The Massachusetts ASSIST program will use part of its federal funds to finance a conference involving legislative and advocacy leaders to draft legislation which would be submitted simultaneously to all of the New England state legislatures. . . .

“Some of the grantees were a bit skittish about being too directly involved in lobbying. For example, the Minnesota ASSIST program indicated that it would consider retaining the state’s existing tobacco control lobby as a subcontractor. . . .

“Once the federal government begins to finance one side of a public policy debate, there can be no debate. There will only be the federal government’s position.”

“Your department will spend approximately \$115 million over seven years on the program, and the American Cancer Society will provide an additional \$25 to \$30 million. Your department will also spend roughly \$20 million for national coordination and evaluation. . . .

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Source. RJ Reynolds memorandum<sup>81</sup> and Hatch.<sup>88</sup>

**FIGURE 1—Excerpts of RJ Reynolds document faxed March 24, 1992 (left), compared with letter from US Senators Malcolm Wallop, Orrin Hatch, and Mitch McConnell to Health and Human Services Secretary Louis Sullivan dated August 10, 1992 (right).**

ASSIST investigators were not engaged in “illegal lobbying.”<sup>89</sup>

Henry Bonilla (Republican, Texas) and Ernest Istook (Republican, Oklahoma) were key congressional allies of the tobacco industry,<sup>84,85,90–94</sup> as a “Weekly Bullet Report” prepared by Philip Morris lobbyists in Washington, DC, bears out:

LABOR, HHS [Appropriations Subcommittee]: PM [Philip Morris] consultants do not think we can chop funding for anti-tobacco programs, given the obvious sensitivity of the issue and the vote count on the Sen Subcomm . . . We can at least work w/ . . . Istook and Bonilla’s office on use of ASSIST funds for lobbying.<sup>95</sup>

On March 26, 1996, John Fish of RJ Reynolds prepared Bonilla’s staff for an upcoming House Appropriations Subcommittee hearing at which Health and Human Services Secretary Donna Shalala was to testify:

Attached are a few questions for Secretary Shalala—if Mr. Bonilla has the opportunity to ask them. They deal with a program called ASSIST. . . . One concern with asking Shalala about this contradiction [regarding lobbying] is it gives her the ability to get on her soapbox about tobacco.<sup>84</sup>

Following Shalala’s testimony at the appropriations hearing, a report dated July 8, 1996, from the Committee on Appropriations included the following:

The Committee is concerned that the National Cancer Institute may not be adequately overseeing the so-called ASSIST Program. . . . The Committee strongly urges the Inspector General to conduct an audit of the contractors in the program to determine whether the funds

are being properly spent and that the program is meeting its goals.<sup>96</sup>

Accordingly, Bonilla and Istook’s Appropriations Subcommittee then ordered the Health and Human Services inspector general to perform the audit.<sup>85,87</sup> The inspector general reviewed all 17 ASSIST states, focusing on New Jersey. In June 1997, the inspector general’s office wrote the 2 representatives that “six [of the cited] instances had not violated applicable Fed lobbying laws.” The inspector general found only “one instance where nonreimbursable lobbying activities occurred [involving a journal advertisement in New Jersey costing \$1470].”<sup>97</sup>

*Other allies.* The tobacco industry recognized the need to recruit and utilize outside organizations that were linked to the industry economically or philosophically.<sup>3,5,7,11,14–16,69,98,99</sup> These included tobacco vendors, tobacco company sales personnel, restaurateurs, grocers, and convenience store owners<sup>100</sup>; organizations and business groups concerned with “taxpayer abuse” and “government excess”<sup>14,15,18,101</sup>; and consumer groups (smokers).<sup>3</sup> Allies could send FOIA requests using sample letters provided by the tobacco companies,<sup>17,102</sup> request hearings or file complaints regarding “illegal lobbying” and other allegations,<sup>38,64,102</sup> file lawsuits,<sup>42</sup> lobby politicians from the local to the state level,<sup>103–106</sup> and speak for the tobacco industry in the media.<sup>101,107</sup> The box on this page shows strategies developed by the Tobacco Institute for working with local allies.

In return, some allies required “financial assistance to enable the organization to improve

its capabilities in dealing with tobacco issues,”<sup>108</sup> as was the case with the Minnesota Candy and Tobacco Association, which received \$20 000 from the Tobacco Institute in 1991<sup>99</sup>; the New York Tavern and Restaurant Association, which received \$26 272 from the Tobacco Institute in 1995<sup>109,110</sup>; and others.<sup>108,111–115</sup> Publicly, the tobacco industry worked to minimize the visibility of its role in funding and organizing retailer activity.<sup>100,107</sup>

In Massachusetts, the industry established a close working relationship with the New England Convenience Store Association.<sup>116,117</sup> As a Tobacco Institute strategist described it,

We fund [the association] to regularly report on ordinance introductions and assist in campaigns to stop unreasonable measures. . . . As a result the industry is prepared to deliver direct mail, run phone bank operations and otherwise attack local proposals with our local business allies in a generally coordinated and productive fashion. The team is beginning to export the Massachusetts efforts to other states in New England to prepare for the increase in local activity expected from ASSIST funding.<sup>5</sup>

In 1993, the tobacco industry worked with Burson-Marsteller, a public relations firm, “in setting up an organization . . . to defend and protect [smokers’] rights, monitor legislative activity, provide information, and represent smokers—not the tobacco industry—with the media and elected officials.”<sup>3</sup> The new National Smokers Alliance, and other local “grassroots” consumer coalitions, were established to counter the activities of local efforts generated by ASSIST, California’s Proposition 99, Massachusetts’s Question 1, and other tobacco control initiatives of the 1990s.<sup>3</sup> In

#### Excerpts From a Tobacco Institute Plan for Addressing Local ASSIST Policy Activity, November 30, 1992

“Develop effective monitoring systems to ensure that the industry learns of the introduction of unfair local anti-tobacco proposals in a timely fashion. . . [We need] an early warning system. . . .”

“Employ effective local advocates. . . . Identifying and deploying the local person who can ‘make the sale’ before local government entities . . . accounts for an extremely large portion of the reason the industry achieves its goals. . . .”

“Provide a solid foundation for coalition development and deployment. . . . The constant claim on the local front is that ‘It’s only the out of state tobacco industry that opposes this ordinance’. . . . Coalition coordinators . . . develop support from individual restaurateurs, retailers, hoteliers, local labor leaders and others. The coordinators get in the door, educate the potential allies, form official local groups if necessary, encourage their attendance at the hearings, motivate them to testify . . . and even encourage them to write letters to lawmakers and the press. . . .”

“Expand use of media relations staff to brief local media. . . . Expand the team of ETS [environmental tobacco smoke] and other expert witnesses available for one on one briefings . . . of legislators . . . and testimony at the local level.”

*Note.* ASSIST=American Stop Smoking Intervention Study. *Source.* Malmgren.<sup>5</sup>



Washington, another public relations firm, The Madison Group, recommended that the industry “cultivate the coalition that will carry the attack against Assist [*sic*]. . . . Organize coalition indignation and uprising against Assist. . . . Extend the issue and general indignation for as long as possible.”<sup>98</sup>

The industry had mixed success with these various allies.<sup>7,118</sup> In a memo dated November 29, 1995, Philip Morris’s Slavitt expressed some frustration with the lack of a strong key ally in New Jersey:

Oy vay! . . . as an ASSIST state, New Jersey is beginning to catch fire on the local level where communities are attacking our sales and marketing practices. It is difficult to implement our traditional methods of heading off legislative/regulatory marketing restrictions at the local level in New Jersey due to the lack of a strong retail trade association in the state.”<sup>119</sup>

Philip Morris strategists were also dubious about the industry’s ability to recruit smokers in their efforts against ASSIST:

Consumers are [a] diminishing resource and have doubts—doubts reduce effectiveness. . . . Fewer consumers will affect the pool of available activists who can/will articulate their own defense. . . . Efforts to enlist consumers in fighting the Anti’s directly have been generally unsuccessful.<sup>16</sup>

### Strategy 3: Disrupt ASSIST

The tobacco industry used a number of tactics to disrupt ASSIST. These included litigation, formal complaints, audits, and exhaustive FOIA requests. A task force convened by Philip Morris in 1993 identified the main objective for these activities: “Launch investigation of ASSIST program in Congress and in state legislatures. . . . Use overall investigation to develop a public relations program designed to erode credibility of opponents over the long term.”<sup>23</sup>

*Framing the debate: “illegal lobbying.”* The tobacco industry used a broad definition of “illegal lobbying” in its public statements and reports so as to include most ASSIST policy advocacy activities under that rubric.<sup>25,55,104,120–124</sup> All 17 ASSIST states were targeted with allegations of “illegal lobbying.”<sup>59</sup> In response to these repeated charges, in March 1993 the ASSIST National Office provided a training workshop for state contractors regarding limitations on political advocacy. The office’s “white paper” on lob-

bying concluded that “state public health agencies . . . may not use federal funds to lobby Congress. . . . [However, no current law] precludes lobbying the executive or administrative branch of government, at any level. . . . State public health agencies are likewise free to lobby the legislative branch at the state or local level, and to attempt to influence initiatives or referenda.”<sup>125</sup>

A Tobacco Institute document dated December 15, 1994, described how this “loop-hole” allowing lobbying at the local level was rectified:

This fall we were able to attach an amendment to the Federal Acquisition Streamlining Act legislation . . . which for the first time would prohibit federal funds from being used to lobby a local legislative body. . . . The Act will result in a revision of the Federal Acquisition Regulations, which govern all federal contracts, including ASSIST.<sup>19</sup>

The new legislation took effect on October 1, 1995,<sup>126</sup> and it applied only to government contracts issued after that date. Therefore, the original ASSIST contracts were not governed by the revised Federal Acquisition Streamlining Act.<sup>127,128</sup> The Tobacco Institute did attempt to use this act to restrict ASSIST advocacy in Minnesota and New York; both efforts failed because local programs were able to cite the opinion of the Office of General Counsel at Health and Human Services that the Federal Acquisition Streamlining Act did not apply either to the original contracts or to ASSIST’s subcontractors.<sup>104,127–130</sup>

Industry public statements and field reports from the 17 states also described ASSIST policy advocacy activities in a way that obscured the distinction between privately funded advocacy work by community coalition members and use of government funds for illegal lobbying through the health departments.<sup>51,52,54,60,73,81,123</sup> Lobbying by the community groups was legal both before and after October 1995. However, even if coalition members understood that their activities were appropriate and legal, some were reluctant to conduct advocacy activities with their private funds,<sup>40,131,132</sup> “or even to talk to public officials about tobacco control because of concern that their actions would be misinterpreted as illegal lobbying.”<sup>133</sup>

The result was often a decrease in advocacy activities.<sup>131,132,134</sup> In Minnesota, tobacco

lobbyist Thomas Briant was able to report that “the entire Minnesota ASSIST Project has been placed on indefinite hold until the outcome of the pending investigation”; no contracts were executed or funds disbursed for several months.<sup>40</sup> Briant wrote to industry executives in 1996 that the Ethical Practices Board had dismissed 15 of the 16 complaints brought by the Minnesota Grocers’ Association because the amount and time spent lobbying had not exceeded the threshold.<sup>26</sup> Undeterred, Briant went on to say that he would be “sending a letter to the Minnesota Department of Health informing them which ASSIST grantees intended to engage in local and/or state lobbying activities and request that the Department of Health take all necessary steps to prevent such lobbying.”<sup>26</sup>

Thus, despite legal setbacks,<sup>26</sup> the tobacco industry often met its “objective of turning the public spotlight on the improper and illegal use of public funds for anti-tobacco lobbying, producing a ‘chilling effect’ on the zeal and cavalier manner in which the anti-tobacco activists conduct their programs, leading to the diminishment and eventual curtailment of some of these programs funded with public money.”<sup>135</sup>

*Complaints and audits.* Given the weaknesses in the new Federal Acquisition Streamlining Act,<sup>19</sup> the Tobacco Institute concluded in 1994 that

The best way to use the new lobbying prohibition may be to bring a complaint to the Inspector General of Health and Human Services. . . . The complaints coupled with political pressure from the Hill eventually might be more effective than a FAR [Federal Acquisition Regulations] complaint to the GAO [General Accounting Office]. . . . By sending the complaints to the IG [inspector general], we could coordinate a grassroots effort that would send dozens of complaints to the IG’s office, forcing the IG to address the problem. . . . If the IG dismisses the complaints . . . his actions will be of interest to the appropriate congressional oversight committees. And, given recent political changes, HHS [Health and Human Services] may be more sensitive to congressional pressure.<sup>19</sup>

As mentioned under strategy 2, Bonilla and Istook’s Appropriations Subcommittee ordered the Health and Human Services inspector general to audit the ASSIST program. Demands for audits were also made at the state level,<sup>104,136,137</sup> often with the assistance of local politicians.<sup>17,22,26</sup> In Washington, tobacco industry operatives drafted letters for State

Representative Tom Huff,<sup>65,135</sup> as described in a memo from Bill Fritz of Public Affairs Associates, a Tobacco Institute consultant:

Here is the State Auditor's reply to Rep. Tom Huff's request for an audit of the ASSIST program. The audit appears to have been "a once over lightly" effort. . . . We should draft another letter for Rep. Huff's signature pointing out and reasking the questions that were not answered.<sup>86</sup>

As mentioned previously, although the audits failed to stop ASSIST activities, they had a "chilling effect" on the program.

#### Strategy 4: Divert Funds From the Community Environment Channel

The industry worked to divert funding from the Community Environment Channel, which had "the strongest emphasis in ASSIST . . . and focuses on goals and activities which are the most objectionable."<sup>24</sup> This channel was probably considered objectionable because of its focus on policy change at the local level<sup>3,5,20,138</sup>: "The community environment channel is very important in influencing [low-educated] population [*sic*]. The most effective way of reaching low-educated populations will be through policy and media advocacy."<sup>51</sup>

Within 3 days of the launch of ASSIST, RJ Reynolds executives proposed to use their contacts with political officials to "restrict or limit" funding from ASSIST's Community Environment Channel and instead "make programs directed at pregnant women and youth a priority; secondary priorities . . . may include smoking cessation programs for people who have decided to quit."<sup>10</sup>

The Tobacco Institute recommended that the industry attempt to "restrict ASSIST funding to school-based anti-tobacco education [*sic*]."<sup>20</sup> Consultants Hays, Hays & Wilson agreed that the institute should "advocate shifting all ASSIST funds to the Schools Channel."<sup>24</sup> (The Schools Channel is the venue for outreach to school administrators, teachers, and youth in the school setting.) Philip Morris's Slavitt pointed out, "The tobacco industry could also offer our own youth initiatives . . . and suggest that further federal or state funding is not needed for youth anti-smoking campaigns."<sup>14</sup> In other words, the industry could argue for a shift in funding to the politically appealing Schools Channel and then follow with an argument to eliminate the schools programs.

The industry also hoped to divert funding entirely from ASSIST to other non-tobacco-related programs.<sup>11,15,139</sup> Slavitt suggested that "Health Advocacy Groups could attack [Health and Human Services Secretary] Sullivan for failing to address major health care issues—AIDS, pre-natal, teen pregnancy, affordable health care, child immunization—instead of wasting more federal dollars on anti-smoking programs."<sup>14</sup>

#### Strategy 5: Media/Public Relations

A number of documents show how the Tobacco Institute and individual tobacco companies wrote press releases,<sup>38,140</sup> provided information to reporters,<sup>15,20,22,61,140</sup> and developed messages about ASSIST that they shared with each other.<sup>141</sup> The messages are described in the box on page 246. The industry made the most of FOIA requests by organizing media coverage such as the following plan from the public relations firm The Madison Group:

Prepare for FOIA request, identify spokesperson and provide adequate media training. . . . Provide targeted contact on the results to key office holders. . . . Counter efforts by Project Assist [*sic*] to stir up animosity in the media and among elected officials. . . . Identify investigative reporter(s) likely to independently pursue Assist abuse . . . brief and provide with information.<sup>98</sup>

The industry developed a comprehensive media plan to publicize a complaint against ASSIST's "taxpayer-funded lobbying" with the Washington Public Disclosure Commission in 1995.<sup>38</sup> The complaint was brought by Stuart Cloud, proprietor of a chain of Seattle-area tobaccoconists. Consultant Bob Kahn stayed in touch with the Tobacco Institute while developing a press release,<sup>38</sup> writing a backgrounder,<sup>37,123</sup> and preparing and arranging for interviews with Cloud and his attorney.<sup>123,142,143</sup>

A major public relations tool to counter ASSIST was the 1998 book *CancerScam: The Diversion of Federal Cancer Funds to Politics* by James T. Bennett and Thomas J. DiLorenzo.<sup>144</sup> Bennett and DiLorenzo have long-standing ties with the tobacco industry. Bennett, of George Mason University, has written several books and articles attacking the American Cancer Society, the American Lung Association, and other "health chari-

ties" (e.g., see references 145–148). DiLorenzo, of Loyola College in Maryland, also has written articles attacking tobacco control researchers and has cowritten several books with Bennett.<sup>149–153</sup> Philip Morris was a "benefactor" for Bennett's George Mason University in 1994 and 1995, donating in the \$10 000 to \$99 999 category.<sup>154</sup> *CancerScam* is a 170-page critique of the American Cancer Society that uses the ASSIST program as its prime example of government waste, greed, and cronyism. Three copies of double-spaced draft versions were found among Philip Morris documents. The drafts were all dated by Philip Morris as 1994, 4 years before the book was published.<sup>155–157</sup>

The documents also provide evidence that Philip Morris surreptitiously gave Bennett materials on ASSIST.<sup>158</sup> An e-mail dated May 27, 1993, from Josh Slavitt of Philip Morris stated the following:

Lindsay Stayer at [Denver public relations firm] Russell, Karsh & Hagen (sp?) . . . will collect all of the state agencies, universities and organizations involved in anti-tobacco activities in Colorado. . . . Once you receive this information. . . . forward a copy to Jim Bennett, be careful to ensure that nothing on Lindsay's materials references her firm, or contains any other references to PM [Philip Morris]—if there is a cover note, shred it. Please remember not to use a PM return address, or any thing which indicates that the info emanated [*sic*] from us—PM postal stamp, etc.<sup>159</sup>

The company also worked on public relations for the book. A handwritten memo faxed in August 1993 and found in a Philip Morris executive's office stated the following:

I got all the 411 on Jim Bennett. We need first to get this guy media-trained. We then need to identify key markets across the US to publicize his book and information. . . . Why not cultivate the very talented Grace Martin (formerly of Burson [Burson-Marsteller, a public relations firm]/DC) to do the publicity for Bennett. . . . She could . . . be very effective for us, without having any ties to us!<sup>160</sup>

A proposed 1994 Philip Morris budget for "communications" listed \$50 000 for "Assist [*sic*] Book Publicity."<sup>161</sup>

#### Strategy 6: Preemptive Legislation

The tobacco industry launched several legislative efforts in response to ASSIST, primarily legislation to reinstate banned or restricted sales practices and to preempt local legislation with weaker state laws.<sup>110,116,139,162,163</sup> Philip

**Tobacco Industry Messages Regarding ASSIST****Misuse of taxpayer dollars**

- “Illegal lobbying,” “Tax Grabs,” conflict of interest/“cronyism,” commingling of funds, use of front groups.
- Government waste
- Duplicates existing programs, unnecessary, diversion from legitimate uses (e.g. breast cancer, prenatal care), not effective.

**Greedy health professionals, volunteer charities, academics****Discrimination**

- Unfair tax burden on poor
- Workplace discrimination

**Freedom of choice and “commercial free speech”**

Left conspiracy (“an instrument of the Left designed to destroy a legal industry”<sup>24</sup>)

Morris executive Tina Walls spoke of the importance of preemption as a key strategy for dealing with tobacco control advocates’ “PAC-Man” approach:

The anti-smoking movement . . . can be in more places than we can and, thanks to Project ASSIST in 17 states, Proposition 99 in California and Question 1 in Massachusetts, the “antis” now have the deep pockets necessary to intensify their local efforts. The solution to “PAC-man” is statewide pre-emption. . . . We’re dead serious about achieving pre-emption in all 50 states.<sup>164</sup>

By the end of 1995, approximately 1006 communities across the United States had adopted local tobacco control measures. By the end of 1995, 29 states had enacted laws that preempted local ordinances. Twenty-six state preemption bills were introduced in 19 states during the 1996 legislative session alone; 17 states defeated these laws and 2 states passed them. Some of these bills were on specific policies and some were related to all aspects of tobacco control. Attempts to repeal preemptive tobacco control laws were initiated in 6 states; as of 1998, only Maine had succeeded in repealing one such law.<sup>165,166</sup>

**DISCUSSION**

This analysis of tobacco industry internal documents shows that the industry coordinated resources to aggressively monitor, audit, and infiltrate ASSIST coalitions; pursue legal actions; preempt local tobacco control initiatives; generate negative publicity about ASSIST; and use its political and other allies to attack ASSIST at every level of government. Furthermore, the tobacco industry attempted to hide its efforts by working through third parties. These tactics were not new to the industry.<sup>1</sup>

The tobacco industry used deceptive messages to further its objective of derailing

ASSIST. By claiming that ASSIST’s legitimate policy advocacy efforts were “illegal lobbying,” the industry intended to discredit the program’s most important component.<sup>131,133,167</sup> Most complaints brought against the ASSIST program for “illegal lobbying” were dismissed.<sup>26,133</sup> However, adverse rulings did not deter the industry from repeated attempts to derail ASSIST’s policy efforts. For ASSIST staff, the result was an enormous burden on their time and resources in responding to investigations and attending training sessions on how they could use their funds. This sometimes led, as intended, to delays in program implementation and curtailment of ASSIST activities; self-censorship in policy activities occurred in 11 (65%) of the 17 ASSIST states.<sup>133</sup>

The industry also used deception in attempting to shift resources from ASSIST’s Community Environment Channel to the Schools Channel. One possible reason the industry preferred the Schools Channel was that research indicated that it was less effective at reducing smoking than more broadly based policy measures.<sup>168,169</sup>

As ASSIST was the largest and most comprehensive tobacco control intervention that the tobacco industry had ever confronted, efforts to defeat ASSIST came at a high cost. The documents demonstrate that industry executives were under a great deal of pressure in dealing with ASSIST’s “PAC-Man” approach to policy advocacy and other activities.<sup>133</sup>

In 1999, after a 1-year extension and much discussion, the ASSIST program was transferred from the National Cancer Institute to the Office of Smoking and Health, within the Centers for Disease Control and Prevention, and merged with the IMPACT program (Initiatives to Mobilize for the Prevention and Control of Tobacco Use). This new nationwide program, known as the National To-

bacco Control Program, funded all 50 states at around \$1 million per state, and provided tobacco control funding to each state as a core public health service, as opposed to the research model of ASSIST.<sup>170</sup>

This document analysis has several limitations related to our use of internal tobacco industry documents as a data source. Because of the enormous volume of documents available and the inconsistent indexing of these documents, there is no way to determine whether all key documents related to the tobacco industry and ASSIST were retrieved. The purpose of this research was to document the tobacco industry’s plans and their implementation, not to establish causality between the industry’s efforts and the outcomes of the ASSIST project. However the continual FOIA requests, lawsuits, complaints, and negative publicity brought against ASSIST had a dampening effect on the program.<sup>131–133,167,171</sup>

Our analysis suggests that tobacco control advocates should expect a vigorous, sophisticated, and well-coordinated response from the tobacco industry to any efforts to implement policy change at the local level. Anticipating and countering these industry challenges should be considered as a tobacco control strategy by public health advocates. The tobacco industry’s response to ASSIST also shows that the task of mobilizing local tobacco control coalitions in a policy-focused approach presents the greatest challenge for the industry to overcome in its efforts to keep Americans smoking. ■

**About the Authors**

The authors are with the Department of Clinical Pharmacy, Center for Tobacco Control Research and Education, University of California, San Francisco.

Requests for reprints should be sent to Lisa A. Bero, PhD, University of California, 3333 California St, Suite



420, Box 0613, San Francisco, CA 94143-0613  
(e-mail: [berx@xxxxxxxxxx.ucsf.edu](mailto:berx@xxxxxxxxxx.ucsf.edu)).

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## Contributors

J. White conducted the document research, coded and analyzed the results, and wrote the article. L. Bero planned and directed the study, analyzed the results, and reviewed and edited the article.

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