

CHAPTER V

THE NEED FOR A PROCESS FOR OPENLY DISCUSSING AND DEBATING ISSUES

"Diplomacy is the art of fishing tranquilly in troubled waters."

— J. Christopher Herald,
Bonaparte in Egypt, Ch.1, p.17)

"Do I not destroy my enemies when I make them my friends?"

— Abraham Lincoln

My personal experiences in tobacco control over the last 20 years have led me to the conclusion that without sacrificing ones principles and objectives it is increasingly important to engage in substantive discussions with both friend and foe. Issues are neither black and white, nor are they static. Yet much of how the various stakeholders approach the tobacco issue are both antiquated and counterproductive for achieving the goal of reducing disease and death caused by tobacco use. Foes might actually turn out to be friends or at least collaborators. The inability of the various players to remove their blinders and to see opportunities is not dissimilar to criticisms about how we have managed the war in Iraq where dogmatic, entrenched thinking and an unwillingness to engage parties in finding solutions has created a polarization that increasingly hampers progress. Tobacco control at the national policymaking level is in need of an Iraq Study Group-like organization, one that focuses on problem solving. We need less of the attitude that "you're either with us or against us".

In this section we will look at two particular areas that need to be addressed. The first is our over reliance on the adversarial polarizing approach to policymaking represented by the private sector's and Congress's continuing inability to function in an effective and transparent manner. The second is to make a case for having an ongoing and sustained process of dialogue and debate where transparency and open dialogue on neutral ground can take place that could actually help make the legislative process function as it should. It is interesting from my per-

spective that this is what occurred when growers and health groups sat down (outside of Washington) to map out a blueprint for change that was then used, to the surprise of many legislators, for achieving some legislative goals. Yet even in that case, the cooperation between these two groups was unfortunately seen by many as a "marriage of convenience" when in fact it was far more than that. Over the last several years there has been a retreat on the part of the public health community and to some extent the tobacco producing community in continuing those dialogues. The issues may be slightly different but the need for dialogue between those groups and others is more pressing than ever before.

Why Over Reliance on the Legislative Process Falls Short

The American public has consistently given Congress and the Administration increasing low marks in their ability to get things done and to restore ethics and democratic principles to our governing bodies. The approval of Congress has consistently maintained ratings of less than 20%. When the Republicans retained control of Congress, Democrats were critical about how democratic processes were routinely circumvented, how legislation was brought to the floor having had no substantive hearings, and how non-germane amendments were slipped into legislation in the dead of night. Today, Republicans are accusing the Democrats of using similar practices. Although some in Congress keep promoting "change" and are having some success, I am not so sure that we can ever really reverse these patterns of behavior. I am convinced, however, that there are ways to better influence the decision-making process in such a way to bring ideas and solutions to Congress that have the chance of being seriously considered and enacted.

The issue of FDA regulation over tobacco products has been around for more than 20 years and yet, while progress has been made, the lack of understanding of the legislative proposals in Congress by many has created a polarization between parties unprecedented in past years. Part of the difficulties in getting this legislation enacted has been the process and the environment in which it has been considered. It has been pretty much an "inside the Beltway" effort with a few individuals and organizations dominating control over what is done. Accepting that the legislative process must be one of transparency, participatory government and compromise, we have fallen short.

During the entire two-year cycle of the 109th Congress and with the knowledge that the legislation “wasn’t perfect,” there were absolutely no discussions on how it might be improved or made fairer or more workable. No efforts were made to sit down and review the legislation. Prior to that, in the 108th Congress, there were no hearings on the legislation, nor any legislative markups.

It is now well accepted that the legislation was the product of negotiations between Philip Morris and the Campaign for Tobacco Free Kids. The legislation has remained pretty much in the same form as it was two Congresses ago, yet much has changed with respect to technologies, tobacco production issues, and the development of new lower-risk products that gained little consideration or attention at the introduction of the legislation or during the hearings or subsequent markup in the Senate.

The 110th Congress came in with great fanfare and great expectations about how that way of doing business was a “thing of the past” and that integrity and open government was going to be restored. But as with many issues this unfortunately has not been the case and once again special interests have been allowed to gain control and to influence outcomes at the expense of open government.

On several occasions (both in the 109th and 110th Congresses), the Alliance for Health Economic and Agriculture Development, in an effort to promote dialogue and transparency, suggested to Congress that they convene comprehensive hearings on tobacco with the purpose of hearing from all interested parties to establish national tobacco policy reforms. This included participation of the public health community, tobacco industry (broadly speaking), the pharmaceutical industry, producers, researchers, scientists, retailers, consumers and other experts. Holding hearings would have, not unlike the infamous hearings of the seven tobacco CEOs testifying before Congress, allowed for some tough questioning of the industry. It also would have provided an opportunity for smaller tobacco technology and biotech-oriented companies to express their views, as well as scientists and researchers doing important work on tobacco and nicotine to provide their views about the future.

I fully recognize that part of the problem is that the number of bills and activities in Congress has accelerated at light speed. Internet and email communications have increased the work

load of members and staffers to the point where there is little time to deal with the complexities of issues – let alone provide time for creative thinking and consideration of new ideas. The need and ability to compete for public and media attention day-in and day-out puts demands on legislators and their staff unheard of just five-to-10 years ago. And the role of partisan politics seems to be constant with no break or let up. One only has to look at the day-to-day attention that is being given to the presidential race that began some two years before the election.

Even for those in the private sector there have only been a few who have taken (or who have had) the time to even read the legislation or to place the legislation in the context of what is occurring in the broader tobacco environment. Today’s rhetoric and strategies for enhancing FDA legislation are not so different than the same rhetoric and strategies used in the mid to late 1990s. For the most part organizations merely sign on as part of a coalition endorsing only the broad concepts of what is being proposed and taking no time to consider the details. Even staff in the various organizations who are taking a lead role seem unaware or unconcerned about the details. I have made it a point to not only read the legislation but to consider it in the context of how the stated goal of reducing disease and death caused by the use of tobacco products might be more effectively achieved. But I understand the limitations and challenges facing congressional staff and under these circumstances it is not surprising that consideration of the FDA legislation has taken more than 10 years.

Here are a few suggestions that Congress and those in the private should have considered to ensure greater transparency and to make a good bill better:

- On the date of introduction of S. 625 and HR 1108, the “parties” to the agreement should have openly and transparently acknowledged that the legislation was the result of an agreement between CTFK and PM.
- Rather than privately agreeing that the legislation could not be altered in any way, it would have been far more appropriate to indicate that while the parties to the agreement opposed changes, they recognized that the legislation should be carefully reviewed and that the views and legitimate concerns of parties affected by the legislation should be given the opportunity to be heard.

- The various Committees of jurisdiction in both the Senate and House should have committed to open and comprehensive hearings on the legislation. This includes the prestigious and powerful House Oversight and Government Reform Committee (The Chairman of that Committee and the Ranking Minority Member of that Committee are the primary sponsors of the House legislation). Rather than hearing only from those who endorsed the legislation, it is important to hear from researchers, scientists, growers, industry and consumers. Rubber stamping legislation is as much a disservice to public health as having the industry use its clout to kill it. Two wrongs do not make a right.

If, as the CTFK has stated (and to which I would probably concur), this is the most important health legislation that Congress can consider in the 110th Congress (statement released on the occasion of the Senate HELP Committee's reporting of S. 625), then it only makes sense that a full and transparent consideration of the issues is given.

Why Dialogue and Engagement Outside of Congress Can and Will Help Shape Policy Decisions

There is no question that what happens to the tobacco issue in this country and globally will require meaningful, effective and workable policy changes. But there are far better and more effective, complementary ways of influencing policy decisions and outcomes that are made in an open, transparent and civil manner and to which time and focus can be dedicated (unlike the legislative process). The irony of what I am suggesting is that it has been the goal and battle cry of the 110th Congress to promote open dialogue transparency and cooperation for finding common ground. If Congress and the special interests working on the FDA/tobacco issue cannot bring themselves to achieving these goals then we need to find a way to help them do it "outside of the Beltway."

The Southern Tobacco Communities Project

In the mid-1990s, a bold and creative idea surfaced. Through a grant from the Robert Wood Johnson Foundation a project called the Southern Tobacco Communities Project came into being. Started in Virginia, the project soon expanded to cover other tobacco producing states including Kentucky, North Carolina, South Carolina, Tennessee and Georgia. The stated purpose of project was:

1. Understanding and documenting how cultural, political and economic factors affect tobacco growing communities;
2. Identifying and evaluating new economic opportunities and strategies in tobacco communities;
3. Establishing relationships and seeking creative ideas and advocates for federal state, and local policy change;
4. Informing and enhancing the public debate on tobacco and economic issues.

As was noted by Dr. Frank Dukes, Director of the Institute for Environmental Negotiation, the above purposes were encapsulated publicly through invitations to participate by advocating four relational goals. These goals:

"...as articulated in the STCP promotional literature, declared that participants were working to create constructive relationships among tobacco producers, health advocates and others concerned with changes facing these families and communities, to enable them to:

1. Replace inflammatory rhetoric, stereotyping and automatic enmity in favor of civil problem solving dialogue;
2. Understand each others' needs, values and concerns;
3. Identify areas of common ground and even interdependence, while acknowledging areas of difference; and,
4. Work together to create realistic, sensible and sustainable options for communities and families facing pressures associated with transition."

For decades, the public health community had viewed the tobacco growers as an integrated part of the tobacco manufac-

turing industry and considered them the enemy. The growers, heavily controlled and influenced by the tobacco manufacturers, were told that the public health community was intent on destroying their way of life. As an example, the industry, as part of its efforts to defeat FDA tobacco legislation, initiated a major public relations campaign in the tobacco producing states that used growers to send a strong message to Congress in opposition to FDA oversight. The campaign under the banner “Keep FDA Off The Farm” was bought and paid for by the manufactures who realized that grower views would resonate with policymakers on Capitol Hill. It was only through the face-to-face dialogue that growers would come to realize what the real intent of FDA oversight was and how they could actually benefit from it.

The dialogue that was conducted resulted in a greater understanding of the goals, objectives, opportunities and barriers that both the public health community and the tobacco producing communities faced.

Congress and the political environment surrounding tobacco had made it impossible for issues to be considered in an open manner. Polarization and the “us against them” attitude remained entrenched on Capitol Hill. Not unlike the debates and discussions surrounding FDA and the broader need for national tobacco policy reforms today. Congress at that time seemed to be at least two years behind where the dialogue and discussions had taken grower and health groups under the auspices of the STCP.

The diligent work of many who put their professional integrity and careers on the line and who checked their organizational and individual egos at the door made it possible for a historic set of Core Principles to be released at a press conference in 1998. Those principles included agreement that served the interests of both the public health community and the tobacco producing communities and would be endorsed by more than 150 organizations. They would serve as the basis for the establishment of the presidential tobacco commission in 1999 and with the issuance of a report in 2001. Time and space does not allow me to elaborate on the many meetings and discussions that took place as part of the STCP and which would lead to both the Core Principles Statement and the presidential commission report, and I suggest that for those of you who are interested in taking more time to recognize how significant this work was, consider reading, “*From Enemies to Allies: The*

Unlikely Collaboration Between the Tobacco Farm and Public Health Communities”, E. Frank Dukes, Ph.D., Director, Institute for Environmental Negotiation, University of Virginia.

I will say that while we all started out with great formality and trepidation, what eventually occurred was a willingness on the part of all the participants to openly talk with each other not only through structured meetings but increasingly in one-on-one conversations as well. We learned that having a dialogue and discussion did not mean having to agree on everything or having to give away essential positions. The issue was not whether we agreed with everything each other said but whether there was sufficient trust to make these discussions productive, if not essential, to moving forward toward finding common ground and potential avenues for resolution where we all thought none existed.

We learned that discussion and dialogue can take place in a neutral forum, away from pressures of legislative negotiations that often fall victim to politics and time constraints. As one grower who had been a part of the process and who would also go on to serve on the presidential commission noted: “The best thing we could have done was to have these discussions outside of the beltway and away from Washington.”

The Core Principles Statement led to the establishment of a presidential tobacco commission charged with advising the president on “changes occurring in the tobacco farming economy and recommend such measures as may be necessary to improve economic opportunity and development in communities that are dependent on tobacco products while protecting consumers, particularly children, from hazards associated with tobacco” (Executive Order 13168). The commission report provided a blueprint for successfully achieving those goals.

Membership included both tobacco producers and public health representatives. The commission’s work included a deliberative open process with several hearings being held to gather information and views related to the commission’s presidential charge. As the commission noted:

We emphasize that the Commission, a collection of growers, representatives of public health organizations and economic development experts found much common ground in the seemingly incompatible goals of assisting tobacco farmers and safeguarding public health. The

starting point goes back more than 15 years when tobacco growers and public health leaders first gathered in the mid-1980s for face-to-face discussions about the plight of tobacco farmers and their communities and the need to protect public health.

(Tobacco at a Crossroad: A Call for Action, May 2001, page ES4)

It is somewhat of a disappointment that many of the recommendations of the commission (both in substance and philosophically) have been ignored and in many ways forgotten as the FDA issue on Capitol Hill became tunneled-vision and as behind the scenes discussions replaced transparent and open dialogue. The current legislation, rather than seeking to accomplish many of the agreed upon goals and intentions in the report, comes up short in many areas, including "promoting the introduction of less harmful products."

Just as the opportunity and need to enter into dialogue between growers and public health organizations was able to move forward with positive and productive outcomes, so it now seems that there is an opportunity to enter into discussions about smokefree tobacco and nicotine products – a process that must take place and be independent of the politics of Washington. Just as there was great uneasiness on the part of many of the players when the dialogues and discussions started through the STCP, so too are there apprehensions about talking about smokefree tobacco and nicotine issues.

Yet I believe that there is clearly enough of a consensus to make such discussions and dialogue productive. Whether to engage the so-called "tobacco industry" is a particularly challenging issue, one that, as with so many issues in tobacco control, is unfortunately looked at in terms of black and white (good and evil). I would suggest that it is not so easy to define who the tobacco industry is. Is it what we in public health community came to call "Big Tobacco"? Or is it any business or individual who deals with tobacco and the tobacco business in any shape or form? Does it include the hundreds of small, very diverse companies scattered around the globe? Does it include the farmers, processors and leaf dealers? Does it include retailers and wholesalers of both tobacco leaf and manufactured products? Does it include biotech companies and other technology companies that are working on developing new, very different tobacco and nicotine-based products

than what we see on the market today? Does it include those who are developing GMO tobacco for use in a variety of different products including pharmaceutical and industrial enzymes? In terms of what I see needing to happen in fostering dialogue in a neutral setting, it should include all of these.

We need to be asking ourselves broader questions about the who, what, when, why, how and where such dialogue might take place. These questions should not only pertain to the industry, but also to the broad range of interests and experts within the tobacco control community, the public health community and scientific community where there are very diverse views.

The situation in tobacco control is not so different than some of the challenging issues and questions that the U.S. faces on issues related to Iraq, global terrorism and the role of the U.S. as part of the international community. The current Administration not so long ago referred to Iran, North Korea and Iraq as the "Axis of Evil," taking a hard line position that diplomacy could not play a role in dealing with them. Yet, today "diplomacy" is playing an increasingly important role as another tool for fostering change. Hard line positions need not be abandoned merely because other avenues are also being used.

In the final chapter, we will lay out a blueprint for changing the way we approach engagement in an area where there may be great potential for helping shape the dynamically and rapidly changing tobacco and nicotine environment.

Conclusion

In our efforts to find ways to regulate the tobacco industry and to force changes on them to modify their products, we have tended to over-rely on the legislative process as the only means for accomplishing those goals. Legislation, and in particular the enactment of fair but effective legislation that would give the FDA oversight authorities, is and will be essential. But because of our over-reliance on the legislative route as the only route, we have suffered from being able to have meaningful dialogue about what the goals of the legislation should be and the best means of accomplishing those goals. Experiences of engagement such as those that took place between tobacco producers and the public health community are indicative of what can be accomplished and how engagement can in fact assist Congress in making better policy decisions. There is an urgent need for engagement to discuss how smokefree tobacco and nicotine products can be used as part of overall strategies to reduce disease and death caused by the use of tobacco (and most importantly highly toxic cigarettes). We cannot expect that Congress will or has the time to consider the intricacies and complexities of these issues, and we cannot and should not rely on those doing advocacy work to take the time either. It is necessary to use our experience and the experience of others to develop mechanisms by which engagement can take place in a neutral and transparent fashion that will influence policymakers and hopefully change the behaviors of stakeholders in a way that will promote public health.