Issue Paper

Smoking in the Workplace

ISSUE PAPER

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INTRODUCTION

This briefing paper defines and analyzes the smoking in the workplace issue for policy makers at all levels in businesses, non-profit institutions, labor unions, and public agencies.

These individuals may represent personnel, benefits administration, finance, legal affairs, or general management. They will find at least one aspect of the issue — economic, sociological, or health — relevant to their policy making responsibilities.

This paper is not written for the general public, or employees (smokers and nonsmokers), but certain dimensions of the issue are important to them. This audience is discussed on page 14.

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EXECUTIVE SUMMARY

I. The smoking in the workplace issue, an outgrowth of the broader public smoking controversy, is a debate over the rights of smoking versus nonsmoking employees.

A. Tobacco industry opponents currently control the issue.

A leading spokesperson is William Weis, Associate Professor of Business Administration, Seattle University.

Weis' work and that of others have caused increased media coverage, more legislation, and more workplace smoking policies.

Traditional antismoking groups, such as the American Lung Association, have introduced workplace smoking efforts.

B. The tobacco industry is concerned with three dimensions of the issue: legislative, judicial, and voluntary.

This paper deals with voluntary actions taken by employers. It concerns three arguments: economic, sociological, and health.

II. The Economic Argument

A. Antismokers insist that smokers are more costly to employ than nonsmokers.

William Weis claims that smokers impose additional costs on business ranging from $4,611.00 to $5,610.00 per year.

B. The tobacco industry disagrees and responds with two main arguments:

1. Existing evidence from Weis and others does not establish that smokers are more costly to employ than nonsmokers.

   o Lewis C. Solmon, Profesor of Economics, UCLA, identifies Weis' faulty analysis and conclusions.

2. Unnecessary workplace smoking policies impose costs on businesses, with no proof of future savings from the effort.

III. The Sociological Argument

The root of the argument is nonsmokers' right to breathe smoke-free air versus co-workers' right to smoke.

A. Antismokers call for discriminatory hiring practices and other forms of discrimination against smokers.

B. The tobacco industry refutes the antismoker argument from a practical and from a social-rights position.

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1. From a practical viewpoint:

   - o Smoking in the workplace presents a potentially explosive issue which both labor and management should want to avoid;
   - o Compared to those issues involving wages and hours, it is relatively unimportant and not worth management or labor devoting time, energy, and resources to it;
   - o Smoking restrictions are costly to implement and enforce.

2. From a social-rights viewpoint:

   - o Smoking restrictions are paternalistic;
   - o Smoking restrictions represent social discrimination;
   - o Smoking restrictions are unnecessary (employees can settle their own differences).

IV. The Health Argument

A. Antismokers argue that ambient smoke is an annoyance and causes disease in nonsmokers.

1. They often rely upon a highly publicized study published by Drs. White and Froeb, March 1980, New England Journal of Medicine. The study claimed that smoking in the workplace adversely affects the lung function of nonsmokers.

B. The White/Froeb study and others have not established that tobacco smoke causes disease in the nonsmoker.

1. Many scientists, physicians, and experts have stated that tobacco smoke has not been shown to be a health hazard to nonsmokers.

2. Nonsmokers' acceptance of the antismoker argument can be attributed to their reliance on inconclusive research, inaccurate reporting, and social influences.

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BACKGROUND

The Issue

The smoking in the workplace issue is an outgrowth of the broader public smoking[1] question. It is a debate over the rights of smoking versus nonsmoking employees.

It is primarily a United States issue, but is likely to spread to other countries in a fashion similar to many tobacco-related issues.

Antismokers have defined and controlled the issue.

Currently, most public discussion of the issue, whether employee information, corporate programs, or print and broadcast media coverage, is controlled by persons with anti-smoking views. A primary information source is William Weis, Associate Professor of Business Administration, Seattle University.

The issue gained momentum in this country beginning in 1980, with a series of publications by Weis. He claims that companies lose from $4,611.00 to $5,610.00 per smoker per year, depending upon his publication date.

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1. Public smoking refers to nonsmokers' exposure to tobacco smoke in public places.

The results of Weis' work and that of others making similar allegations have been:

- o Increased media coverage. A brief analysis indicates media coverage[2] increased 348% from 1978 to 1982:

  1978. . . . . 102 placements

  1979. . . . . .121 placements

  1980. . . . . .182 placements

  1981. . . . . .181 placements

  1982. . . . . .457 placements

- o More workplace smoking restriction bills introduced (see examples, Appendix A).
- o More workplace smoking policies. Although figures vary, these are representative:
  - . in 1978 the Wall Street Journal reported that 30% of businesses had some sort of smoking policy (see Appendix B);
  - . in 1979 a national survey conducted by the National Interagency Council on Smoking and Health indicated that 49.6% of all companies surveyed had some sort of smoking policy (see Appendix C);
  - . in 1982 Business Week reported that 50% of all companies had formal smoking policies (see Appendix D).

Last year, the American Lung Association (ALA) introduced smoking in the workplace efforts which included "Freedom From Smoking" self-help manuals and "Freedom From Smoking" clinics. In July 1982, ALA sponsored a seminar called "Corporate Smoking Policies - A No-Fault Approach," featuring Weis and other smoking opponents. Its

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2. Media coverage includes radio/TV transcripts and newspaper, magazine, and journal publications. The analysis is not comprehensive but confirms the issue's increased publicity.

purpose was to explore the economic, legal, and management implications of restricting employees' smoking.

The Tobacco Industry's Response

While the industry has addressed this issue, it has not yet undertaken an organized workplace smoking program.

A Weis critic and tobacco-industry consultant on the issue is Lewis C. Solmon, Professor of Economics, UCLA. Solmon's work demonstrates Weis' faulty analysis and conclusions. He has written an article which appeared in Personnel Administrator, March 1983.[3] Personnel Administrator is one of the first publications in which Weis' work appeared.

The tobacco industry is concerned with three dimensions of the smoking in the workplace issue:

1. Legislative actions;
2. judicial actions; and
3. voluntary actions taken by businesses and other organizations. These actions generally include restricted smoking areas and discriminatory hiring practices of United States businesses.

This paper focuses upon the third area, voluntary actions. However, it should be useful to those concerned with the legislative and judicial areas as well.

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3. See Appendix E for Dr. Solmon's article.

The voluntary aspect of the issue revolves around three basic arguments:

1. economic;
2. social; and
3. health.

Each argument has sub-issues and each is related to the other. The issue, though, is best understood by analyzing it according to these three categories.

The following pages discuss each argument, giving the views of the tobacco industry and its opponents. The discussion identifies those audiences likely to find each argument important.

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THE ECONOMIC ARGUMENT

Audience

The economic argument is most relevant to personnel, financial, and benefits administration managers of large companies; public agencies; and small business owners or managers.

Antismokers

Tobacco industry opponents argue that smokers are more costly to employ than nonsmokers. A leading spokesperson is William Weis, Associate Professor of Business Administration, University of Seattle. In his May 1981 article, "Can you afford to hire smokers?", in Personnel Administrator (see Appendix F), Weis contends that smokers impose additional costs on business in the form of:

(Cost Categories)	(Annual Cost Per Smoker)
. increased absenteeism	$ 220.00
. more medical care	230.00
. lost earnings from increased morbidity and early mortality	765.00
. increased insurance premiums	90.00
. on-the-job time lost	1,820.00
. increased property damage and depreciation	500.00
. more maintenance	500.00
. involuntary smoking	486.00
Total cost per smoker per year	$4,611.00

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The Tobacco Industry

The industry disagrees with Weis' conclusions and responds with two arguments:

1. Existing evidence does not establish that smokers are more costly to employ than nonsmokers.

Lewis C. Solmon, Professor of Economics, UCLA, refutes Weis' analysis and conclusions in his article entitled, "The Other Side of the Smoking Worker Controversy" (see Appendix E).[4] He notes Weis' major flaw — the assumption that each cost category (as listed on p. 8) is affected primarily or solely by employee smoking — and identifies a variety of additional factors influencing each category.

He scrutinizes other aspects of Weis' work, including:

- His faulty survey methods: Weis surveyed only employers who have instituted smoking policies;
- his inaccurate statistical analysis and miscalculations: Weis confuses average and marginal returns in his calculations; he attributes employee costs to the employer; and he does not support a statistical association between smoking and absenteeism;
- his questionable data manipulation: Weis used many selective statistics. One example is his choice of an unrepresentative year to calculate the number of days smokers were absent.

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4. See also Appendix G-1, "'Rebuttal: 'Ifs, ands or butts'" for J. Everett Hicks rebuttal of Weis article (Appendix G-2), "'No ifs, ands or butts,' - why workplace smoking should be banned."

2. Unnecessary workplace smoking policies impose costs on businesses, with no proof of future savings from the effort.

Segregation or unnecessary smoking policies disrupt the workforce by creating an unnatural physical division of employees. This decreases productivity if:

- o An employee's location is determined by his or her workplace behavior -- smoking -- rather than by his or her job; or
- o an employee must take time to walk to a designated smoking area to smoke a cigarette.

Segregation or unnecessary smoking policies disrupt management. This decreases productivity if:

- o Management must take steps to enforce smoking restrictions;
- o management must devote legal resources to smoking problems; or
- o management must deal with new labor relations problems resulting from smoking restrictions.

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THE SOCIOLOGICAL ARGUMENT

Audience

Certain dimensions of this argument are important to organized labor, personnel, financial, and legal workplace policy makers.

Antismokers

Antismokers have convinced some employers that smoking is socially unacceptable and that it calls for discriminatory hiring practices. The root of this argument is the right of nonsmokers to breathe smoke-free air and the apparent lack of co-workers' rights to smoke (see example, Appendix H, Supervisory Management, "Cold Shouldering the Smoker;" see Appendix I for further discussion of social discrimination).

The apparent lack of legal recourse for smokers against this form of discrimination[5] gives the social argument greater importance.

The Tobacco Industry

The industry refutes this argument from a practical and from a social-rights standpoint.

1. Practically speaking:
   a. Smoking in the workplace presents a potentially explosive issue which both management and labor should want to avoid.
      - o In a non-union shop, the issue could provide an argument to be used in organizing;

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5. See "Legal Aspects of Smoking in the Workplace," Appendix J.

- o in an organized shop, the issue could create a hostile political environment and a division both within the union and between the union and management; and
- o in any contractual situation, it is a working condition that should be bargained for; it cannot be unilaterally imposed (see example, Appendix K).

b. Smoking in the workplace is a relatively unimportant economic issue. During a difficult economic period, both labor and management have more important concerns. Such an issue, if introduced to the collective bargaining process, would cloud more important issues of wages and hours.

c. Smoking restrictions, as discussed previously, are costly and cumbersome to implement and enforce.

2. From a social-rights standpoint:

a. Smoking restrictions are paternalistic.

They represent management intrusion upon the personal lives of smokers and nonsmokers. They can reduce morale by creating divisiveness among co-workers.

b. Smoking policies represent social discrimination, generally. Specifically, they discriminate against non-management and blue-collar workers, since:

- o A greater proportion of smokers are non-management;
- o restricting smoking in common work areas leaves those with private offices undisturbed; and
- o complete segregation leaves those with private offices undisturbed.

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e. Smoking restrictions are unnecessary. People can solve disagreements about smoking, as about other workplace behaviors, through cooperation and courtesy.

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THE HEALTH ARGUMENT

Audience

This argument is most relevant to the general public, or employees (smokers and nonsmokers). Unlike that audience composed of business and labor managers, the public views smoking in the workplace largely according to the alleged health effects and/or annoyance of ambient smoke.

Objective research shows an increasing percentage of nonsmokers who believe cigarette smoke is probably hazardous (from 57% in 1975 to 74% in 1982). Likewise, an increasing percentage find it annoying (from 54% in 1972 to 61% in 1982). Predictably, significantly smaller numbers of smokers hold these opinions.

Majorities of smokers and nonsmokers believe there should be separate smoking sections in the workplace. However, few support a complete workplace smoking ban -- an attitude which coincides with general public opposition to extremism of any kind.

Antismokers

Antismokers use the usual public smoking argument: ambient smoke is an annoyance and causes disease in nonsmokers.

They often rely upon a highly publicized study to promote workplace smoking restrictions. Entitled, "Small Airways Dysfunction in Nonsmokers Chronically Exposed to Tobacco Smoke," the article appeared in the New England Journal of Medicine, March 1980. Its authors, Drs. White and Froeb, concluded that smoking in the workplace adversely affects the lung function of nonsmokers.

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The Tobacco Industry

The tobacco industry responds to the antismoker position:

1. The White - Froeb study and others concerning public smoking have not established that tobacco smoke causes disease in the nonsmoker.

Many scientists, physicians, and experts have stated that tobacco smoke has not been shown to cause disease in nonsmokers.

Among them is Dr. Michael D. Lebowitz, Professor of Internal Medicine, College of Medicine, University of Arizona. He states, "The results of this study cannot be used to demonstrate an effect of passive smoking on forced expiratory flows in adults exposed in the workplace." He adds that the study was "improperly designed" and that "there are problems with the whole data set and with the conclusion." (See Appendix L for Lebowitz's detailed response.)

A sampling[6] of other experts' comments on the public smoking issue include:

- Dr. Domingo Aviado, Professor of Pharmacology, University of Pennsylvania Medical School: "on the basis of existing scientific evidence, tobacco smoke constitutes no health hazard to nonsmokers in public places."

- Dr. Hiram T. Langston, thoracic surgeon and clinical Professor of Surgery at Northwestern University Medical School: "An assertion that tobacco smoke is a health hazard to the normal nonsmoker is untenable. . . the

6. See Appendix M for other experts' comments.

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regulation of public smoking, under the guise of a mandate to protect the public health, is without scientific justification."

- Dr. Suzanne B. Knoebel, Professor of Medicine at the Indiana University School of Medicine: "...there are no indications that tobacco smoke in the atmosphere either causes or accelerates cardiovascular disease in the healthy nonsmoker. Nor do available studies establish that atmospheric tobacco smoke under realistic conditions adversely affects nonsmokers with preexistent cardiovascular disease."

- Dr. Kenneth Moser, Professor of Medicine and Director of the Pulmonary Division of University Hospital, University of California, San Diego: ". . . there is not now a sufficient body of hard facts to support the view that public smoking poses a health hazard to the lungs of the nonsmoker."

2. Despite the lack of persuasive evidence supporting antismokers' health argument, increasing numbers of nonsmokers believe smoking is hazardous to them.

There are several reasons why:

1. Incomplete research findings are too often presented to the public by scientists and the media as "fact";
2. Research which questions anti-smoking allegations is too often not publicized; and
3. At least one social anthropologist, from Harvard Medical School, believes it may be a reflection of frustration with life in general. He believes that overcrowding, coupled with social upheaval, has made people overly sensitive to some components of others' behavior. The visibility of smoke,

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he believes, makes the act of smoking an obvious symbol against which to react. "To some people," he testified, "the smoker has become a ready target for general frustrations, anxiety, and discontent."[7]

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7. Hearings on the Effect of Smoking on Nonsmokers Before the Subcommittee on Tobacco of the House Committee on Agriculture, 95th Cong., 2nd Sess. 58 (Serial No. 95-000, 1978) (Testimony of Sherwin Feinhandler, Ph.D.).

CONCLUSION

Smoking in the workplace is a growing issue which demands the attention of the tobacco industry and non-industry workplace policy makers.

Unfair workplace smoking restrictions:

- have no economic or scientific justification;
- create unnecessary labor/management issues; and
- are costly and difficult to enforce.

The business community and legislatures must recognize antismokers' weak claims on this issue and avoid unnecessary and unfair workplace smoking restrictions.

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APPENDIX A

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SENATE, No. 675

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Senator GRAVES

AN ACT controlling smoking in places of employment and supplementing Chapter 30 of Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that the resolution of the conflict between the right of the smoker to smoke and the right of the nonsmoker to breathe clear air involves a determination of when and where, rather than whether, a smoker may legally smoke. It is not the public policy of this State to deny anyone the right to smoke. However, the Legislature finds that in those places of employment affected by this act the right of the nonsmoker to breathe clean air should supersede the right of the smoker to smoke. In addition to the deleterious effects upon smokers, tobacco smoke is (1) at least an annoyance and a nuisance to a substantial percentage of the nonsmoking public, and (2) a substantial health hazard to a smaller segment of the nonsmoking public. The purpose of this act, therefore, is to control smoking in places of employment, except in designated areas.

2. As used in this act:

a. "Employer" means the proprietor, regardless of whether he is the owner or lessee of the place of employment, or his authorized agent, who ultimately controls, governs or directs the activities and conduct in the place of employment. The term "employer" means a corporation as well as an individual.

b. "Place of employment" means structurally enclosed location or portion thereof which is not usually frequented by the public at which more than 50 or more individuals perform any type of service or labor for consideration of payment under any type of employment relationship with or for a private corporation, partnership or individual.

c. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco.

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3. Every employer shall establish written rules governing smoking in that portion of a building for which he is responsible. The rules shall contain a written policy and procedure to protect the health, welfare and comfort of employees from the detrimental effects of tobacco smoke, which policy shall include designated nonsmoking areas but may include designated smoking areas, unless otherwise prohibited by municipal ordinance under authority of R. S. 40:48–1 and 40:48–2 or other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire. Nothing in this act shall prevent any rule, policy or procedure concerning smoking, which is not contrary to the provisions of this act, from being established by the employer or negotiated as a term or condition of any agreement or contract of employment. Employees shall be provided with a copy of the written rules upon request.

4. a. The State or any agency or political subdivision thereof may suggest guidelines for rules governing smoking in places of employment which may be adopted by employers, but in no case shall they be mandatory.

b. The provisions of this act shall supersede any other statute, municipal ordinance, and rule or regulation adopted pursuant to law concerning smoking in places of employment except where smoking is prohibited by municipal ordinance under authority of R. S. 40:48–1 and 40:48–2 or other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire.

5. Every area in a place of employment where smoking is prohibited or specifically permitted shall be so designated by the employer with a sign containing lettering not less than 2 inches in height contrasting in color with the sign and stating either "Smoking Permitted" or "Smoking Prohibited: Violators Subject to Fine." Every sign shall be located so as to be clearly visible to employees.

6. a. The employer or any agent thereof or a police officer or other public servant engaged in executing or enforcing this act may order any person smoking in violation of this act to comply with the provisions of this act. Thereupon any such person who smokes in a place of employment in violation of this act is subject to a fine not to exceed $100.00.

b. The State Department of Health or the local board of health or such board, body or officers exercising the functions of the local board of health according to law, having reason to suspect that any place of employment is or may be in violation of the provisions of

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this act shall, by written notification, advise the employer thereof accordingly and order appropriate action to be taken. Thereupon, any employer or person receiving such notice who knowingly fails or refuses to comply with the order is subject to a fine not to exceed $25.00 for the first offense and not to exceed $100.00 for the second offense and not to exceed $200.00 for each offense thereafter. In addition to the penalty provided herein, the court may order immediate compliance with the provisions of this act.

c. Any penalty recovered under the provisions of this act shall be recovered by and in the name of the Commissioner of Health of the State of New Jersey or by and in the name of the local board of health. When the plaintiff is the Commissioner of Health, the penalty recovered shall be paid by the commissioner into the treasury of the State. When the plaintiff is a local board of health, the penalty recovered shall be paid by the local board into the treasury of the municipality where the violation occurred.

d. Every municipal court shall have jurisdiction over proceedings to enforce and collect any penalty imposed because of a violation of any provision of this act, if the violation has occurred within the territorial jurisdiction of the court. The proceedings shall be summary and in accordance with "the penalty enforcement law" (N. J. S. 2A:58–1 et seq.). Process shall be in the nature of a summons or warrant and shall issue only at the suit of the Commissioner of Health of the State of New Jersey, or the local board of health, as the case may be, as plaintiff.

7. No employer or any agent thereof shall be subject to any action in any court by any party other than by the Commissioner of Health of the State of New Jersey or the local board of health for failure to meet the provisions of this act.

8. The Judiciary, Law, Public Safety and Defense Committee of the General Assembly, and the Law, Public Safety and Defense Committee of the Senate, or their respective successors, are constituted a joint committee for the purposes of monitoring the effectiveness of the implementation of this act. The Commissioner of Health of the State of New Jersey shall, 2 years from the effective date of this act, report to the joint committee, an evaluation of the effectiveness of this act and the committee shall, upon receiving such report, issue as it may deem necessary and proper, recommendations for administrative or legislative changes affecting the implementation of this act.

9. This act shall take effect 180 days after enactment.

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STATEMENT

The purpose of this bill, as well as its companion legislation, Senate Nos. 672, 673 and 674 of 1982 and P. L. 1981, c. 318 (C. 26:30-1 et seq.), P. L. 1981, c. 319 (C. 26:30-7 et seq.), and P. L. 1981, c. 320 (C. 26:30-15 et seq.), is to protect and preserve in a reasonable manner the health and comfort of the people in this State by establishing areas that are free from the toxic and annoying effects of tobacco smoke. As a result of hearings held on smoking, it is clear that there is overwhelming scientific evidence that tobacco smoke is detrimental to nonsmokers' health, welfare, and comfort, especially to those who have allergies or cardiovascular or respiratory diseases. The regulation of smoking in certain confined places, i.e., determining when and where, rather than whether, a smoker may legally smoke is, therefore, necessary for the public health. This legislation is even more important in our industrial State where tobacco smoke acts to exacerbate the effects of our existing air quality.

Specifically, this bill requires employers to balance the health and comfort of nonsmoker employees with the right of employees who desire to smoke by establishing respective areas for each. Several employers have adopted this policy and either prohibit smoking in their facilities or control it by limiting smoking to certain areas. The provisions of the bill do not mandate private businesses to adopt a particular policy, but only set broad parameters. This bill would permit further restrictions not contrary to the bill to be adopted by the employer or to be negotiated as a term or condition of employment.

A person smoking in violation of this act would be subject to a fine not to exceed $100.00. Failure to establish nonsmoking areas and to post such areas after being notified of noncompliance by the Department of Health or local board of health may result in a fine not to exceed $25.00 for the first offense, not to exceed $100.00 for the second, and not to exceed $200.00 for each additional offense.

Fines shall be collected by the Department of Health or local board of health. No suit may be brought to enforce this act except by the Department of Health or local boards of health. The Commissioner of Health shall report back to a joint committee of the Assembly Judiciary, Law, Public Safety and Defense Committee and the Senate Law, Public Safety and Defense Committee in 2 years as to the effectiveness of this act.

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APPENDIX B

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THE WALL STREET JOURNAL
Tuesday, Nov. 7, 1978 p 1

Fewer Workers Now Are Singing 'Smoke Gets in Your Eyes'

Firms Use Bonuses and Clinics To Get Employes to Quit; A Saving on Cleanup Costs

By Eileen V. Kelliher
Staff Reporter of The Wall Street Journal

Neon Electric Corp. decided no-smoking is good business. Eighteen months ago, the Houston sign maker got rid of its ashtrays, banned smoking by its employes and offered a raise of 50 cents an hour to any worker who kicked the habit.

Sherman H. Hink, Neon's president, says the campaign is costing him $1,000 a year because one man, his best sign maker, has dropped a three-pack-a-day habit; three other workers are trying to quit.

The smoke is clearing at an increasing number of companies like Neon. Indeed, 30% of U.S. businesses have some sort of no-smoking policy, either banning smoking or limiting it to designated areas, says a survey by Dartnell Institute of Business Research in Chicago. Three percent of U.S. businesses even pay their workers not to smoke, Dartnell says.

"Army" of Janitors

Companies are turning against tobacco in response to evidence that smoking costs them money—about $19 billion a year from absences and premature deaths due to smoking-related illnesses, says the U.S. Department of Health, Education and Welfare. Heart disease, lung cancer, emphysema, high blood pressure and other illnesses said to be smoking-related usually occur when an employe is 45 or older, at the peak of his or her career and of the greatest value to the company. Additionally, HEW says direct health-care costs attributable to illness from smoking are another $9 billion.

There are other costs too. Merle Norman Cosmetics banned smoking at its four plants and its Los Angeles office in 1976 and thereby cut its housekeeping costs by 10%, or $13,500 a year, says J. B. Nethercutt, chairman. Mr. Nethercutt says he got rid of the "army" of janitors who disrupted work three times a day to empty ashtrays.

The Alexandria, Va., fire department stopped hiring firefighters who smoke, in part because 16 of the 22 men who have retired since 1973 because of disabilities were smokers who developed heart or lung disease. The city estimated that a disability retirement cost it about $100,000 more than did a routine retirement.

Rewards to Quit

Vaughn Morgan, president of Cybertek Computer Products Inc., says he estimated that smoking habit took 15 minutes of his time each day, or 3% of the work year. Applying that figure to the average $22,500 salary at his Los Angeles-based company, he decided smoking cost $675 a year per smoker—so he began offering them $500 each to quit.

Other employers are offering similar incentives. Speedcall Corp., of Hayward, [illegible] president, Gardiner Hempel, began offering his 36 employes $7 for each week they didn't smoke. Last year, Speedcall, which makes mobile communications systems, paid nearly $10,000 in rewards, and the number of smokers dropped to four from 25 in two years.

City Federal Savings & Loan Association of Birmingham, Ala., has paid monthly dividends to nonsmokers since 1967. Last year, the company paid nearly $40,000 in $20 monthly rewards to 166 of its 185 full-time employes.

Wager Window

James Miller, president of Intermatic Inc., a Spring Grove, Ill., maker of timing devices, opened a betting window in October 1976 and invited his employes to wager up to $100 of their own money that they could quit smoking for 12 months—giving them the opportunity of doubling their money. At year's end, Mr. Miller paid $2,815 to the 25 winners; the 45 losers paid $1,105 to the American Cancer Society.

Mr. Miller says he will start another stop-smoking program soon, but right now Intermatic is involved in a weight-loss campaign ($5 for each pound shed over a 15-pound minimum). "I can't expect people to lose weight and give up smoking at the same time," he says.

Westminster Business Systems Inc. of Lake Bluff, Ill., gives a $50 savings bond to smokers who quit for one year. It also quit hiring smokers five years ago and restricts smoking by those who haven't quit to the lunch room, which has an air purifier. Karl Lichtenberger, president, says he reasoned that nonsmokers were in the majority, and "why should they be forced to inhale others' garbage?"

Large companies generally are reluctant to impose smoking bans, and they shun both programs as difficult to monitor. But American Telephone & Telegraph Co., Dow Chemical Co., Continental Illinois Corp., Kimberly-Clark Corp., Quaker Oats Co. and others sponsor smoking-withdrawal clinics, poster campaigns and similar educational programs to encourage smokers to quit.

Large companies also depend on peer pressure from nonsmokers. At Quaker Oats, workers are encouraged to post no-smoking signs on desks and in private offices. AT&T's Bell Laboratories is segregating smokers from nonsmokers in its Whippany, N.J., plant on an experimental basis and has declared 70% of the facility off-limits to smokers.

Not all smokers are stuffing their cigarets in silence. Last April, a federal court in Texas ordered Johns-Manville Corp. to allow smoking in certain areas at its Denison, Texas, asbestos plant after some workers filed suit against the building-products maker.

Johns-Manville, which has been systematically banning smoking at its asbestos plants since 1976, is appealing the decision. The company cites evidence that asbestos workers who smoke have a 92-times greater [illegible] than those who don't smoke. Although some workers have complained, the smoking ban remains in force at the company's other nine asbestos plants. The company has also stopped hiring asbestos workers who smoke.

As the ranks of smokers diminish (to 33% of the population over age 21 so far from 40% in 1966), efforts to discourage smoking in the work place are expected to continue. Currently, 22 states have laws that restrict smoking in such public places as banks, stores and restaurants, and today Californians will vote on a measure that would ban smoking in offices, schools and health care facilities.

512000107

APPENDIX C

51700108

national
interagency
council
on smoking
and
health

Room 1005
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Smoking and the Workplace - A National Survey

A recent nationwide survey revealed that approximately 15% of U.S. businesses have programs to encourage and assist their employees to quit smoking. In addition, one-third of the responding companies indicated an interest in developing or expanding smoking and health programs for their work force.

The survey was conducted under the auspices of the National Interagency Council on Smoking and Health, (NICSH) a coalition of over thirty public and private health organizations concerned with reducing death and disability due to cigarette smoking in the United States.

Cigarette smoking contributes to an estimated 350,000 excess deaths each year in the U.S. from lung and other cancers, cardiovascular disease, emphysema and chronic bronchitis. As a result, cigarette smoking accounts for an estimated $5 to $8 billion in direct health care expenses. In addition, indirect costs incurred in lost productivity, wages and absenteeism account for another $12 to $18 billion.

517000109

Although some companies have received public attention as a result of establishing smoking and health programs for their employees, data are limited on the existence of, or interest in, smoking programs throughout U. S. businesses. For this reason, NICSH surveyed top-level management and medical officials in 3000 U. S. companies: the Fortune "Double 500" (the top 1000 companies in the U. S. ranked by gross sales); 1000 medium-sized companies (500-2200 employees); and 1000 small companies (50-499 employees). Both medium-sized and small companies were chosen at random. The survey yielded a 30% response, which is representative of the business community under study.

The survey sought information on three issues:

(1) The number of companies with policies restricting or prohibiting smoking in the workplace;

(2) The existence and form of health education or promotion programs (including smoking cessation programs) in businesses; and

(3) The level of interest in developing or expanding a program on smoking and health for employees.

Smoking Policies

The survey revealed that a significant number of the responding companies have policies which restrict or prohibit smoking in the workplace. Most policies had been initiated by management, and policies were most frequently applied to blue-collar work areas, where smoking often poses a safety as well as a health hazard. Sixty-five percent of responding companies indicated that their policy was established after the release of the first Surgeon General's Report in 1964.

517000110

Smoking Programs

Smoking programs ranked third among health education and health promotion programs sponsored by U. S. companies, after high blood pressure and diet/weight control programs. Almost 15% of responding companies had a smoking program for employees. Large companies were more likely to have ongoing health education and health promotion programs, including smoking programs.

Most smoking and health programs in the workplace were operated "in-house", with distribution of "how-to-quit" materials, physician counseling and other health professional counseling the most common program formats. In addition, most companies utilized their own staff to administer smoking programs, and supported activities with existing medical resources rather than providing separate monies for smoking programs. The one exception was the provision of multi-session group cessation clinics, where companies often were provided assistance by NICSH member agencies, such as the American Cancer Society and American Lung Association, to administer the clinics.

Interest in Program Development

One-third of responding companies expressed an interest in developing or expanding smoking and health programs, with another one-third unsure at the present time.

Of those companies which expressed an interest in developing or expanding smoking programs for their employees, over 70 percent would like assistance in this endeavor. These responses indicate a large and potentially successful area - the workplace - to provide assistance to adult smokers who want to quit.

51700011

A Call to Action

The results of this nationwide survey of U. S. companies are clear:

- U. S. companies have taken steps to reduce smoking in the workplace to enhance the safety, health and comfort of their employees.
- A sizeable number of companies are already providing assistance to their smoking employees who want to quit. And, for the most part, these companies are undertaking programs using existing staff and monetary resources, with some assistance from community health organizations such as the American Lung Association and American Cancer Society.
- Fully one-third of responding companies want to develop or expand smoking programs for employees, with the majority of interested companies desiring assistance with program development and implementation.

The National Interagency Council on Smoking and Health, through member agencies, intends to use the information from this survey to assist companies to expand smoking and health programs in the workplace.

For additional information, contact the National Interagency Council on Smoking and Health, 291 Broadway, Suite 1005, New York, New York 10008 (212/227-4390).

512000112

Smoking And The Workplace

National Interagency Council on Smoking & Health

Business Survey

510001113

I. BACKGROUND

Smoking and Health: A Medical and Economic Issue

Smoking is an issue of growing concern among employees, health officials and top management of many business and industrial firms. Besides concern over the health of both the smoker and nonsmoker, the increasing economic impact of smoking has recently caused many companies to look closely at initiating workplace activities discouraging the habit. In addition, since blue-collar workers continue to have the highest smoking incidence rates, public and private health agencies support the development of workplace-based smoking programs as a major tool in assisting smokers to quit.

Cigarette smoking contributes to an estimated 350,000 deaths each year in the U.S. from lung and other cancers, cardiovascular disease, emphysema and chronic bronchitis.[1] As a result, cigarette smoking accounts for an estimated $5 to $8 billion in direct health care expenses. In addition, indirect costs incurred in lost productivity, wages, and absenteeism account for another $12 to $18 billion.[2]

SL700014

The risk of developing a serious smoking-related illness is especially high for workers in certain industries. For example, employees working with asbestos have a greater likelihood of developing several forms of cancer (notably lung cancer) than those workers not exposed to this substance. However, smokers exposed to asbestos have a far greater risk of incurring asbestos-related disease than non-smoking workers at the same site.[3] Asbestos is only one of several hazardous substances found in the workplace, the health effects of which are exacerbated by cigarette smoking. Others include uranium, chlorine, cotton dust, and coal dust.

Although some companies have received public attention as a result of establishing smoking control programs for employees, data are limited on the existence of, or interest in, smoking programs throughout American businesses. Few studies have been conducted in this area.

One such study, conducted by the Dartnell Institute of Business Research in 1977, surveyed 250 office administrators from the United States and Canada. The data collected indicate that 30% of the responding companies have some form of smoking policy restricting or prohibiting smoking in the workplace.[4] The companies were not questioned about the existence of smoking education or information programs. In addition, Dartnell did not attempt to poll a representative sample of American businesses and no follow-up of non-respondents was conducted.

512001115

The Washington Business Group on Health polled 160 Fortune "500" companies concerning their health promotion, prevention and education programs. An interim report, based on the first 59 responses, was released in December, 1978.[5] WBGH's data indicate that, with the exception of on-the-job safety training and courses in cardiopulmonary resuscitation (CPR), more companies offer programs on smoking cessation than any other health-related area. Like the Dartnell study, no follow-up was conducted, and only large corporations from the Fortune "500" were contacted.

In order to obtain a more complete and comprehensive understanding of the existence of, and interest in, smoking control initiatives in the workplace, the National Interagency Council on Smoking and Health (NICSH) decided to undertake a survey of American businesses. NICSH is composed of over thirty public and private health organizations who are concerned with reducing death and disability due to cigarette smoking in the United States.

Early in 1979, NICSH initiated a survey of 3,000 companies to collect information on three issues:

1. the number of companies with policies restricting or prohibiting smoking in the workplace;
2. the existence and form of health education or promotion programs (including smoking programs) in companies; and

512000116

3. the level of interest in developing or expanding activities on smoking and health for employees.

In addition to obtaining data which would describe the current situation with regard to smoking policies and programs in the work place, it was thought that the survey would give direction to NIC member agencies in planning smoking control efforts for companies requesting assistance.

METHODOLOGY

Each company in the study was mailed a brief questionnaire addressed to the health educator/medical director. The study sample consisted of 1,000 small companies and 1,000 medium-size companies, chosen at random; and the 1,000 Fortune "Double 500" companies.[6]

Following the mailing, 117 non-deliverable questionnaires were returned to NICSH. Forty-eight of these were Fortune "Double 500" companies. New addresses were obtained for 44 of these companies, and questionnaires were sent with a revised return date. Undeliverable questionnaires addressed to small and medium-sized firms were not followed up.[7]

Recipients were asked to complete and return the survey in an enclosed postage-paid envelope to NICSH. As a result of the first mailing, the Council received 296 (10%) usable

517000117

responses, evenly divided among the three size categories.[8] A second wave of questionnaires was mailed one month later to all non-respondents. Following this mailing, the Council received an additional 313 (11%) usable responses.

To further increase the response rate, a telephone survey was conducted of non-respondents. A random sample of companies which had not completed the mail survey was systematically drawn for the follow-up. Trained interviewers, using written instruction sheets, conducted this follow-up, which resulted in an additional 231 (9%) usable surveys.

As a result of the mail and telephone surveys, 856 (29%) usable responses were received.[9] To determine whether the mail and telephone surveys resulted in different responses, a random sample of telephone responses was drawn and compared with an equal random sample of questionnaires received in the mail. No significant differences between the two samples were found. Thus, data received from both mail and telephone surveys were analyzed en masse.

Survey Results

Major findings are summarized below. Survey responses are presented in the order in which the questions were asked.

S1700018

Policies Which Restrict or Prohibit Smoking in the Workplace

A. Which of the following best describes your company's policy restricting or prohibiting smoking for some areas of company facilities? (check one answer)

___ Company currently has a corporation-wide smoking policy

___ Smoking policy is set on an individual facility/ plant/office basis

___ Company had a smoking policy but policy no longer exists (PLEASE ANSWER QUESTIONS B-F REGARDING COMPANY'S FORMER PROGRAM)

___ Company has never had a policy (SKIP TO QUESTION G)

___ Don't know (SKIP TO QUESTION G)

TABLE I

SMOKING POLICIES

	Currently Have a Policy		Policy Set On A Company Wide Basis		Policy Set On An Individual Basis	
	#	%	#	%**	#	%**
All Companies* (N=822)	408	49.6	121	29.7	287	70.3
Small (N=269)	125	46.4	55	44.0	70	56.0
Medium (N=280)	137	48.9	42	30.7	95	69.3
Large (N=273)	146	53.5	24	16.4	122	83.6

* Thirty-four companies did not answer question I, A.
**These percentages are based on the 408 respondents who indicated they have a smoking policy.

2700119

Almost half of the companies responding (49.6%) indicate that they have some type of policy, set either on a company-wide or individual facility basis, which restricts or prohibits smoking in the workplace. There is a greater tendency among small companies to set policy on a company wide basis. The opposite is true with larger companies, which are more likely to set their smoking policy on an individual facility basis.

Forty-nine percent of all companies have never had a smoking-related policy. The breakdown is almost evenly divided among the three size categories.*

B. If your company currently has (or previously had) a policy prohibiting or restricting smoking in company facilities, what year was it implemented? 19___

Companies report the initiation of smoking regulations as early as 1914 and as recently as 1979. In many firms, the smoking policy was set when the company was first established. However, more (17) companies report starting their smoking policies in 1978 than in any other year.

Of those companies indicating the year in which their policy was initiated (N=159), 65% (N=101) implemented the policy after release of the first Surgeon General's Report in 1964. (However, almost two thirds (N=248) of the companies having smoking policies did not respond to this question.)

*Less than one percent (seven) of the companies responding to the survey previously had a policy restricting smoking, but have now discontinued it.

517000120

C. Who was responsible for initiating the policy? (check the one best answer)

___ Medical/Health Director

___ Personnel Director

___ Other Management

___ Unions

___ Employees

___ Don't Know

___ Other (Please specify)

TABLE II
WHO INITIATED POLICY

	Medical/ Health Director	Personnel Director	Other Management	Unions	Employees	Don't Know	Other
	%	%	%	%	%	%	%
All Co. with smoking policies (N=348)*	5.5	12.9	54.0	0.3	2.6	8.6	16.1
Small (N=109)	0.9	14.7	62.4	0	2.8	5.5	13.8
Medium (N=120)	0	10.8	55.8	0.8	0.8	11.7	20.0
Large (N=119)	15.1	13.4	44.5	0	4.2	8.4	14.3

517000121

*Sixty companies with smoking policies did not answer question I,E.

The majority of firms having smoking policies report that "other management", such as the president, vice-president or chairman, initiated these policies. This is especially true for small and medium size companies. However, in most Fortune "Double 500" companies, groups other than "other management" were also involved in initiating the policy. For example, health professionals were responsible for introducing 15 percent of the smoking policies in the large firms. Neither unions nor individual employees appear to have played a significant part in initiating smoking policies.

E. What is (was) the policy of your company with regard to smoking in the following areas:

	No Restrictions on Smoking	Designated Non-Smoking Areas	Smoking Completely Prohibited
ıg areas	____	____	____
collar areas	____	____	____
e collar areas	____	____	____
erence s	____	____	____
rooms	____	____	____
cal lities	____	____	____
company erty	____	____	____
r	____	____	____

Specify) _____

517000122

TABLE III
RESTRICTIONS ON SMOKING

	NO RESTRICTIONS	DESIGNATED AREAS	COMPLETELY PROHIBITED
	%	%	%
DINING AREAS			
Companies (N=401)	79.6	18.5	2.0
ıll (N=122)	87.7	9.8	2.5
lium (N=137)	86.9	11.7	1.5
ge (N=142)	65.5	32.4	2.1
BLUE COLLAR			
l Companies (N=386)	30.6	42.0	27.5
all (N=120)	34.2	31.7	34.2
dium (N=134)	32.1	39.6	28.4
rge (N=132	25.8	53.8	20.5
WHITE COLLAR			
l Companies (N=389)	74.3	15.2	10.5
all (N=123)	62.6	19.5	17.9
dium (N=134)	78.4	12.7	9.0
rge (N=132)	81.1	13.6	5.3
CONFERENCE ROOMS			
l1 Companies (N=385)	87.3	6.2	6.5
all (N=120)	85.8	4.2	10.0
dium (N=135)	93.3	1.5	5.2
arge (N=130)	82.3	13.1	4.6
MEDICAL FACILITIES			
11 Companies (N=300)	60.7	14.7	24.7
mall (N=78)	71.8	7.7	24.7
edium (N=101)	66.3	9.9	23.8
arge (N=121)	48.8	23.1	28.1

51700123

The only area in which a majority of companies restrict smoking is in blue-collar work areas. Companies indicate this is primarily due to safety and health regulations. For example, smoking is permitted in areas containing flammable goods, public contact areas, and places where food is prepared. Smaller companies were less likely to have any restrictions on smoking.

F. Are (were) there penalities for violating the policy?
____ Yes ____ No ____ Don't know

TABLE IV

PENALTIES FOR VIOLATING POLICY

	YES	NO	DON'T KNOW
All Companies (N=406)	53.7	38.9	7.4
Small (N=129)	43.4	53.9	3.1
Medium (N=137)	66.4	27.0	6.6
Large (N=140)	50.7	37.1	12.1

Among companies with restrictions or prohibitions on smoking, more than half the respondents said that penalties <u>are</u> imposed for violations of smoking policy. Reported severity of the punishment varies greatly, ranging from reprimanding to firing the worker involved.

G. Have the financial costs incurred by your company as a result of employees' smoking ever been calculated (i.e., increased absenteeism, health care utilization, housekeeping cost, early retirement)?

____ Yes ____ No ____ Don't know

51700124

Less than 1 percent (7 companies) indicate that they have calculated their financial costs incurred as a result of smoking. These are evenly distributed among the company size categories.

H. Have any employees claimed that exposure to the cigarette smoke from other employees caused them to develop an illness or physical problem?

____ Yes ____ No ____ Don't know

The majority of companies (67.3%) indicate no employees have reported developing an illness or physical problem due to smoking. However, more large companies (25.8%) reported having had an employee who has filed such a claim, than did medium-companies (19.3%) and small companies (11%). Several companies responding (13.8%) reported not knowing if any claims had been filed.

II. PROGRAMS WHICH ENCOURAGE OR ASSIST WORKERS TO QUIT SMOKING

A. Does your company have (or did it ever have) an incentive program for encouraging smokers to quit (e.g. time off, money, prizes, etc.)? (check one answer)

____ Yes, currently have an incentive program

____ Previously had an incentive program but no longer exists

____ No, never had an incentive program (SKIP TO QUESTION B)

____ Don't know (SKIP TO QUESTION B)

Only 1.1 percent (9 companies) currently have incentive programs of this type. An additional one percent indicated

512001125

that they have had incentive programs in the past. This total figure is lower than the 3 percent reported by the Dartnell Corporation in 1977. The vast majority (96.8%) have never had an incentive program related to smoking and health.

B. Does your company currently have (or did it have) health education or promotion programs on any of the following topics for employees? (check all that apply)

____ Weight control/diet

____ High blood pressure

____ Smoking

____ Breast self-examination

____ Exercise

____ Stress management/control

____ Other, please specify _____

____ No, never had such program (SKIP TO SECTION III)

____ Don't know (SKIP TO SECTION III)

TABLE V
HEALTH EDUCATION/PROMOTION PROGRAM

	Diet	High Blood Pressure	Smoking	Breast Self Examination	Exercise	Stress Control	Other	No Programs
	%	%	%	%	%	%	%	%
All Companies (N=842)	16.2	27.1	14.7	14.4	13.3	9.2	14.5	51.6
Small (N=274)	4.0	12.8	4.4	3.6	4.4	4.4	10.0	70.0
Medium (N=287)	12.2	23.3	11.8	13.6	9.0	7.3	16.0	51.2
Large (N=281)	32.0	44.8	27.8	25.6	26.6	16.0	17.4	34.5

512001426

The majority of companies (51%) have never had any health education or promotion programs.

Of those who reported having health education or promotion programs, high blood pressure was ranked first (228 companies), weight control second (136), and smoking third (124). Many of the companies which offered high blood pressure programs also offered weight control and smoking programs. Fourteen percent of firms responding to this question indicated they had programs other than the choices given. Of these, first aid and cardiopulmonary resuscitation were mentioned most often.

C. How are your employees made aware of these program(s)? (check all that apply)

____ Payroll stuffers

____ Posters

____ Announcements in company newsletter

____ Through their union

____ Shop foremen

____ Medical department

____ Word-of-mouth

____ Don't know

____ Other (specify)_____

512000127

TABLE VI
AWARENESS OF SMOKING PROGRAMS

	Payroll Stuffers	Posters	Newsletter	Union	Fore-Men	Medical Dept.	Word-Of Mouth
ll Co. with noking pro-rams (N=124)	% 25.0	% 70.2	% 59.7	% 6.5	% 8.1	% 63.7	% 31.5	% 20.2
mall (N=12)	25.0	50.0	25.0	0	0	25.0	33.3	8.3
edium (N=34)	38.2	67.6	52.9	0	8.8	52.9	17.6	20.6
arge (N=78)	19.2	74.4	67.9	10.3	9.0	74.4	37.2	21.8

Posters were mentioned more often than any other method (70.2%), with the medical department ranking second (63.7%).

Neither foremen nor unions appear to have an active role in promoting smoking education programs.

D. If your company has (had) an education program devoted to helping smokers quit, what form(s) does your company's smoking program take? (check all that apply)

____ Physician counseling of smokers

____ Other health professional counseling

____ Distribution of how-to-quit smoking materials

____ Single session smoking presentation/films

____ Multi-session group clinics

____ Other (specify) _____

____ Don't know (SKIP TO QUESTION G)

517001128

TABLE VII
TYPE OF SMOKING CONTROL PROGRAM

	PHYSICIAN COUNSELING	OTHER COUNSELING	HOW-TO-QUIT MATERIALS	SINGLE SESSION CLINICS	MULTI-SESSION CLINICS	OTHER
	%	%	%	%	%	%
All Companies (N=124)	32.3	33.1	56.5	22.6	31.5	10.5
Small (N=12)*	0	0	41.7	0	0	8.3
Medium (N=34)	11.8	14.7	61.8	26.5	17.6	11.8
Large (N=78)	46.1	46.2	56.4	24.4	42.3	10.3

The majority of companies having smoking programs report that they distribute "how-to-quit" materials. Companies indicated that the materials distributed are received from the American Cancer Society, the American Lung Association and the National Cancer Institute.

In addition to distributing "how-to-quit" materials, many large companies with smoking programs are likely to use physician counseling (46.1%), other professional counseling (44.9%), and multi-session clinics (42.3%).

The majority (51%) of large companies indicating they have smoking programs report having at least one doctor on staff. Many of these companies (40%) also employ at least one nurse.

*Six companies with smoking programs did not indicate what types of program they have.

51700129

E. Of the program(s) provided, which are (were) conducted primarily by company staff, outside organization(s) or both:

	Company Staff	Outside Organization(s)	Both
Physician counseling	___	___	___
Other health professional counseling	___	___	___
Distribution of how-to-quit smoking materials	___	___	___
Single session smoking presentation	___	___	___
Multi-session group cessation clinics	___	___	___
Other	___	___	___

If outside service(s) or organization(s) are involved, please specify name(s) _____

TABLE VIII

ADMINISTRATION OF SMOKING PROGRAMS

	Company Staff	Outside Organizations	Both
	%	%	%
Physician Counseling			
All companies, (N=46)	76.1	13.0	10.9
Other Health Professional			
(N=52)	57.7	26.9	15.4
How-to-Quit Materials			
(N=61)	59.0	29.5	11.5
Single Session Presentations			
(N=33)	51.5	39.4	9.1
Multi-Session Clinics			
(N=40)	22.5	70.0	7.5

51700130

It is important to note that all services, with the exception of multi-session clinics, are provided primarily by company staff. It is primarily with multi-session clinics that the majority of companies with smoking programs turn to outside organizations for assistance. The outside organizations which most often provided assistance were the American Cancer Society and American Lung Association; commercial programs were also mentioned.

F. Of the services provided, which are (were) administered on company time, before or after hours, or both:

	On Company Time	Before or After Working Hours	Both
Physician counseling	___	___	___
Other health professional counseling	___	___	___
Distribution of how-to-quit smoking materials	___	___	___
Single session smoking presentation/ films	___	___	___
Multi-session group cessation clinics	___	___	___
Other	___	___	___

510001131

TABLE IX

WHEN [illegible]E SMOKING PROGRAMS COND[illegible]TED

	On Company Time	Before/After Working Hours	Both
	%	%	%
Physician Counseling			
All companies (N=45)	84.4	6.7	8.9
Other Health Professional			
All companies (N=53)	69.8	9.4	20.8
How-to-Quit Materials			
All companies (N=64)	81.3	6.3	12.5
Single Session Presentations			
All companies (N=36)	63.9	19.4	16.7
Multi-Session Clinics			
All companies (N=40)	30.0	50.0	20.0

Again, with the exception of multi-session group clinics, smoking programs are primarily conducted on company time. The majority of multi-session clinics are run before or after working hours. Some companies report splitting the time required for these sessions between on-work and off-work time.

517001132

G. Has your company allocated any funds to support smoking programs? (check one answer)

____ No

____ $100 or less, annually

____ $100 - $500, annually

____ $500 - $1,000, annually

____ $1,000 - $5,000, annually

____ Over $5,000, annually

____ Funds allocated one time (specify amount)

_____

____ Don't know

TABLE X
FINANCIAL ALLOCATIONS

	No %	Under $100 %	100-500 %	500-1000 %	1000-5000 %	Over 5000 %	One Time %	Don't Know %
11 companies (N=92)*	70.7	2.2	3.3	2.2	2.2	2.2	8.7	8.7

A minority of companies (12.3%) allocate separate funds for smoking programs each year. Although the majority of firms do not allocate separate funds for smoking programs, the use of existing health personnel and company time to provide these services constitutes indirect fund allocation for this purpose.

H. Has your company conducted any evaluation of its smoking education program(s)? (check one answer)

____ Yes ____ No ____ Don't know

*Thirty-two companies with smoking programs did not answer question II, G.

517000133

Eighteen (14.5) of the 124 companies with smoking programs indicate that they have contributed an evaluation of their effectiveness. Most companies which have carried out an evaluation are large companies.

III. INTEREST IN DEVELOPING OR EXPANDING SMOKING AND HEALTH PROGRAMS

A. Would your company be interested in developing/expanding a program on smoking and health for employees?

____ Yes ____ No ____ Don't know

TABLE XI
INTERESTED IN DEVELOPING/EXPANDING PROGRAM

	Yes	Unsure	No
	%	%	%
All companies (N=823)	33.2	32.5	34.3
Small (N=273)	26.0	31.9	42.1
Medium (N=262)	34.2	46.2	29.6
Large (N=288)	39.5	35.8	24.7

B. If yes, would your company like assistance with the program?

____ Yes ____ No

INTERESTED IN RECEIVING ASSISTANCE

	Yes	No
All Companies (N=317)*	71.9	28.1
Small (N=84)	69.4	30.6
Medium (N=116)	71.3	28.7
Large (N=117)	74.4	25.6

*Several companies who responded "unsure" to the previous question indicated that they are in deceiving assistance in developing smoking programs.

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About one-third (33.2%) of all respondents are interested in developing or expanding their smoking programs. An additional one-third are unsure; however, these companies may be interested in developing smoking programs if provided with more information.

A large majority of companies interested in developing a program (71.9%) would like assistance in doing so. Although larger companies (74%) expressed a greater interest in receiving assistance, many small (69%) and medium size companies (71%) requested aid as well.

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Conclusions

The results of this nationwide survey of U.S. companies are clear:

- U.S. companies have taken steps to reduce smoking in the workplace to enhance the safety, health and comfort of their employees.

- A sizable number of companies are already providing assistance to their smoking employees who want to quit. And, for the most part, these companies are undertaking programs using existing staff and monetary resources, some with assistance from community health organizations such as the American Lung Association and the American Cancer Society.

- Fully one-third of responding companies want to develop or expand smoking programs for employees, with the majority of interested companies desiring assistance with program development and implementation.

The National Interagency Council on Smoking and Health, through its member agencies, intends to use the information from this survey to assist companies to expand smoking and health programs in the workplace. To obtain additional information on the NICSH and its member agencies, write or call:

National Interagency Council on Smoking & Health
291 Broadway, Suite 1005
New York, New York 10007
(212/227-4390)

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FOOTNOTES

1. Smoking and Health, a report of the Surgeon General, U.S. Department of Health, Education, and Welfare, Public Health Service Office of the Assistant Secretary for Health, Office of Smoking and Health, p. 2.

2. Smoking and Health, p. 2.

3. I.J. Selikoff and E.C. Hammond, "Asbestos and Smoking Editorial", JAMA, Vol. 242, No. 5. (August 3, 1979), p. 458.

4. Dartnell Institute of Business Research, Chicago, Illinois, Target Survey, 1977.

5. Washington Business Group on Health, "A Survey of Industry Sponsored Health Promotion, Prevention and Education Programs." December, 1978, Table I.

6. Small companies were defined as having between 50-499 employees, medium size companies as having between 500-2,199 employees and Fortune "Double 500" as the top 1,000 companies ranked by gross sales. The large majority of Fortune "Double 500" companies employ over 2,200 workers.

7. A follow-up of a random sample of non-deliverable questionnaires indicated that the large majority of these small and medium size firms had gone out of business or moved without leaving a forwarding address.

8. Eighty-three small companies, 103 medium-size companies and 97 Fortune "Double 500" companies returned the questionnaire. Thirteen additional questionnaires did not include the company name or size; data from these responses were included in the overall analysis, but omitted from the analysis by company size.

9. Respondents consist of 274 small firms, 287 medium-sized firms, and 281 Fortune "Double 500" firms.

10. Where sample sizes permit or where noticeable differences exist, results are presented by small, medium and large companies as well as by the total respondents.

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APPENDIX D

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Office smokers feel the heat

Prodded by court rulings, many companies are creating tobacco-free work areas

The war between the smokers and the nonsmokers has invaded the corporation.

A few companies—including IBM, 3M, and AT&T—have already bowed to militant nonsmokers and ceded them their own territory in offices and factories: areas free from the blue haze of cigarettes, pipes, and cigars. Many other companies, prodded by court decisions and stepped-up campaigns by antismoking health groups, will be forced to face the issue, sooner rather than later.

Basically, employees who do not want to be irritated by co-workers' smoke insist that companies have a duty to provide work environments unpolluted by tobacco. A New Jersey court upheld that argument in 1976 in a landmark case against New Jersey Bell Telephone Co., but only recently has it become a general rule. Within the past three months, three other courts—including the prestigious U.S. Court of Appeals in San Francisco—have imposed on employers the obligation to take reasonable steps to separate smokers from nonsmokers.

All three cases involved employees acutely sensitive to tobacco smoke. But "as a practical matter, it is going to be very, very hard to draw a line" between those who are physically unable to work in smoky rooms and those who simply do not like doing so, says Washington lawyer John Banzhaf III, executive director of Action on Smoking & Health. Because it would consume too much time and money to take each case to court, Banzhaf says, "we're going to have to adopt general guidelines." Litigation will serve as an "or else" for companies loath to establish guidelines.

Bolder elevator riders. Banzhaf's group has lots of company. The American Lung Assn. earlier this year sent all local sections a guide on how to persuade companies to create nonsmoking sections. The Group Against Smoking Pollution of Massachusetts (GASP), in Boston, averages more than five requests a day from callers who want help in setting up tobacco-free areas where they work. Across the continent, the Berkeley-based Californians for Nonsmokers' Rights logs the same number of inquiries daily. When the California group recently polled its members to set lobbying priorities for the coming year, fully one-third of the 12,000 respondents wrote in a request for a law segregating smoking in the workplace—even though the survey had not listed such a choice.

For their part, some companies have come to feel that they have a responsibility to accommodate nonsmoking employees. With only a third of most workers now smoking, "you don't want to tell your majority, 'Well, the heck with you,'" says Robert N. Beck, executive vice-president at Bank of America in San Francisco. Written guidelines are essential, Beck says, to instruct line managers on how to respond when nonsmokers ask for protection, and the bank is now formulating its policy.

Minnesota, the nation's leader in this area, has had a workplace smoking law since 1975. It bans smoking in any enclosed area "serving as a place of work" other than sections specially designated for smokers. The statute has so emboldened antismokers that it is not unheard of for an elevator passenger in a Minneapolis office building to pluck a cigarette out of the mouth of someone ignoring the rule.

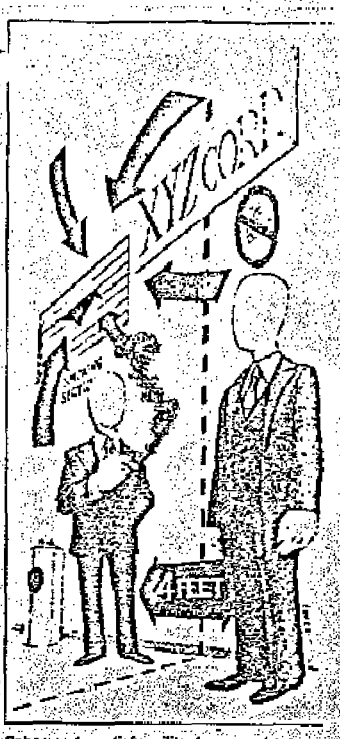
The 10-person rule. Responding to the Minnesota law and employee complaints, Control Data Corp. in 1979 adopted an eight-page policy outlining the rights of smokers and nonsmokers. It separates work areas into smoking and nonsmoking sections, with work stations shifted around so that each employee works in the section he or she prefers. Ventilation systems are designed to waft air currents away from nonsmoking areas.

Other companies get even more specific. In West Palm Beach, Fla., for instance, the Government Products Div. of Pratt & Whitney Aircraft of Canada Ltd., a subsidiary of United Technologies Corp., sets a minimum distance of 4 ft. between smoking and nonsmoking areas and directs that in the cafeteria and dining room, the "size of the smoking area will not exceed that of the nonsmoking area." American Telephone & Telegraph Co. says that when more than 10 persons are in a meeting, the room should be divided into smoking and nonsmoking areas; in smaller gatherings, anyone may veto all smoking.

There are obvious costs to segregating smokers, including having to build walls between smoking and nonsmoking areas and increasing ventilation. But the antismoking lobby counters with figures of its own. William L. Weis, associate professor of business administration at Seattle University, took into account everything from the increased productivity of nonsmokers who feel better in a smoke-free environment to the longer life of office furniture unmarred by smoke to calculate that such segregation will save $243 per year per smoker.

"I took my ashtray home." Actually, half of all U.S. companies have formal policies curbing smoking, according to a 1979 survey by the federal government. But almost all of these concentrate on blue-collar areas, where smoking either would be hazardous—for instance, because of the presence of flammable chemicals—or would risk contaminating the product. Only 12% of the companies in the study had rules about smoking in conference rooms, and only 10% provided nonsmoking areas in their dining facilities.

For companies fearful that smoking bans in white-collar areas may create employee controversy, Harold K. Haug, manager of human resources for the Minneapolis-based Physical Electronic Div. of Perkin-Elmer Corp., has a hopeful message. The division limited smoking to two employee lounges back in 1974, he recalls, and no one objected "because it was so uniform," and no one has had to be disciplined since. As for Haug, "I took my ashtray home, and that was it."



Schemes to satisfy militant nonsmokers range from special ventilation systems to 4-ft. buffer zones next to smoking areas.

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APPENDIX E

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Sick leave policies may affect statistics

The other side of the smoking worker controversy

Lewis C. Solomon

Lewis C. Solomon, PhD, is a professor in the Graduate School of Education at UCLA. This paper is one result of his work as a consultant to several tobacco companies on economics and related matters.

William L. Weis has spearheaded a campaign to ban smoking and smokers from the workplace through a series of articles claiming that employers who do not hire smokers can "shave personnel costs by 20 percent, insurance premiums by 30 percent, maintenance charges by 50 percent, furniture replacement by 50 percent and disability payments by 75 percent."

Weis concludes that total costs per smoker per year to an employer are $4,611 or $4,689, depending upon his publication date. These assertations have been relied upon recently by other writers to support their arguments concerning smoking in the workplace. But closer scrutiny of Weis' material, reveals that his analysis is faulty and his conclusions are without merit. As Weis, himself, allows: "Skeptics might argue that these numbers are as soft as the underside of a porcupine, and that may be true." Indeed, virtually every part of his estimate is unfounded and he compounds his errors by surveying those persons most against smoking.

Weis asserts that, "Men who smoke more than 40 cigarettes per day are absent from work almost twice as often as their peers who have never smoked." He concedes that such "absences may be due to causes other than smoking." There is good reason for that concession. Data appearing in the *Statistical Abstract of the United States (1974)*, which Weis relies upon at times, demonstrate that:

- Work loss for women smokers is smallest among women who smoke the most;
- Work loss for male smokers is smallest among males in the second highest smoking category;
- Work loss per person declines as the number of cigarettes smoked increases through the first three of the four smoking classes for men and the last three classes for women.

Lower absenteeism

More recent data are of equal interest. Among men, the 1976 National Health Survey showed smokers of less than 15 cigarettes per day to have an absenteeism rate of 2.6 days, compared to those who never smoked with 4.3 days. Other data inconsistent with Weis' claim appear in the 1979 Surgeon General's Report: Male smokers are reported to be absent less than ex-smokers and

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have less bed-disability; male smokers of less than 11 cigarettes per day are absent less than those who never smoked; and for women in the "17-plus" age category, present smokers reportedly have less bed-disability than either former smokers or those who never smoked.

Weis uses a cross-sectional, weighted average of work-loss days obtained from the Statistical Abstract to estimate that in 1970 smokers were absent 2.2 days per year more than non-smokers. The exact same methodology (which we reject) using 1976 data leads to a difference in work-loss days of 1.3 rather 2.2. This 41 percent decline in the difference in only six years could lead to the projection that in the 1980s the reported difference in absenteeism between smokers and non-smokers will disappear.

To make any sense out of the absenteeism point, it is necessary to know why workers are absent. Numerous factors have been associated with absenteeism including age, sex, family responsibilities, personal problems, use of alcohol, use of drugs, general health, type of employment, job responsibilities, job satisfaction and commuting time to work. One way to examine the claimed association between smoking and absenteeism is to compare demographic and occupational characteristics of smokers and non-smokers, and to compare the work-loss rates for equivalent demographic and occupational groups.

Many studies have reported a higher incidence of smoking among blue-collar workers than among white-collar workers. Therefore, if relatively low-paid assembly line workers are more inclined to skip work occasionally than are top executives, a correlation between smoking absenteeism would be observed. But rather than a casual relationship between smoking and work-loss days, the correlation would probably be due to job boredom, lack of commitment to the employer, low pay and so on.

Vacation time

Another confounding factor ignored by Weis is the fact that sick leave substitutes for vacation time in certain jobs. Many employment arrangements offer a certain number of paid vacation days and a certain number of paid sick days per year. In effect, the contract offers a certain total number of paid days of work-loss. If the employee does not use all his sick days, he is not taking full advantage of his employment benefits. His total income will be less than what was negotiated, if money wages are lower than they would have been without a paid sick-leave policy and he does not take all his allowable sick leave. Clearly, salaries will be lower if a sick-leave policy is part of the total compensation package. Since employees in jobs with such sick-leave fringe benefits (*i.e.*, blue-collar, unionized jobs) are more likely to smoke than are those in other jobs, this is a further indication that the smoking-absenteeism correlation, if it exists, is not casual.

...In a country where the worker may change employers or elect to go into business for himself, most on-the-job training costs are borne by the employee in the form of a lower wage.

As mentioned above, when a sick-leave policy is part of an employment agreement, part of the cost is borne by the employee in the form of lower monetary wages. If the employer expects a certain number of days of absence, he will include this in his evaluation of the (annual) productivity of the worker and pay him accordingly. The question then becomes whether extra sick days taken by one group compared to another are beyond those allowable (and compensatable) by mutual agreement. If total work-loss days are about six per year (as indicated by the Statistical Abstracts of the United States), this seems fewer than most sick leave policies would allow and so would be included in the wage calculation.

Weis cites an estimate, which he attributes to Luce and Schweitzer, that "on the average, smokers require an additional $230 per person per year for medical care alone, and cost an additional $765 per person per year for discounted lost earnings due to morbidity and premature mortality." Those figures cannot be found in Luce and Schweitzer, and Weiss does not indicate how he developed them.

More importantly, Weis assumes "that the incremental savings from these factors [various insurance costs, taxes, social security, medicare programs, health care] flow directly to the employer." He admits that this is a "futuristic", that is, unrealistic assumption. Why these items should be considered savings to employers is unimaginable.

As to the "discounted lost earnings" assertion, if workers fail to earn wages because they are ill or because they die, the "lost" earnings are a private cost to them, not a cost to their employers. Professor Weis seems to suggest that such "lost earnings" may approximate the employer's cost to train a new employee. In fact, in a country where the worker may change employers or elect to go into business for himself, most on-the-job training costs are borne by the employee in the form of a lower wage. **51700142**

Medical costs

As to the "additional medical care" cost assertion, if medical costs are higher for smokers (we

Continued on page 101

SMOKING WORKERS

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do not accept the data presented as proof that such costs are higher), this is only a cost to employers if insurance rates rise for all employees and they are not offset by lower salaries. Furthermore, there may be an element of "double-counting" in Weis' analysis. His "medical care" cost allegation includes the cost of "contributions to health, disability and life insurance plans; taxes for state and federal employment compensation and taxes for federal social security and medicare programs." Such cost factors seem to be included in Weis' "absenteeism" assertion, which is predicated upon an employer's expenses for "wages and salaries, including fringes and payroll taxes."

Weis cites a claim by Marvin Kristein of the American Health Foundation that smokers cost an extra $45 per year for accidental injury and related workers' compensation cost. These assertions are based on studies allegedly showing "smokers have twice the accident rate of non-smokers."

Again, the suggested association between accidents and smoking, if it exists at all, is not likely to be casual. Since smokers tend to be found more often among blue-collar workers, they are more likely to be engaged in strenuous physical activity during the workday and therefore more likely to be exposed to physical harm through accidents. This analysis is supported by the fact that premium rates for workers' compensation are determined, not by employee smoking habits, but by occupational category, carrier experience with the business and the statutory level for workers' compensation for the particular state.

...when a sick-leave policy is part of an employment agreement, part of the cost is borne by the employee in the form of lower monetary wages.

Biased remarks

The estimates used for time lost per day due to smoking are obtained from interviews with employers who have instituted non-smoking policies (presumably persons with an anti-smoking bias), and an estimate by a consulting firm—Robert E. Nolan of Simsbury, CT. Weis then estimates that a smoking employee loses 35 minutes per day by smoking (he assumes one in five smokes a pipe, which had a higher estimated time loss).

Weis seems to be assuming that smokers are able to spend more leisure time on the job because they are smokers. He has not shown that time spent smoking is not a substitute for non-smoking on-the-job leisure. For example, non-smokers may spend equal time at the coffee machine or talking to their co-workers.

The $1,820 alleged cost in this category is clearly erroneous. It assumes that the equivalent of 18.2 days per year assertedly lost by smokers is not taken in other forms of leisure by non-smokers.

Property damage

Weis estimates costs by interviewing employers who have implemented non-smoking bans in their firms. This would seem to bias the estimates upwards because the employers are either predisposed against smoking, or have based their estimates on a particularly bad experience which caused them to implement the ban. These biases lead Weis to his annual figures of $500 for property damage and $500 for maintenance.

Since Weis' estimate of the claimed costs of "involuntary" smoking relies on the claimed costs alleged to be associated with direct smoking, it is subject to all the infirmities of those allegations described.

Weis implies that employers will benefit from refusing to hire smokers. But if substantial numbers of workers in a particular trade or profession are excluded from hiring consideration, there are inherent inefficiencies. The situation is not different from that which exists when women, blacks or other subgroups are systematically excluded for reasons unrelated to job performance.□

Readers' Comments

Continued from page 4

looked at the table of contents and noted the titles of other articles, i.e., "Concession Bargaining" and "Give-backs".

If we are to convince employees that they don't need representation, we need to use a more constructive vocabulary.

When we use words like "concession" and "give-backs", don't we give the impression that we in management are attempting to place the burden of our economic woes on the back of workers? Alternatively, shouldn't we be stressing to our employees the need for improved productivity and the need to make adjustments in compensation packages so that secure and stable employment continues to be possible? Specifically, we must come to understand that we are competing in a world market and will achieve a secure economic future only by putting high quality, competitively priced products into the market place.

M. C. Fritzsche
Vice President - Personnel
Central Soya
Fort Wayne, IN

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APPENDIX F

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The incremental costs associated with employees who smoke is approaching $5,000 per smoker per year

Can you afford to hire smokers?

William L. Weis

Dr. William L. Weis, CPA, is associate professor of business administration in the Albers School of Business at Seattle University. Dr. Weis is author of several articles on financial and managerial accounting issues and is co-authoring a book on the cost consequences of employing smokers. He received his PhD from the University of Washington.

When I first suggested to employers that their sagging productivity could be reversed by the purchase of a 79¢ "No Smoking" sign,[1] they laughed. When I proposed that up to $4,500 per smoker is squandered by employers each year, $4,500 that could be used more judiciously to reward exemplary performance, invest in cost-saving technology or simply added to profits, they doubted.

But amidst the doubting and laughing, a growing number of pioneering business owners began to study the data on smoking and its cost consequences. A few were bold enough to challenge our tradition of tolerating the inconveniences associated with smoking and implemented personnel policies that both banned smoking at the workplace and proscribed the future hiring of applicants who smoked. The expected cost reductions from these policies were, based on results to date, underestimated. Not only did anticipated savings from absenteeism, insurance rates and maintenance exceed expectations, but new categories of savings emerged that only the most imaginative efficiency expert could have projected.

As the experiences of these employers are shared with other cost-conscious business leaders, smoking "cessation programs", popular among some major companies, will give way to outright proscriptions – both against smoking on company premises and against hiring smokers.

Today there's a lot less laughing and a lot less doubting about the profit consequences of smoking at the workplace. Soon there will be a lot less smoking. This article points out why.

What Are The Costs To Employers?

In a recent article[2] I listed several areas from which employers can expect to reap handsome dividends by imposing smoking bans. These areas included absenteeism, mortality, insurance, on-the-job productivity, maintenance, depreciation on furniture and equipment and employee morale. With the help of several other researchers in

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the field it is possible to estimate how much extra each smoker costs his or her employer from these sources.

A word of caution. Smoking behavior, employee mix, physical plant, production functions, etc. – these all vary widely in our complex industrial state. So, too, will the cost and profit consequences of tolerating or banning smoking from the workplace. Using the best information available *today* one can approximate these savings. That information, and hence the estimates, will improve as we move this area of exploration from infancy to maturity. But if we don't begin to apply the already substantive data available, we may never reach that maturity.

Absenteeism

Incremental absenteeism has been supported by numerous studies over the past three decades.[3] As one might expect, the rates are highly correlated with dosage – men who smoke more than 40 cigarettes per day are absent from work almost twice as often as their peers who have never smoked. The cross-sectional average for all ages and all dosages is 45 percent greater for female smokers and 57 percent for male smokers[4] – approximately 50 percent greater for smokers in general. This translates into an additional 2.2 days absent per year for each smoker on the payroll. (Of course, absences may be due to causes other than smoking.)

What does one day of absence cost an employer? Again, this will vary widely among businesses. A firm whose wages and salaries, including fringes and payroll taxes, average $20,000 per employee (at Ford Motor Co. the average annual labor cost for hourly workers is $54,000; for workers in the chemical manufacturing industry, $30,000[5]) is paying approximately $80 per working day for every employee on the payroll. Based on an assumed 25 percent return on payroll dollars, the direct cost to the employer is $100 per absence – and this does not include the costs of temporary replacements. The total additional cost per smoker per year: $220.

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Morbidity And Premature Mortality

Morbidity and mortality differentials affect several factors that are ultimately impounded in a firm's cost function, including, but not limited to: contributions to health, disability and life insurance plans; taxes for state and federal employment compensation and taxes for federal social security and medicare programs. Mortality rates for smokers are from 70 to 270 percent higher, depending on dosage and age bracket.[6] Heavy smokers use the nation's health care system at least 50 percent more than do nonsmokers.[7]

Let's assume, for purposes of cost estimation, that the incremental savings from these factors flow directly to the employer. Granted, this is a somewhat futuristic assumption, but major insurance companies are beginning to offer big discounts to nonsmokers, especially to firms that have rigid no-smoking policies, so the benefits will ultimately filter down to the employer and can be bargained for today.[8]

Luce and Schweitzer, reporting in the *New England Journal of Medicine*,[9] estimate that, on the average, smokers require an additional $230 per person per year for medical care alone, and cost an additional $765 per person per year for discounted lost earnings due to morbidity and premature mortality. It may be some time before the full $995 per employee filters down to the company, but it represents a realistic target in long-range policy projections.

Other Insurance Costs

Lost earnings are not the only costs associated with higher rates of mortality and disability. Economist Marvin Kristein of the American Health Foundation estimates that smokers cost an extra $45 per year per smoker for accidental injury and related workers' compensation costs.[10] His calculations were based on studies showing that smokers have twice the accident rate of nonsmokers due to carelessness caused by attention loss, eye intation, coughing and hand interference. In addition, Dr. Kristein estimates an additional $45 per year per smoker in insura premiums for fire, life and wage continuation policies.[11]

Productivity Loss

Estimates of on-the-job time lost to the smoking ritual – lighting, puffing, staring, pretending to be in deep thought, informal breaks – vary among sources, ranging from a low of *eight minutes per day*[12] to a high of 15 to 30 minutes *per hour*.[13] A conservative compromise of 30 minutes per day for cigarette smokers and 55 minutes per day for pipe smokers, provided by the consulting firm of Robert E. Nolan from Sumsburg, CT, is the basis for this estimate.[14] A time-weighted average of 35 minutes lost per day assumes that one in every five smokers puffs a pipe. If we again assume that $100 per day is a reasonable approximation of the return expected from each employee, then the equivalent 18.2 days lost per year (based on a 120,000-minute work year and a 480-minute, or eight-hour, workday) is costing the employer an additional $1,820 per year per smoker. For jobs in construction and the trades, where tools go down when smokers light up, the time *and* dollar loss may be substantially greater.

On the legal question of banning smoking in the workplace, the economic repercussions to an industry boasting one of the most powerful lobbies in Washington almost guarantee a Supreme Court hearing in the next few years.

Property Damage, Depreciation And Maintenance

Dr. C. Patrick Fleenor, professor of management at Seattle University, and I are currently preparing a compendium of cases based on interviews with business owners and executives who have implemented smoking bans at their respective organizations. The estimates which follow are based on a preliminary synthesis of these business cases.

Property damage and depreciation[15] are roughly equivalent phenomena for estimating incremental costs for most business Furnitu carpeting and draperies are genera replaced when damaged and the damage invariably takes the form cigarette burns. Estimates of usefu lives on commercial furnishings ar primarily based on the employer's tolerance for burn spots and the expected frequency of appearance for burns. Employers with whom we spoke are revising those estimates upward, since the primary agent of depreciation has been eliminated.

Radar Electric's Warren McPherson expects furniture and fixture replacement intervals to *at least* triple and others generally agreed with this estimat Firms that employ costly precision machinery have long recognized damage caused by smoke merely circulating in the surrounding air. The well-known Shimp decision, decided by Judge Gruccio agains New Jersey Bell Telephone Company, was based partly on New Jersey Bell's enforcement of smoking restrictions to protect its sensitive telephone equipment, bu refusing to enforce comparable restrictions to protect the health o its non-smoking personnel.[16]

Estimates of per-smoker costs a admittedly crude in this category, but will improve with continued research. In our case research, Professor Fleenor and I found tha employers expected to save at lea $500 per smoker per year from incremental replacement of furnishings and equipment, not counting occasional patch-up wo on recently-acquired carpeting, which, according to Unico's Jame Douglas, can run as high as $10 per repair.

Maintenance was another area for savings according to many owners of smoke-free business. Routine cleaning was reduced by as much as 60 percent in some workplaces, partly aided by a mo cleanliness-conscious workforce

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(windows, show cases, etc.) to an annual instead of monthly routine. Repainting of interior surfaces was similarly obviated, since the film that clouds the windows and fades the wall finish is simply exhaust from the tips of cigarettes and the lungs of smokers.

Again, a per-smoker estimate is largely a matter of conjecture, but we found no argument among interviewees with an assessment of another $500 per smoker. One employer who had 40 smokers on his payroll before implementing a strict non-smoking policy was able to reduce his cleaning force by one person and reduce his average painting and window washing work by two-thirds, thereby saving $30,000 per year from maintenance alone, or $750 per smoker. A $500-per-smoker-per-year target is a reasonably conservative expectation.

Involuntary Smoking And Employee Morale

Although a surprising number of employers are still oblivious to the health hazard imposed on nonsmokers who live and work around smokers, the evidence is compelling. The most relevant research to our study of business costs was conducted by Professors James R. White and Herman F. Froeb of the University of California at San Diego. Reporting in the March 27, 1980 issue of the *New England Journal of Medicine*, White and Froeb found a significant impairment of the small airways function for nonsmokers who work around smokers, damage equivalent to that suffered by light smokers *(i.e., one to ten cigarettes per day)*,[17] or approximately one-fifth the damage to normal smokers.[18]

If we apply this one-fifth to our estimate of incremental costs from excess medical care, discounted lost earnings from morbidity and premature mortality and incremental absenteeism, then each smoker is increasing the per-worker expenses of nonsmokers by $243 per year. And since two of every three workers are nonsmokers, the incremental cost due to health impairment caused nonsmokers is $486 per smoker per year.

Finally, in spite of the substantial additional costs just itemized, employers who no longer tolerate smoking in their firms insist that the major profit consequences, *by far*, stem from higher employee morale. Smoke-free work environments are clean, healthy and conducive to good working relationships. The benefits of higher morale are difficult to quantify but the reader should note that the total cost projected in this article is exclusive of what most employers regard as the foremost dollar consequence.

Summary

Figure 1 summarizes the various cost savings that employers might expect from a policy that both prohibits smoking on company premises *and* restricts all future hiring to nonsmokers, who now constitute two-thirds of the adult population. The total may be viewed another way: as the additional cost per year associated with each smoker on the payroll. Is it worth it?

Skeptics might argue that these numbers are as soft as the underside of a porcupine, and that may be true. At the same time, there is little doubt that the incremental costs to business owners from employing smokers are indeed substantial and are possibly higher than the rough approximations here.

But Can It Be Done?

Somewhere in the reading of this article, several bothersome questions will have plagued even the most supportive reader. Is this all legal? Is it commercially feasible? Are there really firms that have announced to their employees that after January 1, 19XX smoking will no longer be permitted on company premises? Are there really employment application forms that boldly ask, in Question 1, "Do you smoke?" and follow in Question 2 with "If your answer to No. 1 was yes, do not bother to complete the application."? Are there really signs posted at entryways of public

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establishments reminding valued clients and customers to extinguish smoking materials *before* entering?

The answers to all but the first question are decidedly "yes"; to the first, probably so. Professor Fleenor and I can positively attest to the feasibility of no-smoking policies: we have yet to see one that has failed. On the legal question of banning smoking in the workplace, the economic repercussions to an industry boasting one of the most powerful lobbies in Washington almost guarantee a Supreme Court hearing in the next few years. But the judgment of reasonable and disinterested justices, once confronted with the cost increments discussed here and elsewhere and with the gruesome implications of White and Froeb, will certainly favor the rights of employers to pursue a least-cost personnel policy when that same policy is necessary to protect the health of non-smoking employees. A more appropriate legal question, in light of White and Froeb, is the right of employers to continue subjecting two-thirds of the workforce to the damaging byproduct of their co-workers' smoking habit.

The only question that remains is the assumption of judicial reason and disinterest. Unfortunately, with the mix of lawyer and politician populating the highest bench, that assumption is by no means assured.

Estimates of on-the-job time lost to the smoking ritual—lighting, puffing, staring, pretending to be in deep thought, informal breaks—vary among sources, ranging from a low of eight minutes per day to a high of 15 to 30 minutes per hour.

Conclusion

No one can guarantee that a smoking ban will immediately improve annual profits by $4,500 per reformed or displaced smoker. On the other hand, if your firm stops hiring smokers and establishes a firm date for proscribing *all* smoking on company property (by both employees and customers), you may be assured that:

- Personnel costs will decline. Expect to accomplish the same work load with 10 percent fewer employees.
- Maintenance costs will decline.
- Actual physical depreciation on furniture and equipment will slow substantially.
- Insurance rates can be slashed through renegotiation for new fire, health, accident and disability coverage.
- Employee morale will improve.
- Customers and clients will adjust, without adverse repercussions, to your new policy.

Yours *could* be the first smoke-free organization to report unfavorable results, but I'll place

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my bets against that happening. Smoking is an expensive luxury. Can your business afford it?□

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APPENDIX G

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"No ifs, ands or butts" – why workplace smoking should be banned

A professor tells why he refuses to "play bashful" in his stand against smoking in the workplace

By William L. Weis Ph.D., C.P.A.

I've never been accused of being reticent in my enthusiasm for no-smoking employment policies. In an article in the March, 1981 *Personnel Journal*, I made some pretty bold claims. I promised that employers could shave personnel costs by 20 percent, insurance premiums by 30 percent, furniture depreciation and maintenance requirements by 50 percent, and disability payments by 75 percent — and improve employee morale. (*See August, 1981* Management World, *page 24.*)

Now I think that I understated my case. In a book that my colleague, Dr. C. Patrick Fleenor, and I will soon finish, we predict that employers can expect to save $4,789 per year per smoker, as a long-term average, by adopting a two-pronged policy that 1) restricts all hiring to nonsmokers and 2) prohibits all smoking on company premises. Table 1 summarizes the sources of those expected cost savings.

While I can't guarantee an annual $4,789 savings per smoker from such a policy, I will promise that:

- Personnel costs can be reduced. Expect to accomplish the same amount of work with ten percent fewer employees.
- Maintenance requirements, especially interior window washing, sweeping, repainting, and repairs to carpeting and draperies will drop substantially.
- Fire, health, accident, and disability insurance rates can be slashed through renegotiation, once the company has become smoking-free.
- Employee morale will improve.
- Customers and clients will accept the new policy, and most will do so with enthusiasm.

Table 1

Additional Annual Cost of Employing Smokers and Allowing Smoking at the Workplace

Source	Annual Cost per Smoker
Absenteeism	$ 220
Medical Care	$ 230
Morbidity and Early Mortality (lost earnings)	$ 765
Insurance (excluding health)	$ 90
On-the-Job Time Lost	$1,820
Property Damage & Depreciation	$ 500
Maintenance	$ 500
Involuntary Smoking	$ 664
Total Cost per Smoker per Year	$4,789

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William L. Weis, Ph.D., C.P.A., is associate professor in the Albers School of Business at Seattle University, Seattle, Washington.

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-- There's no need for hedging on the claims. I've seen too many studies and talked with too many smoking-free business owners to play bashful. There may be a mysterious third agent that causes companies to simultaneously implement no-smoking policies and enjoy the cost savings cited above, just as there may be a mysterious third agent that tobacco lobbyists implicitly blame for the simultaneous smoking of cigarettes and contracting of lung cancer — but I'll bet my reputation against that discovery. So far there hasn't been a clue, even after decades of costly tobacco industry research.

False Fears

If you have looked at the data, you are no doubt impressed by the possibilities for deep cost savings with smoking bans. But can we really do it? Can we just tell Humphrey Bogart that, like it or not, he'll have to do his tough talking somewhere else, or learn to do it without that stupid stick dangling from his mouth?

The answer is "Yes," resoundingly so. The era of the smoke-shrouded movie screen (sometimes it was difficult to recognize the characters in the cloud of smoke) and, sadly, of Humphrey Bogart, are both over. The latter might still be with us were it not for his deadly habit.

Over the past several months, Dr. Fleenor and I have spoken with numerous employers who have "cleared the air." We have yet to meet one who was not frightened by the prospect of adverse employee and customer repercussions. Fear of the unknown, of the unmet, can be awesome. But we have yet to meet one employer whose fears were supported by policy results.

"I wasted a lot of sleepless nights," reported Warren McPherson, president of Radar Electric, "worrying over something that never happened."

And that comment was typical of the lot. If implemented properly, smoking bans can and are accepted by both employees and customers — accepted enthusiastically by most. And for some good reasons.

Myths and Facts

For starters, a study by J.R. White and H.F. Froeb, reported in the March, 1980 *New England Journal of Medicine*, leaves little doubt that the damage to involuntary smokers (nonsmokers who work around smokers) is both real and severe. White and Froeb found significant impairment of the small airways function (wind sacs) in nonsmokers who were exposed to smoking at the workplace.

The Tobacco Institute will point out that impairment of the small airways function is not proof of health impairment. But if we adopt the tobacco industry interpretation of "proof," not only have we not proven that smoking causes lung cancer, neither have we proven that bacteria cause strep throat or that viruses cause influenza. To the tobacco industry, there may be no such thing as "proof."

If pangs of guilt, conditioned by a culture that for years has placed the convenience of smokers above all other social considerations, stand in the way of your no-smoking policy, think a little about the welfare of that two-thirds of the workforce who would like to preserve what's left of their small airways. The risk is not unique to primitive work environments. The *Wall Street Journal* reports that particulate contamination in the nation's newest and most modern office complexes is from ten to 100 times higher than allowable Environmental Protection Agency limits for outside air quality. Remove the smoking and you remove the particulate contamination.

I recently spoke with an employer who was enjoying the economic benefits of a strict no-smoking policy. She dismissed health impairment to nonsmokers as inconsequential. The employer invoked a common myth: that a myriad of other forms of pollution makes the air we breath so toxic that the smoke from cigarettes and cigars is hardly worth worrying about.

That fallacy was probably originated and nurtured in the public relations offices of tobacco companies — certainly not in the medical journals. I intuitively believe that the exhaust from automobiles represents a serious health hazard, and is a disgusting environmental nuisance to those of us who dwell in urban areas. But my intuition is yet to be supported by compelling medical evidence. On the other hand, the relationship between smoking and a host of adverse health and behavioral consequences — various types of cancers, cardiovascular diseases, peptic ulcer disease, emphysema — has been supported by literally reams of data.

The Case of Radar Electric

Professor Fleenor and I devote several chapters of our book to describing approaches that have been successful for smoking-free companies. I will just briefly discuss several components of one firm's policy, a policy that proved extremely effective.

Radar Electric, a Seattle distributor of electronic components with a workforce of approximately 100 full-time employees, became one of Seattle's first smoking-free businesses on January 1, 1978. The policy planning started months before and was spearheaded by President McPherson.

"I formally announced during the summer of 1977 that as of January 1, 1978 smoking would no longer be allowed on company property," McPherson states. "I knew that this would be very threatening to over half of my workers who then smoked, so I threw in some sweeteners."

Those sweeteners included paid memberships to a nearby health club for all nonsmokers, and limited release time to encourage use of the club facilities. In addition, McPherson offered an hourly wage increment as an inducement to kick the habit as quickly as possible.

"I was afraid that my sweeteners might be resented by nonsmokers on the payroll. As it turns out, nonsmokers have a tremendous compassion for smokers struggling to break the habit. I received nothing but encouragement and praise from my nonsmoking employees."

From August 1, 1977, Radar Electric hired only nonsmokers. The application for employment expressly conveys company policy on smoking: only nonsmokers are considered for hiring. The sick leave policy at Radar is even simpler — there isn't any. Since sick leave is substantially a special wage subsidy for smokers, a company without smokers needs no sick leave policy, only expanded vacation time.

As McPherson puts it, "Nonsmokers basically know that their smoking colleagues chalk up most of the absenteeism, and hence the sick leave benefit is unevenly distributed — and that's un-

Continued on page 44

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"Banning workplace smoking" (Cont. from p. 40)

fair. Now everyone gets the same amount of time off. The smokers can spend it in bed and the nonsmokers on the ski slopes. Of course, we have only two smokers left on the payroll. The rest have all stopped."

There were other subtle components in the Radar Electric program, but I think this brief discussion makes clear the approach that was taken. The program was very successful. Not only did employees and customers enthusiastically support the no-smoking policy, the cost consequences discussed earlier in this article were an unexpected surprise to McPherson.

"I did this for personal reasons, because I thought it was the right thing to do, for the health and welfare of my employees. The productivity impact was completely unexpected — the savings have really been impressive. I should have done this years ago," he says.

Radar Electric's experience is only one among a growing number of cases involving companies that no longer regard smoking as a necessary cost and inconvenience. Dr. Fleenor and I cover a number of others in our book, and we have barely scratched the surface.

Should you continue hiring from a pool of applicants who, by choice, belong to a minority distinguished by high rates of absenteeism, disability, early mortality, and low productivity, and who are contaminating the work environment and impairing the health of their colleagues? Or is it time to kick the habit?

For additional information, consult the following sources:

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Rebuttal: "Ifs, ands or butts"

Why banning workplace smoking would violate the tenets of accounting practices as well as our civil liberties

By J. Everett Hicks, C.A.M.

Editor's Note: The following is a rebuttal to September's "Forum," entitled "'No Ifs, Ands or Butts' — Why Workplace Smoking Should Be Banned," by William L. Weis, Ph.D., CPA.

What follows is an admittedly harsh rebuke to those who honestly believe that a rule or law will remedy anything, and who have dismissed Thomas Jefferson's wisdom that "the best governed are the least governed."

I have long held that the overzealousness of advocates of "radical" propositions should be cause for a penetrating examination of any data they offer to support their conclusions. This approach appears to have considerable merit, viewed from the perspective of a "devil's advocate."

First, look at Dr. Weis's tabulation of the cost of smoking in the workplace at $4,789 per year per smoking employee. Should any significance be attached to the fact that the figures lack the grace and favor of a CPA's formal and customary certificate as to how they were arrived at, and to his opinion as to their validity?

Under only cursory examination, certain items in the schedule appear to lack professional integrity. For example, comingled property damage and depreciation expenses cannot be reported within the format of any income tax return I have seen during the last 30 years.

If these claimed costs were applied to an administrative office of 50 employees, all smokers, the $25,000 for maintenance attributable to smoking plus the other normal maintenance costs, when processed by an IRS computer, would flash lights and sound claxons of the sort that compel extensive and expensive tax return audits. The same would apply to the $25,000-plus other expense of the non-related property damage and depreciation expenses claimed.

If an administrative manager had submitted such figures in a budget to certain chief executive officers I have known in the business world, he or she would have been fired as soon as the CEO had time to cough up his cigar.

I am inclined to ignore other calculations except to note that the effectiveness of management employees, as distinguished from academic people, is measured by the bottom lines of financial reports and not by the time and effort managers spend in carrying out their basic functions. Is this factored in in the figures for on-the-job time costs?

During my youth, Prohibition was described as "A good law, but they can't enforce it." The absolutism demanded by Dr. Weis smacks too much of this type of Big Brotherism. I still have confidence that it would not be tolerated by a body of people with an inherited abhorrence of regimented lifestyles.

I am a firm believer in the concept of moderation in all policies and procedures that apply to people of diverse concepts. From the beginning, compromise has been a necessary and successful ingredient in the adoption of our Constitution and laws. They are tailored to avoid the tyranny of majorities or minorities.

I am also sure that the rights of nonsmokers could be accommodated within reasonable and flexible policies built on the give and take among fair-minded people — with no requirement or need to humor what many might consider blind prejudices, however well they are orchestrated.

Let us, therefore, confine our work for desirable reform to what is attainable through the above process, and avoid the trauma that would result from more and more fiats from lofty, ivy-clad towers. □

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APPENDIX I

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The Smoking Controversy: A Perspective

A Statement by
The Tobacco Institute
December/1978

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II. THE PSYCHOLOGICAL WAR ESCALATES

Dr. Selye's concern takes on additional significance in light of the announcement in January 1978, by Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare.[31] He said his department would wage "the most vigorous and hard-hitting program against smoking that this country has ever had."

Secretary Califano declared that the program, at a cost of $23 million in its first year, would concentrate on education and incentives. The proposed "incentives" include higher taxes on cigarettes and further prohibitions of smoking in public places (see End Note #6).

Less than one-tenth of the 26-page announcement was concerned with research, but to the degree this murky reference can be understood it means research into methods of "helping people overcome their addiction to cigarettes." (It will be recalled that the Surgeon General's report said smoking is an habituation, not an addiction.[14])

A voice of reason

A few weeks earlier President Carter's top health advisor on the White House staff took a different position, but his was a muted voice of reason.[32] He reiterated the President's observation that the public has been "adequately warned" about smoking and advocated more research into the cause of disease. And he emphasized that the research should not be restricted to tobacco.

The announcement by Secretary Califano, a lawyer, was covered extensively by all the media. By contrast the position of the White House medical doctor was virtually ignored.

Still another offensive launched

The fact that a declaration of war or the launching of a new offensive can draw publicity is well recognized by the anti-cigarette forces. In 1976, the American Cancer Society announced "Target 5" (military terminology again), a five-year political and propoganda campaign to be highlighted by anti-smoking media events and lobbying for more anti-cigarette legislation.[33]

Diverting the Society's efforts from research into propaganda, overt and covert, the program is aimed directly at smokers. Its method is to instill blame, shame and fear among them. It attempts

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to make them second-class citizens in society, pariahs in their own families (see End Note #7). The possibility for psychological strain among the tens of millions of people who enjoy smoking is ignored.

The profound sense of alienation among the victims of disease is a growing cause of concern.

Tragically, the forgotten ones are the victims of the diseases the health agencies purport to be fighting. The profound sense of alienation among the victims of disease is a growing cause of concern. They tend to blame themselves for their afflictions, and members of their families tend to agree with them. The tactics of the health agencies can serve only to intensify their alienation at a time of deepest distress.

A metaphor for hate

Susan Sontag, herself a victim of breast cancer, observes: "Ostensibly, the illness is the culprit. But it is also the cancer patient who is made culpable."[3]

Ms. Sontag conducted extensive research into the historical and medical literature on the macabre use of "disease as a political metaphor"—that is, an excuse for attacking non-victims of the disease.

She goes back to the plague of the 14th century, which in the twisted mentality of the times led to a massacre of Jews. When the plague subsided, the pogroms ceased. Particularly when magnified to "epidemic" proportions, Ms. Sontag suggests, cancer can be used by extremists to justify radical actions.

It is altogether clear that this is what is happening to smokers today. The "incentives" proposed for smokers follow a classic pattern of prejudice: discrimination in employment, segregation in public places, economic repression (through taxation) and emotional belief in condemnatory mythology.

A question of proof

On what basis can organizations be justified in their "wars on disease" that inflict distress on members of our society?

In their scare campaigns, the health agencies have both publicized statistical "epidemics" and provided scapegoats. They make the flat judgment that smoking causes lung cancer and heart disease.

The burden of proof must rest with those who advance the hypothesis.

On the face of it, the judgment violates the laws of science. Many smokers suffer neither of those diseases. And many nonsmokers are struck by one or the other. Neither phenomenon is explained.

There is another law of science that pertains. A hypothesis concerning the cause of disease remains merely a hypothesis until and unless conclusive laboratory and clinical proof can be found. The burden of proof must rest with those who advance the hypothesis.

The most insistent enemies of smoking are well aware of that fact.

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E. Cuyler Hammond, Sc.D., vice president for epidemiology and statistics of the American Cancer Society. stated it quite articulately: "You can't prove that something produces no effect. You can't prove that one out of a trillion people won't get cancer from being exposed. Nor can you prove that out of a trillion people, there wouldn't be one that was prevented from getting cancer by this exposure."[34] (See End Note #8.)

Thus it cannot be proven that smoking has "no effect." The people who make tobacco products do not claim that smoking has no effect. This paper cannot prove and does not imply that smoking is "safe."

It cannot be proven that smoking has "no effect."

On the other hand, it must and does challenge the simplistic transition from statistical hypothesis to blanket charges to the absolute conclusion that the case against smoking is proved (see End Note #9).

To dismiss the tobacco industry's position because the impossible disproof is not forthcoming deviates from the issues. Yet this arrow frequently is shot from the anti-tobacco bow. Proof as to the cause of disease is indispensable. Where is it in the case of lung cancer?

The American Cancer Society remains well aware of the need for laboratory evidence because the one time it claimed to have such evidence became an abiding embarrassment.

On February 5, 1970, the ACS held a news conference at the Waldorf Astoria Hotel in New York City.[35] Without the customary review by scientific peers and acceptance by a reputable scientific publication—a procedure considered essential in the scientific community—research purporting to show that the inhalation of tobacco smoke caused lung cancer in beagle dogs was announced to the general public.[36]

The study did have the endorsement of the then Surgeon General, Jesse Steinfeld, a testimonial highlighted by the ACS. It was later learned that he had not even reviewed the study before giving it his endorsement.[37, 38]

More important, it was also disclosed later that the study had been rejected for publication by both the *New England Journal of Medicine* and the *Journal of the American Medical Association*.[38, 39]

The unorthodox public press conference received front-page coverage by newspapers and was featured by the television networks. Walter Cronkite reported the Society's claim that "this is the first cause-effect link" between cigarettes and lung cancer in higher animals.[40]

ACS has never released the full details of the study for independent review (see End Note #10). The National Academy of Sciences questioned the study on the basis of four separate points that still remain to be resolved.[41] Many people mistakenly believe the "cause-effect link" has been established, and the ACS does nothing to disabuse them of the false notion which it created.[42]

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One author of the study, Dr. E. Cuyler Hammond, remains employed by the ACS. The second, Dr. Oscar Auerbach, is an ACS grantee. Dr. Steinfeld, whose unqualified endorsement of a study which he had not seen added to its original and misleading credibility, is closely associated with the Society. But experimental scientists have yet to induce, by exposure of tobacco smoke in animal lungs, the type of cancer associated with smoking.

In the public disservice

Grisly results of the rigid dogma promulgated by the anti-smoker agencies are beginning to come to light. One reported example involves BCME (bis-chloro-methyl ether), a relatively new chemical important in the refining of low-grade uranium and other uses. In 1971, a group of researchers at New York University concluded BCME is the most potent carcinogen among those it tested.[43]

For more than 20 years, BCME workers at a plant in Pennsylvania suffered an inordinate rate of lung cancer, but the cancer deaths were attributed by company officials—and outside medical experts!—to cigarettes.

Concerning that plant, an inspector from the Occupational Safety and Health Administration in 1971 glowingly noted in his official report that the plant had "recently completed 365 calendar days without a lost-time injury."

During those 365 days, ten of its workers had died of respiratory cancer.

That smoking was the cause was "a meaningless argument to throw in . . ."

By 1974, more than 50 employees who had been exposed to BCME in the plant had died of respiratory cancer, but the company resolutely maintained that the deaths were not related to occupation. Finally, when it was clear that nonsmokers as well as smokers were cancer victims, one OSHA doctor commented that the company's insistence that smoking was the cause was "a meaningless argument to throw in; 60 to 70 percent of the working population smokes."

By July 1975, the company had settled 27 compensation claims by survivors of workers who had died of cancer. An investigative article in the *Philadelphia Inquirer's* Sunday magazine, *Today*, reported that 54 employees had died of respiratory disease after exposure to BCME.

"Something else is going on"

To suggest that the BCME incident was isolated would ignore contrary evidence. In 1975, the National Cancer Institute issued an atlas showing cancer death rates over a 20-year period for each county in

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the United States.[44] The patterns of lung cancer bore a highly inconsistent relationship to the presumed patterns of cigarette smoking (see End Note #11). The incidence of lung cancer was extremely high along the East and Gulf Coasts. Commented Dr. Joseph Fraumeni of the NCI: "Something else is going on."

Statistics of lung cancer bear little or no relationship to nation-by-nation differences in cigarette consumption.

When the NCI atlas was released, *Newsweek* noted that it was "called 'a surprise.'" But the warriors against cigarettes seemingly ignored it and, characteristically, intensified their efforts.

The atlas could hardly have been surprising to the epidemiologists who for years have noted that the worldwide statistics of lung cancer bear little or no relationship to the nation-by-nation differences in cigarette consumption.[45]

The smoker diversion

Among the states with the highest rates of lung cancer is New Jersey, whose large number of industries includes chemicals and asbestos, widely held to be one of the most pervasive carcinogens. Asbestos manufacturers, however, have used the anti-cigarette conviction to muddy the issue.[46]

Recently a Congresswoman from New Jersey introduced federal legislation to enact a special "health insurance" tax on both asbestos and cigarettes.[47] The tax would be used to compensate asbestos workers or their survivors when those workers have been afflicted by respiratory disease. Within the Congresswoman's district is one of the world's largest asbestos companies. Her legislation, it was discovered, was drafted by the company's lawyers.[48]

As the number of suspected carcinogens has grown, the number of those with a vested interest in the anti-cigarette ritual has grown apace. More than 500 worker's compensation cases are pending against one asbestos company.[49] (The company has already paid several.[50]) Between eight and eleven million workers are believed to have been directly exposed to asbestos and other carcinogens in their occupations.[51] Attempts to spread or divert the blame by exploiting the charges against cigarettes, of course, do not advance the search for the true causes of disease.

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III. THE CANCER CLIQUE

When one considers that hundreds of millions of dollars have been spent for cancer research through the public and private agencies with comparatively little discernible advancement of knowledge, there is good reason to suspect waste and misdirection. Such charges have been made by people in a position to know. One is Dr. Irwin D. J. Bross, Director of Biostatistics for the Roswell Park Memorial Institute, who testified on June 14, 1977, to the House Intergovernmental Relations and Human Resources Subcommittee.[52]

Dr. Bross, a well-known foe of cigarettes,[53] pinned the failure of our nation's cancer programs on the administrative superstructure that controls the National Cancer Institute, and he did not hesitate to name names:

What the superstructure did was to concentrate power in a tight little professional in-group . . .

"The superstructure was largely engineered and controlled by the American Cancer Society, a principal beneficiary of NCI funds. The liaison with the White House, Benno Schmidt, and the Director of the National Cancer Institute, Frank Rauscher, and many members of the National Cancer Advisory Board . . . all had close ties with ACS. This is also true, for that matter, for proposed replacements for Frank Rauscher (who is now an ACS vice president). What the superstructure did was to concentrate power in a tight little professional in-group which then proceeded to run the Conquest of Cancer program as a closed corporation with a total disregard for the public interest.

"In any other area of the federal government," Dr. Bross continued, "this cozy set-up would have been regarded as very questionable or outright corrupt. This set-up is not worth revamping and should be junked. The American Cancer Society should be barred from getting any NCI grants . . . for the next four years." (See End Note #12.)

Manipulating media

Dr. Bross has been engaged in cancer research for 25 years,[54] but his grave allegations largely escaped attention in the press. Perhaps the media were sensitive to his implication that they were being manipulated:

"The programs for other environmental carcinogens are little more than public relations gimmicks, 'paper tigers' designed to reassure a concerned public that something is being done when it isn't. This is standard practice in the NIH (National Institutes of Health). The program on cigarette health hazards is a farce. It consists of noisy scare campaigns which are counterproductive—like

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most of 'cancer education.' It sets up meaningless 'clearinghouses' to shuffle paper around—a successful gimmick that is now used for chemical carcinogens. It will kill a lot of beagle dogs in a cruel and stupid experiment that will tell us nothing about human cancer . . ."

The use of the media by the Cancer Society has assumed questionable proportions. *The Reader's Digest*, for example, has carried anti-smoking articles written by a paid staff member of the ACS.[55] Readers were not informed of the author's affiliation, although his special interest is certainly relevant.

The Reader's Digest has carried anti-smoking articles written by a paid staff member of the American Cancer Society.

At virtually the same time Dr. Bross was delivering his testimony, ACS was launching its "Target 5" propaganda program with so-called "forums," actually staged media events in major U. S. cities. At the first one it presented a young man who had held a hostage at gunpoint on the roof of a Los Angeles building.[56] He had refused to release his hostage until the media reported that his father had died from smoking; here again, an allegation and not a proven medical fact. The media complied.[57] To the ACS, the terrorist and accused felon was an invited witness whose views deserved publicity. (See End Note #13.)

Stigmatizing smokers

The implied objective of the "Target 5" program is to create social scorn for smokers. The implication was clear to the *Chicago Metro News*, a black publication that is understandably sensitive to manifestations of oppression. In an editorial, it stated:

"If the ACS is allowed to continue in this direction of setting up 'veiled' rules for setting the lifestyles of citizens, the precedent will have been set for hundreds of organizations whose actions and programs are already suspect, to openly get involved in setting up 'people constraints' geared to regiment the people in this country into a state of terror described by the author of the classic novel '1984' in which 'big brother' determined the existence of all people on the planet."[58] (See End Note #14.)

Diffused cigarette smoke

The concerted effort to stigmatize smokers as second-class citizens has been magnified into a furor over smoking in public places. From the earliest history of tobacco, the sight of someone smoking has been disagreeable to some people.

Growing constraints on smokers are based on emotional antagonism.

The *Chicago Metro News* had a good reason to perceive social prejudice in the growing constraints on smokers, because they are based on emotional antagonism, rather than reason. A comprehen-

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sive review of the research into the question of so-called "passive smoking" was conducted by the American Health Foundation and published in 1975 in the journal, *Preventive Medicine.*[59] The conclusion: "On the basis of available epidemiological evidence, it appears passive inhalation of tobacco smoke by nonsmokers or smokers does not increase their risk for chronic illnesses such as cancer of the respiratory tract, emphysema, or cardiovascular disease."

Two articles supporting this view appeared in *The New England Journal of Medicine* in April 1975. In "Concentrations of Nicotine and Tobacco Smoke in Public Places," a research paper by William C. Hinds and Melvin W. First of the Harvard School of Public Health, the authors concluded that measured levels of ambient cigarette smoke "would not be expected to produce the strong public reaction to tobacco smoke that has developed in the past few years."

Hinds and First suggested that "annoyance from tobacco smoke is caused by factors other than the average concentration of particulate matter in the indoor atmosphere."

Men have physically attacked other men for smoking.

In the same issue, Dr. Gary L. Huber of the Harvard Medical School wrote that nonsmokers' reaction to tobacco smoke may be psychological, rather than physical.[60] There have been numerous reports of nonsmoker behavior that could best be described as neurotic. For example, men have physically attacked other men for smoking in supermarkets.[61]

Growing concern led to a Congressional hearing in September 1978, at which nine scientists testified in refutation of charges by anti-smokers that tobacco smoke in the air can cause disease. Following the hearing, ten other experts provided additional scientific refutations to the committee. It was their outspoken contention that ambient tobacco smoke cannot cause illness in normal nonsmokers.[62]

Generating fear and hate

How much psychological distress is reinforced by unfounded charges by some of the health and propaganda agencies, notably the American Lung Association and Action on Smoking and Health, is a matter of conjecture. But innumerable nonsmokers have written letters to the editor stating the new shibboleth: "Your smoke is killing me." To the degree such people believe what they say, the propaganda causes distress and animosity. The frequency of such unsubstantiated charges in letters columns also brings up the question of editorial judgment. Against what group other than smokers would editors repeatedly print the unsubstantiated charge of killing?

The irrationality of the allegations is heightened by the fact that most public places are now air conditioned. A major government

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ly, for example, concluded that tobacco smoke on aircraft does not represent a significant health hazard to nonsmoking passengers.[63] In planes with a typical ratio of smokers, it found the air more pure than the outdoor air in urban environments.

Yet the activists, not satisfied with the back-of-the-plane segregation of smokers, now want a ban on smoking in all public transportation.

Are health agencies believable?

As in the Salem witch trials, a segment of society is acting on the basis of emotion when it mistakenly thinks it has the facts. The blame for this distortion of the public interest must be assigned to the health agencies, for society reasonably assumes these agencies deal dispassionately with facts and concentrate on conquering disease through research. Society has been misled.[64] The private agencies concentrate on propaganda and the accumulation of assets, only a small percentage of which is spent on research into the cause and cure of disease.[65, 66] A witch trial of smokers, whether it threatens public welfare or not, gets public attention, inflames the passions of volunteer fund raisers and produces big budgets and oversized reserves in such private agencies as the American Cancer Society, the American Heart Association and the American Lung Association.

A witch trial of smokers gets public attention.

Research into the cause and cure of disease does not.

There is an independent non-profit service for contributors, the National Information Bureau, that monitors the finances of "philanthropic" organizations. In a recent report on the American Heart Association, it states: "Question arises with respect to the reasonableness of AHA's accumulation of assets beyond the amount required for its next year's budget."[67]

Its reports on the American Lung Association and the American Cancer Society raise additional questions. With respect to the American Cancer Society, NIB further noted that " . . . for many years the primary focus of the society's promotional and fund-raising materials has been on the need for funds for research for which the percentile allocation has actually declined over this ten year period."[68]

ACS practices called misleading

NIB also reported that ACS assets increased from $76,500,000 to $186,800,000 during the ten years while it was saying it didn't have enough money for research. The report concluded: "NIB believes that

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it is misleading to the contributor for an agency to state that funds are not available if this 'unavailability' is in part a result of previously budgeted allocations and not based on actual funds on hand."

ACS spends 13% of its budget on fund raising, and more than 27% on "education"—a large but undisclosed portion of which is for anti-smoking propaganda.[69] "Education," of course, keeps ACS before the eyes of potential contributors, and ACS spends less on research than it does on "education."

The handful of paid executives who run the ACS receive salaries of up to $75,000 or more per year. One such employee is Dr. Frank R. Rauscher, who left the National Cancer Institute, which works closely with the ACS, to become senior vice president for research. Because ACS works closely with the government agencies, the propriety of such job switching has been questioned.[70]

The American Lung Association devotes only 2.3% of its budget to research.

The American Lung Association devotes only 2.3% of its budget to research.[66] The NIB report states: "Attention is called to the ALA's fund-raising costs." This attention is certainly justified. For every 2.3¢ ALA spends on research, it spends 28¢ on its fund drives.

ALA reports that it also spends about 28% of its budget on "education." The "education," to cite one example, takes the form of a scare booklet replete with unsubstantiated allegations and dire conjecture about the effects of tobacco smoke on nonsmokers.[71] After attempting to frighten nonsmokers concerning the imagined perils (no scientific source is cited), the booklet advocates agitation for all sorts of restrictions on smoking in public places. The unscientific allegations are dutifully echoed by legislators who have found that anti-smoking declarations get them press coverage.

The ALA booklet also urges direct action against smokers: "Let family, friends, co-workers and strangers know you mind if they smoke." Also " . . . voice . . . objections when smokers light up without asking permission."

In other words, make one class of citizens beholden to another for the right to enjoy a simple satisfaction, and invoke the police power of the state to deny that right. The militancy involved has led to actual incidents of physical violence. Certainly this could not be the intent of most people who contribute to an organization called the American Lung Association. They undoubtedly expect a positive approach to solving the riddles of respiratory diseases.

The anti-smoking agencies

The party line has been adopted by dissidents in search of a cause, who have penchants for setting up organizations with acrimonious acronymns.

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Among the most active is ASH (Action on Smoking and Health), whose founder and paid head is John F. Banzhaf III, a law school professor. Like more than 30 other organizations, ASH agitates for legislation restricting smokers. Mr. Banzhaf's motto is: "Sue the bastards!"[72]

The activists seem to revel in their sense of power, and, indeed, at times their influence is grossly disproportionate to their numbers. Julia Pendino, a Rochester, New York housewife who lobbied for bans against smoking in public places under the banner of GASP (Group Against Smokers' Pollution), boasted, "When I went up to the legislature, they thought I had about 10,000 people behind me. That was a laugh. It was just me. I had laws passed by myself."[73] (See End Note #15.)

Another example of an extreme anti-smoker organization is SMASH (Society for Mortification and Smoker Humiliation), whose organizer suggested implantation of bits of explosives in cigarettes and development of a spray which would cause smokers to vomit.[74]

"You don't know what a rewarding feeling it is, the first time you spray a smoker in the face."

In November 1977, Bob Greene, a writer syndicated by Field Enterprises, devoted his column to Paul Wright, executive director of the National Association on Smoking and Health.[75] He wrote that Wright is intent on building an "army" of 2,000,000 militants who will go about "zapping" smokers in the face with spray from aerosol cans.

As quoted in the column, Wright said, "You don't know what a rewarding feeling it is, the first time you spray a smoker in the face. It's hard to work yourself up to the first spray. It takes guts. But once you've broken the ice, it's easy. And you feel exhilarated."

Asked what would be done if the anti-smoking spray cans prove ineffective, Wright said, "Then we move on to the anti-smoking billy club."

Columnist Greene found this commendable. "At last, a genuine American hero," he wrote. "All hail Paul Wright."

We indeed are on the brink of paranoia. The antagonism against tobacco has degenerated into a vendetta against smokers. The onslaught has grown shrill, even hysterical, as the frustrated militants realize that they cannot easily impose their will on the nearly 60 million Americans who continue to enjoy cigarettes.

While the noise level some time ago drowned the voices of reason, millions of Americans obviously continue to smoke tobacco because somehow it provides personal pleasure. There is substantial evidence that smoking may be a safety valve in an increasingly stressful society.

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IV. CONCLUSION

Choice:
A fading freedom

At heart, the issue is one of personal rights. Both smokers and non-smokers have a right to an open airing of the facts, not the monolithic mindset purveyed by the anti-smoker agencies. And they have the right to decide for themselves.

In his masterful and classic essay, *On Liberty*, John Stuart Mill wrote:

> "The opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course, deny its truth; but they are not infallible. They have no authority to decide the question for all mankind and exclude every other person from the means of judging."[76]

Mill's words strike to the heart of the question: Who has the authority to decide? As historians have pointed out, the most revolutionary idea in the Declaration of Independence was expressed in three words: "pursuit of happiness." This was no mystical abstraction. Robert Green Ingersoll, the gifted orator who identified James G. Blaine in a presidential nomination speech as "a plumed knight," observed that "the way to be happy is to make others so;"[77] in other words, to help relieve life of grimness, meagerness and anxiety. Tyrants of the American colonial era had never entertained the idea that the masses should have such personal rights.

The efforts to deny the right to pursue the satisfactions of smoking add up to nothing less than tyranny by a minority of anti-smokers.

It is relevant to note that many, if not most, of the framers of the Constitution enjoyed the use of tobacco, as well as tea. How indignant they would have been at any attempt to infringe on that personal right through taxation, restrictions and prohibitions!

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APPENDIX H

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Cold-shouldering the smoker

By William L. Weis, Ph.D., C.P.A.
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Associate Professor, Management

The Albers School of Business
Seattle University

The Wall Street Journal has reported that smoking during an employment interview might jeopardize one's chance of being hired. Interviewers purportedly offer applicants cigarettes as ploys to observe the interviewee's poise in a high-stress situation. But a recent survey of Seattle area business managers, all of whom either exercise direct hiring responsibility on their present jobs or have in the past, suggests that interviewers may be looking for something else. They may be looking for nonsmokers.

Discrimination against smokers may already be a major factor in evaluating prospective employees. With mounting evidence suggesting that smokers not only cost their employers more but present a health hazard to their co-workers, the prognosis for smokers may soon be as dismal in the employment office as it is on the health charts. Unofficial selection practices are beginning to show a clear bias. Many firms already allow managers to establish independent smoking restrictions over their respective work areas, and a look at how one sample of managers views smoking among job applicants may come as a surprise.

In our survey, 119 out of 223 Seattle-area managers indicated that they choose nonsmokers over smokers when faced with a choice between otherwise equally qualified applicants. Among the remaining respondents, 103 regard the decision as a toss-up, and only one prefers smokers. For the smoker, this statistic must have a chilling effect—but the news gets even worse.

We asked our managers to make two *assumptions* that are in fact

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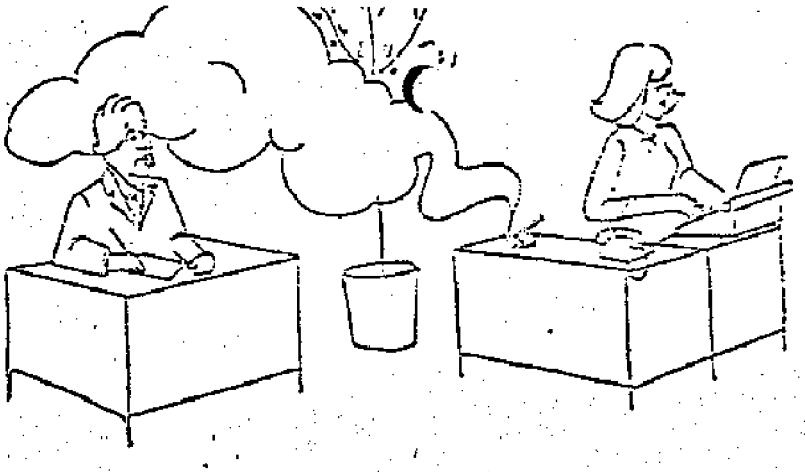

strongly supported in recent studies: (1) Absenteeism among smokers is approximately 50 percent higher than among nonsmokers, and (2) The health of nonsmokers who work around smokers is measurably impaired as a result. Given these additional *assumed* factors, the number choosing nonsmokers shot to 198 out of 223, leaving only 23 in the toss-up corner, one "no reponse," and one still preferring smokers.

That represents a fairly clear message to job seekers who still smoke. Widespread awareness of the additional costs associated with employee smoking, as well as the related health consequences to co-workers, is certainly only a matter of time in coming. Apparently, smokers should either find employment quickly before that awareness spreads, plan to outshine nonsmokers in job-related areas, or stop smoking.

Life, liberty, and the right to smoke

In our work with Pacific northwest employers who have or are planning restrictive smoking policies, we are frequently asked about the legal ramifications of smoking bans. With proper deference to the bar and the bench, we offer the following observations.

Our reading of the federal discrimination statutes (from the Civil Rights Acts of 1964 and 1968 to the Age Discrimination in Employment Act of 1967 and subsequent EEO legislation) does not detect even a slight mention of smoking as one of those guaranteed inalienables. We find a distinction between *ascribed* and *achieved* characteristics, a distinction that is rudimentary to interpreting the civil rights statutes, to be a useful frame of reference for the legality of smoking proscriptions. Discrimination on the basis of ascribed qualities—qualities over which an individual has little or no control—is generally illegal. Ascribed attributes include

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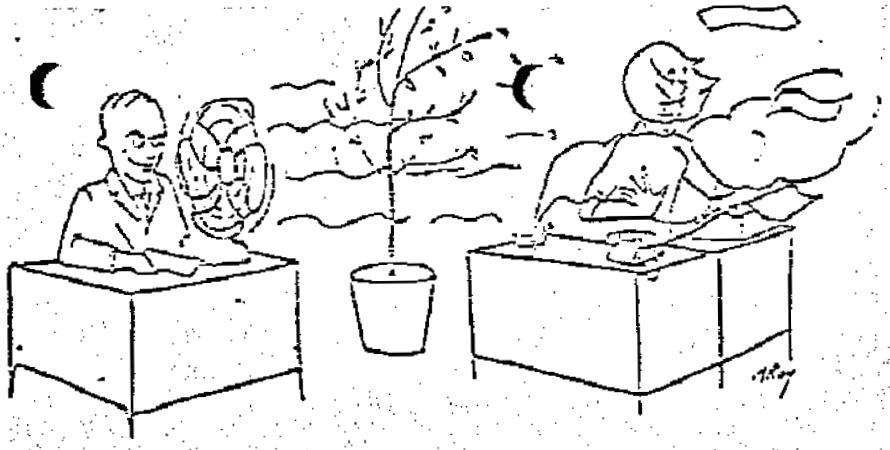

the issues of race, color, sex, national origin, and creed.

Achieved qualities, on the other hand, are those upon which employers traditionally discriminate in choosing applicants for employment. Employers are generally within their legal rights to select candidates on the basis of such variables as prior work experience, academic credentials, employer references, or personal grooming. Conceivably this could be extended to include smoking. Smoking seems to us to be an achieved behavior, just like wearing sweat clothes in the office, shooting spitballs at colleagues, and having two-hour three-martini lunches. That the practice of smoking became common during the last 75 years, promoted initially by the near force-feeding (or force-smoking) of doughboys during World War I, does not make the practice any less *achieved*.

The right to smoke, both on and off the job, does not seem to be guaranteed by any civil rights statute currently in force. We personally doubt that this will change, especially in light of the known consequences of smoking to productivity and co-worker health.

"If you were on the Supreme Court. . . ."

Since the economic ramifications of a bias against smokers could be, to say the least, substantial to the tobacco industry, we expect a test case to be thrust upon the U.S. Supreme Court within the next few years, either at the initiative of the tobacco industry or on appeal from an aggrieved employer or employee. We asked our contingent of Seattle managers to place themselves on a hypothetical Supreme Court, deciding an appeal from an employer who was denied the right to ban smoking on company premises by a lower court, and from an employer who was denied the right to hire nonsmokers exclusively.

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I explain to all applicants that smoking is absolutely prohibited on company premises—except in the parking lot during coffee breaks. That's been our policy since 1973, and it's been sealed by binding arbitration with the Teamsters Union. If one can't live with that policy, then it's best to pursue work elsewhere.

Richard Boyd
Secretary-Treasurer
The Boyd Coffee Company
Portland

Our policy on hiring smokers is quite simple: We don't. Smokers need not bother to apply.

Warren McPherson
President
Radar Electric Company
Seattle

I employ no person who smokes cigarettes.

Thomas Edison
In a letter to Henry Ford, 1914

With no preconceived notions about absenteeism or nonsmoker health effects, the managers reversed the lower court ruling by a 68 to 31 percent margin, preserving the employer's right to ban smoking completely from company premises. On the issue of hiring nonsmokers exclusively, our sample of hypothetical judges held for the lower court by a 62 to 37 percent margin, thus denying the employer's right to hire only nonsmokers.

When we added the assumptions of incremental absenteeism and nonsmoker health impairment, the managers voted 168 to 84 in favor of the employer's right to ban smoking completely from company premises and 118 to 105 *against* the employer's right to hire only nonsmokers. The vote against restricting hiring to only nonsmokers, both before and after the assumptions, seems to us to reflect a civil rights consciousness. Being especially sensitive to the antidiscrimination litigation of the past few years, managers have difficulty believing that smokers can be simply turned away at the employment window.

In our final question we asked the managers to express a preference for

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Executive Attitudes

Within our sample of managers was a subgroup of top executives—20 of the 223. Given the substantial influence of executives on personnel policies, it is instructive to see what their reponses were.

Prior to any assumptions about absenteeism and co-worker health effects, 14 of the 20, or 70 percent, would hire a nonsmoker over a smoker if other attributes were substantially the same. The remaining six viewed the decision as a toss-up. None picked the smoker.

When we asked the executives to assume both the higher absenteeism rates and the health effects on nonsmoking co-workers, all 20, *100 percent*, said they would choose nonsmokers—something to think about.

one of three alternative policies regarding smoking at their respective organizations. Of the 223 respondents, 74 preferred a complete ban on smoking, 123 preferred separate areas for smokers and nonsmokers, and 26 preferred no restrictions. We believe that an 88 percent preference for either a complete ban or for separate smoking/nonsmoking areas represents an important signal from organizational policy makers.

Implications

The results of our survey surprised us. Without tipping respondents to the purpose of the survey or to the known costs and health factors, 53.4 percent reported that they were already discriminating against smokers at the hiring point. And 68.8 percent indicated their intention to discriminate if the absenteeism and co-worker health assumptions turn out to be true. Interestingly, in a recent report measuring the costs of smoking at the workplace, incremental absenteeism—which was the *only* factor assumed in our study—was the *least* significant among eight categories of cost savings from banning smoking, representing only 4.8 percent of the total expected savings from implementing a strict no-smoking policy.

What will the results be when managers are asked to assume the full package of cost consequences? One can only speculate, but in the meantime, think twice before accepting cigarettes from a job interviewer. A nonsmoker may be waiting in the hallway. ■

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APPENDIX J

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Legal Aspects of Smoking in the Workplace

By JOHN D. BLACKBURN

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"THE EVIDENCE IS CLEAR and overwhelming. Cigarette smoke contaminates and pollutes the air, creating a health hazard not merely to the smoker but to all those around her who must rely on the same air supply. The right of an individual to risk his or her own health does not include the right to jeopardize the health of those who must remain around him or her in order to properly perform the duty of their jobs."[1]

So spoke the Superior Court of New Jersey in 1976 in the case of *Shimp v. New Jersey Bell Telephone*. Judge Gruccio based his decision in that case on the common law, that is, nonstatutory law, of New Jersey. He granted an injunction demanded by an employee of the New Jersey Bell Telephone Company that banned all smoking from work areas, including office and adjacent customer service areas.

More will be said about the *Shimp* case later. However, this is just one aspect of the legal rights and duties that employers may face when confronted with the issue of smoking in the workplace. Certainly, the legal aspects of smoking in the workplace must not be slighted. Not only may smoking be unhealthy, inefficient, and costly to businesses, but there may also be a legal duty, enforceable by employees, to prohibit or restrict smoking under certain circumstances, as in the *Shimp* case.

As will be seen, the general rule as to smoking in the workplace is, bluntly, that there is no general rule. Although the law is clear on the legal responsibilities of employers as to damage caused by the combustion potential of a lighted cigarette, one can only speculate on legal rights as to the effects of atmospheric cigarette pollution. That is, employers generally have a duty to post and enforce "No Smoking"

[1] 145 NJ Super 516, 368 A2d 408 (NJ SupCt, 1977), 1976-1977 OSHD ¶ 21,421.

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signs near combustible materials,[2] and injury caused by carelessness with matches and cigarettes is generally compensable under workers' compensation acts.[3] But what of the annoyance, the inconvenience, and the physical injury to nonsmokers caused by so-called "sidestream smoke," smoke from the lighted end of the cigarette or exhaled by smokers?

To begin with, there are generally four bodies of law that touch on this subject: constitutional law; federal statutory and administrative law; state statutory and administrative law; and common or case law. The following discussion focuses on the issues in each of these areas.

Is there a constitutional right to prevent persons from smoking in work areas? Although not directly considering the issue, two federal cases seem to have resolved this issue, and the answer is no. In *Gasper v. Louisiana Stadium and Exposition District*,[4] the plaintiffs alleged that state acquiesence in the permission of smoking in the Superdome violated first, fifth, ninth, and fourteenth amendment rights.

The court dismissed the first and ninth amendment claims with little discussion and then considered plaintiffs' claim that they were denied liberty without due process by the state's permitting a hazardous substance, that is, smoke, in state buildings. The court said no: liberty rights are subject to reasonable limits in public. The court refused to create a constitutional means "through which an individual could attempt to regulate the social habits of his neighbor."[5]

In the second case, *Federal Employees for Non-Smokers' Rights (FENSR) v. United States*,[6] the plaintiffs, a group of federal employees, claimed that permitting smoking in offices and hallways of federal buildings violated constitutional rights. The court in *FENSR* easily dismissed this constitutional claim, relying on the *Gasper* decision. In summary, then, constitutional claims have little or no merit.

One last constitutional aspect deserves mention, however, and that is state constitutions. Both Illinois and Pennsylvania, for example, guarantee individual rights to clean air and a healthful environment.[7] What application this may have to a right to breathe smoke-free air is open to speculation.

Federal Law

Obviously, the Occupational Safety and Health Act of 1970 is the most important federal law in the area of employee health and safety, since it applies to almost every employer except the government.[8] But, since the OSH Act expressly states that it has no effect on other statutory or common law,[9] a few other federal aspects must be mentioned.

First, federal agencies require separate seating for nonsmokers in inter-

[2] See 29 CFR 1910.108(f)(4) (dip tanks); 1910.107(m)(2) (organic peroxides); 1910.109(e)(1) (explosives); 1910.106(d)(7)(iii) (combustible liquids); 1910.107(e)(4)(ii) (powder coating areas); 1910.107(g)(4) (paint spraying); and 1926.151(a)(3) (construction area fire hazards).

[3] Annot., "Workmen's Compensation: Compensation to Workmen Injured Through Smoking," 5 *A. L. R.* 1521 (1920); Annot., "Liability of Master for Damage to Person or Property Due to Servant's Smoking," 13 *A. L. R.* 997 (1921).

[4] (1976), 418 FSupp 716.

[5] *Ibid.*

[6] 446 FSupp 181 (DC Dof C, 1978), 1978 OSHD ¶ 22,575, aff'd 598 F2d 310 (CA DofC, 1978), 1979 OSHD ¶ 23,510, cert. denied (US SCt, 1979, Docket No. 79-147), 100 SCt 265.

[7] See Comment, "Toward Recognition of Nonsmokers' Rights in Illinois" 5 *Loy. Chi. L.J.* 610 (1974), pp. 616, 617.

[8] 29 USC 652 (1976).

[9] 29 USC 653(b)(4) (1976).

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state public conveyances both on land[10] and in the air.[11] These agency rules may affect employees' rights to smoke-free air. The Association of Flight Attendants with the help of "Action on Smoking and Health" or ASH, a Washington-based antismoking lobby, are both fighting to ban smoking on *all* flights at *all* times.[12]

Second, the Equal Employment Opportunity Act and the National Labor Relations Act disallow certain types of employment discrimination. Although one could discriminate on the basis of smoking/nonsmoking for the purposes of hiring without adverse effect,[13] an employer cannot under Title VII discriminate against female employees by permitting only male employees to smoke.[14] As to the NLRA, one case, *Central Merchandise Co. v. NLRB*,[15] has held that a discharge of an employee for smoking in a bathroom stall, taken together with all other evidence of antiunionism, constitutes a violation of Section 8(a)(3) of the NLRA, that is, unlawful discrimination based on union animus. Another case, *Butcher Boy Refrigerator Door Co. v. NLRB*,[16] held that the imposition of a smoking ban in work areas, again, along with other evidence of antiunion feelings, constituted an unfair labor practice, in violation of the NLRA.

Duties

But what of the OSH Act? There are two distinct duties of employers and a corresponding duty of employees. Employers first must furnish employees with a workplace "free from *recognized hazards causing or likely to cause death or serious physical harm to employees*" and second must comply with all OSHA health and safety standards.[17] Employees, in addition, must comply with all OSHA rules.[18]

Are the atmospheric effects of smoking a recognized hazard likely to cause serious physical harm to employees? Commentators and courts[19] generally agree on four criteria that must be present to trigger this duty. First, the hazard must be from a condition arising from employment. Second, the condition must be generally recognized in the industry as a "hazard," and the employer must know, or should know this.

Third, there must be a causal connection between the condition and the likelihood of serious physical harm. Finally, the hazard must be preventable in the course of business. If these four criteria are met, and there is no authority either way as to smoking in the workplace, the employer has an absolute duty to remove the hazard.

And what of the employer's duty to comply with OSHA health standards?

[10] 49 CFR 106.1 (1979).
[11] 14 CFR 252.2 (1979).
[12] "Nonsmokers Extend Fight Against Smoke-Filled Rooms to Their Jobs, *Christian Sci. Monitor*, April 18, 1980, p. 10, col. 1.
[13] Comment, "Where There's Smoke, There's Ire: The Search for Legal Paths to Tobacco-Free Air," *Colum. J. Envrt'l L.* 62 (976), p. 105.
[14] 1973 CCH EEOC DECISIONS ¶ 6165.
[15] 471 F2d 809 (CA-8, 1972), 70 LC ¶ 13,243.
[16] 290 F2d 22 (CA-7, 1961), 42 LC ¶ 16,904.
[17] 29 USC 654(a)(1), (2) (1976).
[18] *Ibid.*, Section 654(b).
[19] *Brennan v. Buller Lime and Cement Co.*, 520 F2d 1011 (CA-7, 1975), 1975-1976 OSHD ¶ 19,967; *Brennan v. REA Express, Inc.*, 495 F2d 822 (CA-2, 1974), 1973-1974 OSHD ¶ 18,692; *Brennan v. OSHA* (CA-8, 1974), 494 F2d 460; *OSHRC v. National Realty and Construction Co.*, 489 F2d 1257 (CA DofC, 1973), 1973-1974 OSHD ¶ 17,018; Morey, "The General Duty Clause of the Occupational Health and Safety Act of 1970," 86 *Harv. L. Rev.* 988 (1973); and Comment, "Torts—Nonsmokers' Rights—Duty of Employer To Furnish Safe Working Environment Will Support Injunction Against Smoking in the Work Area," 9 *Tex. Tech. L. Rev.* 353 (1977-78).

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OSHA regulations[20] list many toxic substances prohibited from the workplace based on an employee's work per hour basis, in particular carbon monoxide. Although no legal challenges have appeared as yet,[21] several commentators have noted that cigarette smoke releases carbon monoxide and other toxic gases into closed areas in amounts that clearly violate OSHA standards.[22]

Several problems arise with an employee's use of the OSH Act to enforce his or her rights, however. An employee can report violations and be protected from discharge for doing so,[23] but no private cause of action exists to enforce the Act.[24] Only the Department of Labor has such power. Further, as stated, an employee has the same duty to obey all OSHA regulations, thus providing a possible out for the employer challenged by the nonsmoking employee.[25] Finally, problems with bureaucratic machinery, OSHA staff size, and measurement of toxic substances all cut into the Act's practical uses.[26]

State Law

Many states expressly prohibit smoking in public areas and state buildings, and, while such laws do apply to customer service areas, they have little or no application to the ordinary workplace.[27] Other state statutes guarantee the handicapped access to public buildings. The "Action on Smoking and Health" lobby, for one, is pushing for acceptance of the employee injured by cigarette smoke, by allergies or otherwise, as a handicapped employee.[28]

In one recent case, *GASP v. Mecklenburg County*,[29] the plaintiffs claimed to represent a class of handicapped persons stricken by allergies and heart disease when in smoke-filled areas. They demanded that smoking be banned in all public facilities to achieve full and free access by handicapped persons. Although the court dismissed the claim because "handicapped" was never intended to include all persons adversely affected by smoke, the court expressed no opinion on a class of persons afflicted with a particular disease, for example, emphysema.

Finally, there is workers' compensation, but again, while it compensates the employee for damage caused by the combustibility of cigarettes, compensation for the atmospheric effects of sidestream smoke is required only if an "occupational disease" is contracted or the employee is "injured." An occupational disease must be peculiar to the employment, arising from something that that employee is not ordinarily subjected to away from employment.[30]

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[20] 29 CFR 1910.1000.

[21] Comment, cited at note 13, p. 104.

[22] Comment, cited at note 7, p. 626; Comment, cited at note 13, p. 64 & note 68; Comment, "Legislation for Clean Air: An Indoor Front," 82 *Yale L. J.* 1040 (1973), pp. 1044, 1045.

[23] 29 USC 657(f)(1), 660(c)(1) (1976).

[24] *FENSR v. U. S.*, 446 FSupp 181 (DC DofC, 1978), 1978 OSHD ¶ 22,575; *Russell v. Bartley*, 494 F2d 334 (CA-6, 1974), 1973-1974 OSHD ¶ 17,506.

[25] Comment, cited at note 7, p. 628.

[26] *Ibid.*, p. 629; Comment, "Legislation for Clean Air: An Indoor Front," cited at note 22, pp. 1048, 1049.

[27] See Ohio Rev. Code Ann., Section 3791.-031 (Page Supp. 1980); Columbus City Code, Chapter 2563 (1973); and Comment, "Employment—Employee's Right to a Safe, Healthy Work Environment—Injunction Issued Prohibiting Tobacco Smoking in Offices and Customer Service Area on Employer's Premises," 8 *Conn. L. Rev.* 579 (1977).

[28] See note 12.

[29] 42 NCApp 225 (NCAppCt, 1979), 256 SE2d 477.

[30] See, e.g., Ohio Rev. Code Ann., Sections 4123.54 (Page Supp. 1973) and 4123.-68 (BB).

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An injury must be in the course of and arise out of employment.[31] Unless the employee can prove that his injury from sidestream smoke "arises out of employment," his chances of success are slim. More importantly, a complaining employee would rather restrict smoking than be compensated for physical damage.[32]

Common Law

Is there a common law right for an employee to force an employer to restrict smoking in certain nonwork areas? The *Shimp* case says yes, but there are several circumstances that may limit its application to other cases in other jurisdictions.

An examination of what the court did reveals the case's limitations. The court started with the indisputable duty of the employer, in most jurisdictions, to provide the employee with a reasonably safe place to work. From this premise the court looked to four factors to see if permitting smoke in the workplace was reasonably safe. First, what was the burden, or the cost to the employer, of preventing smoking? Second, what was the seriousness of the harm to the employee? Third, was the particular harm foreseeable? And finally, had the employee avoided the harm?

As to the burden on the employer, the court found that smoking was not necessary for the employer's telephone business. In particular, it was unnecessary for what this employee, a receptionist, had to do. In fact, the employer had already restricted smoking near sensitive machines. The employer could easily, therefore, further restrict smoking to nonwork or eating areas.

Second, the court found sidestream smoke to be very toxic to a large percentage of the population. Here, in particular, the employee suffered from eye, nose, and throat irritations, headaches, and nausea.

Third, the court found that such a reaction by nonsmokers was reasonably foreseeable by the employer. And finally, the court found that the plaintiff had to remain in one area and breathe the smoke to perform the job. All these facts, including the fact that the plaintiff tried "every other avenue open to her" to get relief, added up to the clear equitable power of the New Jersey Superior Court to enjoin smoking from work areas.

One can perceive, then, that *Shimp* is made up of many important facts, the absence of any of which could persuade a court to find differently. Further, this is not the Supreme Court in New Jersey, nor has the decision been followed by any other courts in New Jersey or elsewhere. Moreover, there are several things the New Jersey court did not consider. It did not consider the cost of allowing employees extra time off to smoke.[33]

Furthermore, although the court held that the plaintiff did not assume the risk of her injuries by staying on the job, the court did not consider whether the employer was liable under a fellow-servant rule. That is, when another employee is negligent in smoking near the allergic employee, the common law states that the other employee's negligence wipes out the employer's negligence.

Finally, the court's use of an injunction in this area is unprecedented.[34] Injunctions like the one in *Shimp* are relatively scarce; the courts look for irreparable injury, clear rights, and absolutely no other remedies.

[31] *Ibid.*, Section 4123.01 (C).
[32] Comment, cited at note 27, pp. 582-83.
[33] *Newsweek* (Dec. 8, 1975), p. 35, Comment, cited at note 13, p. 65.
[34] Comment, cited at note 13, pp. 92-93.

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Two other common law remedies deserve mention: nuisance and battery. Most commentators agree that a person has no cause of action to prohibit public smoking on grounds of private or public nuisance.[35] As to battery, however, one employee in North Carolina is currently suing his cigar-smoking supervisor on the grounds that he smoked in an area close to the plaintiff employee, intending to discomfort him.[36] Such an intent, however, is hopefully the rare case.

Conclusion

As can be seen, the issue of whether an employee has an enforceable right under the law to a smoke-free environment has no certain resolution. It is submitted that the answer lies with the legislatures, where elected representatives can balance the interests of the nonsmoker against the smoker to produce reasonable accommodations for both. For this reason, both a Federal Indoor Clean Air Act[37] and a Model State Smoking Pollution Prevention Act[38] have been proposed.

The proposed federal act would be based on the Clean Air Act of 1970, different in that the proposal concentrates on the three major sources of indoor pollution: cooking, heating, *and smoking*. The act would cover all businesses involved in interstate commerce. Activities regulated would be ventilation per room size, the number of occupants, and the range of polluting agents.

The proposed model state act would put the control in the hands of the state's enforcement agencies. This act would flatly require the employer, in any indoor workplace where two or more persons are gainfully employed, to designate areas where smoking is prohibited and permitted, such that no harm, discomfort, or annoyance occurs to nonsmokers. This may include a complete prohibition against smoking, construction of partitions in the workplace, or, when employees must wait in line, a "smoking" and a "nonsmoking" line.

Although no action has been taken on the proposed federal act, Minnesota and Utah already have statutes restricting or prohibiting smoking in all workplaces "where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health [and/or] comfort of nonsmoking employees."[39] No cases have been decided under either of these statutes, however.

The large percentage of smokers in the population, the increasing militancy of nonsmokers, and the growing interest of businesses in providing smoking cessation programs and adopting smoking prohibitions in their employment policies all point to the need for an adequate legal foundation for this area. Given the uncertain state of the law on issues involving smoking in the workplace, what is needed now is legislation that offers a fair balance of the interest of smokers and nonsmokers alike. Both the proposed federal statute and the model state statute offer balanced approaches and should be given serious consideration.

[The End]

[35] See, e.g., Axel-Lute, "Legislation Against Smoking Pollution," 6 *Envt'l Aff.* 345 (1978), pp. 354, 355; Comment, cited at note 7, p. 618; and Comment, "The Non-Smoker in Public: A Review and Analysis of Non-Smokers' Rights," 7 *San Fernando Valley L. Rev.* 141 (1979), p. 156.

[36] *McCracken v. Sloan* (SuperCt Mecklenburg County, N. C., 1978, Docket No. 75-4270).

[37] Comment, cited at note 26, p. 1050.

[38] Axel-Lute, cited at note 35, p. 369.

[39] Minn. Stat. Ann., Section 144.414 (1975) ("health *and* comfort"); Utah Code Ann., Section 76-10-106 (1976) ("health *or* comfort").

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APPENDIX K

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-5711-80T2

In the Matter of

WARREN HILLS REGIONAL
EDUCATION ASSOCIATION,

Petitioner-Respondent,

- and -

BOARD OF EDUCATION OF THE
WARREN HILLS REGIONAL HIGH
SCHOOL DISTRICT,

Respondent-Appellant.

Argued on October 26, 1982 - Decided NOV 16 1982

Before Judges Pressler and Trautwein.

On appeal from a final decision of the Public Employment Relations Commission.

David A. Wallace argued the cause for the appellant.

Arnold S. Cohen argued the cause for the respondent (Rothbard, Harris & Oxfeld, attorneys).

Public Employment Relations Commission filed a statement in lieu of brief (Sidney H. Lehmann, General Counsel; Don Horowitz, Deputy General Counsel, on the statement).

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PER CURIAM

This appeal challenges the propriety of a final decision of the Public Employment Relations Commission (PERC) in a scope of negotiations proceeding conducted pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The controversy presented to PERC had its genesis in a resolution adopted by the Board of Education of Warren Hills Regional High School District (Board) setting a policy prohibiting smoking on Board property by anyone at any time effective September 27, 1976.

Our review of the record discloses that the absolute prohibition of smoking effected by the Board's resolution arose out of student unrest and dissatisfaction with a prior policy of the Board that had totally prohibited students from smoking while permitting teachers to smoke in certain designated areas of the Board's property. The students sought the elimination of a double standard contending that such elimination would result in an improvement in student-teacher relations and student discipline.

The Warren Hills Regional Educational Association (Association) filed a grievance on October 14, 1976 on behalf of teachers. From grievance steps the matter proceeded to binding arbitration invoked by Association pursuant to Step IV of the grievance procedure set forth in the collective negotiations agreement (Agreement) then in effect between the Board and the Association. Despite the Board's contention that control of smoking was a non-negotiable management prerogative, the arbitrator retained jurisdiction and held that the matter was one subject to arbitration. The arbitrator concluded that the Board, by unilaterally banning teachers from smoking in previously designated areas, had violated Article IIE of the Agreement and ordered the Board to permit smoking as theretofore. Article IIE provided that "... proposed new rules or modifications of existing rules governing

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worker conditi[illegible] shall be negotiated wi[illegible] the majority representative before they are established."

Subsequently, the Board filed a complaint in the Law Division of Superior Court seeking to vacate the arbitration award and then moved for summary judgment. The Association responded with a motion to confirm the arbitration award. The Board's motion was denied and the Association's granted with the award confirmed. The Board appealed to this court where, on May 9, 1980, we vacated the Law Division judgment confirming the arbitration award and remanded the matter to the Law Division with directions that the matter be transferred to PERC for a determination of the scope of negotiations issue raised by the Board. Bd. of Ed. of Warren Hills Reg'l. H.S. Dist. v. Warren Hills, Reg'l. Ed. Assn., Docket No. A-4778-77.

PERC was confronted on the one hand with the Board's concern for the health, safety and welfare of students, certainly a managerial prerogative which cannot be bargained away. Bd. of Education Bernards Tp. v. Bernards Tp. Ed. Assn., 79 N.J. 311, 321 (1979). Implicated, on the other hand, was the proposed deprivation of a customary privilege, indeed expressly permitted in a policy created by formal resolution of the Board, intimately related to terms and conditions of employment and consequently a matter of collective negotiation.

While not expressed in precise terms of "subtle balancing" when choosing between these two contending theories, we are satisfied, after a careful reading of its decision, that PERC gave due consideration to them before determining that the

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grievance concerned a term and condition of employment which was mandatorily negotiable. We agree and affirm substantially for the reasons expressed in the written final decision of PERC dated July 21, 1981 and issued July 22, 1981.

Accordingly, the matter is remanded to the Law Division for the entry of a judgment confirming the arbitration award. We do not retain jurisdiction.

A TRUE COPY
Elizabeth McLaughlin
Clerk

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APPENDIX L

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United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, SECOND SESSION

Vol. 128 WASHINGTON, THURSDAY, DECEMBER 16, 1982 No. 149

House of Representatives

WHITE-FROEB STUDY DISCREDITED BY SCIENTISTS

HON. L. H. FOUNTAIN

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 16, 1982

Mr. FOUNTAIN. Mr. Speaker, after 30 years of service to the people of the Second District of North Carolina, I am about to retire from the U.S. House of Representatives. Before leaving I would like to submit, for the RECORD, an item dealing with an issue with which I and many others have long been interested; namely, the alleged effect of smoking on the health of the nonsmoker.

Mr. Speaker, let me briefly place the issue into its proper context. In 1978, the Subcommittee on Tobacco of the House Committee on Agriculture heard testimony from a vast array of eminent scientists and physicians on the issue of the effect of tobacco smoke on nonsmokers. Those individuals who testified generally agreed that no conclusive scientific evidence exists to support the claim that smoking affects the health of nonsmokers. In 1980, however, an article appeared in the New England Journal of Medicine by Drs. White and Feoeb entitled "Small Airways Dysfunction in Nonsmokers Chroncially Exposed to Tobacco Smoke," in which the authors concluded that smoking in the workplace adversely affects the lung function of nonsmokers. This conclusion appeared to conflict with the testimony presented to the Subcommittee on Tobacco.

Since its publication, the White-Froeb study has been used to support both regulatory and legislative activities in the United States. For example, the study was referred to in testimony before the Civil Aeronautics Board during its recent consideration of rules regarding smoking aboard commercial aircraft. The National Research Council report entitled "Indoor Pollutants" which was issued in 1981 under an EPA contract also relies on the study. Finally, the White-Froeb study has received widespread attention in both State and local legislative and policymaking bodies.

The White-Froeb study continues to play an important role in legislative considerations, despite the fact that the study itself has been heavily criticized by scientists and health practitioners. Most recently, at the 1982 joint meeting of the American Lung Association-American Thoracic Society, Dr. Michael D. Lebowitz, professor of internal medicine, college of medicine, University of Arizona and special consultant to the Subcommittee on Tobacco, presented reasons why, in his own words, "the results of this study cannot be used to demonstrate an effect of passive smoking on forced expiratory flows in adults exposed in the workplace." Dr. Lebowitz, a noted specialist in epidemiology and respiratory diseases, said that the basic problem with the White-Froeb study is that it is "improperly designed" and that "there are problems with the whole data set and with the conclusion." Dr. Lebowitz also expressed concern that the significance of the White-Froeb data appeared to depend upon their unexplained omission of data from 3,000 subjects originally included in the study.

Mr. Speaker, Dr. Lebowitz wrote a letter, dated July 10, 1981, to our colleague, Congressman CHARLES ROSE, Chairman of the Tobacco and Peanuts Subcommittee of the House Agriculture Committee, as a result of a personal interview which Chairman ROSE and Dr. Lebowitz had with Dr. White. With the personal consent of Chairman ROSE, I am inserting herewith Dr. Lebowitz's letter. It more fully explains the author's views regarding the White-Froeb study.

I also want to mention another evaluation of the White-Froeb study, one which was made by Dr. J. G. Gostomzyk, director of the department of health of the city of Augsburg, West Germany. After an extensive, detailed review of the White-Froeb study, Dr. Gostomzyk has concluded that the White-Froeb data were incompletely presented and did not satisfy the prerequisites for scientific credibility. In addition, Dr. Gostomzyk remarked that "Dr. White's methodology is not scientific but that of a lay person with convictions," and concluded that "we assume that Dr. White's study is an attempt at scientific validation of his credo and that he possibly is unaware of the inadequacy of this methodology." It is obvious that Dr. Gostomzyk is referring to Dr. White's outspoken antismoking activities in California, including Dr. White's endorsement of public smoking referendums which were, incidentally, twice rejected by the California voters.

Given these and other criticisms of the White-Froeb study, it would appear that the New England Journal of Medicine has, perhaps unwittingly, performed a disservice to its readership. It is extremely unfortunate that a study so fraught with methodological problems, as indicated through numerous criticisms by scientists in the United States and elsewhere, should have been published in such a reputable journal of medicine. The White-Froeb study should, therefore, not be relied upon by the Congress, Federal agencies, or other legislative or policymaking bodies when considering restrictions on smoking in public places.

THE UNIVERSITY OF ARIZONA,
COLLEGE OF MEDICINE,
Tucson, Ariz., July 10, 1981

Congressman CHARLES ROSE,
Chairman, Subcommittee on Tobacco and Peanuts, House of Representatives, Rayburn Building, Washington, D.C.

DEAR CONGRESSMAN ROSE: The following is a summary of my notes on our visit to Dr. James White at UC San Diego, as per our discussion. Unfortunately, despite the statement in the editorial of the New England Journal of Medicine (27 March 1980), Dr. White and his co-author did not "faultlessly demonstrate a reduction in measures of small airways of healthy non-smokers exposed to cigarette smoke in the work place". It is apparent from our visit and the article that there were various faults in the present study, which shall be discussed.

The problems with the research design are as follows:

The participants were not only volunteers, but generally had to pay for the physical fitness course; this is the reason most were white-collar. Employees in specific factories invited White to run the physical fitness course in their factories as well, which would also bias the population sample. Blue-collar workers were not distributed randomly. (It has to be assumed that volunteers in the physical fitness courses fall into unrepresentative categories; the highly motivated, with an interest in health and usually healthier, those who are worried about health and generally less healthy; the first group would include fewer smokers and the second group would include more smokers.)

The questionnaire utilized was not a vali-

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dated one per se; test-retest comparisons were made only on the smoking questions and very small groups of subjects. The smoking information was not validated. There were no test-retest or validations on symptoms asked in the questionnaire. The questionnaire itself was derived by the investigator, and included some questions from standard questionnaires; this did not appear to include standard respiratory questions, and in fact various typical respiratory questions (such as phlegm) were not asked. The questionnaire did not include questions on attitude, but did include questions on activity levels and jobs (duration, type). The questionnaire did ask how many smokers were in their work area, room size, and nature of the air conditioning. It also included questions about residences in the last 20 years (zip codes), so that exposures away from work were assessed by residential location. A question was asked about smokers in the home. (Thus, the smoking information is not validated, but is probably relatively accurate. The information about exposure to passive smoking is only approximate, as is the information on other occupational exposures. Exposures to air pollutants or to unknown toxic gases in the working place is only approximate, and their effects underestimated.)

Dr. White presented a paper to the American College of Sports Medicine, the abstract for which in 1977 indicated there were 7,122 subjects enrolled between 1969 and 1977. However, in the New England Journal of Medicine article, he states that the base population analyzed is only 5,210 smokers and non-smokers enrolled between 1969 and 1979. Although he excluded all the ex-smokers, some whose zip codes were missing, his answers as to why the rest of the subjects were excluded were entirely unclear and tend to indicate potential bias in selection of subjects for consideration for analyses. It might be added that the 2,100 subjects analyzed in the NEJM article and those analyzed and presented in the Sports Medicine abstract appear to be the same as they yield exactly the same table of results (as determined from comparison of the table in the Sports Medicine manuscript and the NEJM table).

In addition to the sources of bias mentioned above, it is apparent that the non-smokers in clean work environments and those in smoking work environments have not only chosen not to smoke, but it is likely that those non-smokers working in smoking environments may be different for a variety of reasons from non-smokers working in clean environments. Furthermore, it is apparent that the non-smokers in non-smoking environments are quite different in that their lung function is "super normal" in comparison even with the Seventh Day Adventists (the source of the Morris prediction equations).

Dr. White did state that from the questionnaire and from the baseline tests that there were no significant differences in the three non-smoking/non-inhaling groups in terms of the amount of previous exercise or oxygen consumption, but he was unsure of the difference in percent of body fat. Smokers did have less body fat, were less in terms of having lower oxygen consumption, and had less activity. He says further that there were no differences between the groups in terms of childhood respiratory history (lower respiratory tract illnesses) from his submitted questionnaire information, but he did not ask about family history. He did not ask sufficiently about respiratory questionnaires to appropriately exclude groups on the bases of productive cough ("cough bronchitis"). He states that there were no differences in prevalence rates of questionnaire responses by zip codes; if so, this contradicts other evidence vis-a-vis the effects of air pollution in these areas. He was not able to assess other exposures such as those from hobbies, exposures to gas stoves, or transportation. In terms of passive smoking in the home, he excluded such passive smokers from the non-smoking and passive smoking groups, but not from any smoking groups. He was not able to provide any information about the distribution of characteristics in those eliminated from the original 7,000 or the 2,208 that qualified because of other questionnaire results.

With regards to the pulmonary function testing done by Dr. White, it must be first noted that the instrument used is not considered a satisfactory instrument in that it is non-linear (highly biased) at both high volumes and low volumes. (This has the effect of maximizing differences in that anyone with minor aberrations of total vital capacity or of flows at the end of the flow volume curve would have very different, that is, low, flows.) The comparisons that Dr. White did and reported on in his response letter in the NEJM (14 August 1980) would not in any way modify this opinion. Furthermore, Dr. White has the only pulmonary function technician and reader. Even though he was trained at the VA hospital and his techniques were evaluated by test--retest and by comparison to other readers, any biases inherent in Dr. White's thinking (see below) would affect the way he read the tests. Furthermore, he took the FEV, and flows off the same spirogram using an approximation technique published by Morris, et al., which is not an adequate or accurate representation of those measures. All of his tests were baseline tests done after two and a half hours in the classroom in the evening on those without acute respiratory illnesses (usually on a Monday or Tuesday evening); thus, there is probably little diurnal variation or pretest biases other than those experienced by the workers during their work day and in their activities prior to the classroom. Although it is difficult to judge the effects of these factors, they may have influenced the test results, especially in those with any significant exposures during the day.

The major problem with the pulmonary function test results as reported is that they are not age- and height-adjusted, since lung volumes and flow rates are associated with both of these factors. In other words, Dr. White used raw values of flows and volumes to do comparisons. He did this on the assumption that the mean age and height were similar for the different groups. This is a mistake, since the distributions for those ages and heights could have differed. Furthermore, his quoted figures for percent predicted are strictly for the average person, age 49, with an average height, and does not represent the group for which they are provided. In terms of these statistical analysis, he just chose the SNK package among many. There is no correlation coefficient per se. "Normality" was not an objective of this study, so he cannot state anything about the normality of the subjects studied, including those he considered to have significantly different results from the non-exposed non-smokers. He does not understand the difference between clinical meaningfulness and statistical significance. It is quite obvious that the majority of those in the passive smoking and in the non-inhaling group are quite normal and that very few would be considered abnormal by any criteria.

In his reported results, he quotes an incorrect significance level of $p.<.005$, whereas the level provided by the technique is $p.<.05$. This is very different, given the number of comparisons made, and indicates that some of the results would not be significant if corrections were made for the number of comparisons. Furthermore, the data presented in Table 1 was used to recompute the SNK analysis by Mary C. Townsend, MPH (Department of Epidemiology, University of Pittsburgh). Those results differ from those published by Dr. White and are provided in the attachment. The most important of the differences is the finding that the passive smokers and light smokers differ for the male FEV 75 85 percent. Thus, the effect of passive smoking on non-smokers is still unconfirmed, despite Dr. White's unfailing conviction that it is confirmed.

Other minor points: In terms of the carbon monoxide sampling, although it is stated that it was randomized, it was really on only 40 smoking and 40 non-smoking situations chosen by chance but not by random selection. Dr. Frank, the co-author with Dr. White, is a private practitioner in La Jolla and helped Dr. White in drafting the NEJM manuscript from the manuscript presented at the American College of Sport Medicine. It might be pointed out that San Diego is not strictly low in air pollution concentrations, nor uniformed throughout the area; this may bias some results. Dr. White performed the pulmonary function tests until "reproducible curves were obtained", but they do not necessarily follow the Intermountain, Snowbird, or ATS recommendations.

In reviewing Dr. White's response to the letter to the Editor in the NEJM (14 August 1980), it is quite clear that Dr. White did not satisfactorily answer all the questions raised, many of which are similar to those raised in this letter. It is questionable, from the discussion, whether Dr. White would pursue any further re-analysis of the data, nor necessarily could it be pursued. It is questionable, given the basic underlying problems in the research design, that re-analysis of the data would be worthwhile. On the other hand, given other results that contradict Dr. White's, including those now in press (such as Comstock et al., Johns Hopkins, presented at the Society for Epidemiological Research in June of 1981), it would be likely that a panel discussion of passive smoking might be valuable. I will be glad to furnish further discussion or help in that matter.

Sincerely,

MICHAEL D. LEBOWITZ, Ph. D.,
F.C.C.P.,
Professor of Internal Medicine.

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APPENDIX M

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STATEMENT OF GEORGE E. SCHAFER, M.D.

I am Dr. George E. Schafer, a medical consultant to The Tobacco Institute. I am a graduate of the University of Cincinnati College of Medicine and am board certified by the American Board of Preventive Medicine in Aerospace Medicine. I have served thiry-one years in the United States Air Force. My Air Force career culminated in my assignment as Surgeon General of the United States Air Force, 1975-78; and I retired in 1978 with the grade of Lieutenant General. My Air Force career included ten years in research and development. During this time, I served as Commander of the U.S. Air Force School of Aerospace Medicine and as commander of the Aerospace Medical Division. I have also been President of the Association of Military Surgeons of the United States, President of the Aerospace Medical Association, President of the Society of U.S.A.F. Flight Surgeons. I have contributed to the professional literature in the field of aerospace medicine.

My responsibilities as a medical consultant to The Tobacco Institute include ongoing reviews and analyses of the medical and scientific literature in the field of smoking and health. I also attend scientific meetings on smoking and health research.

I am appearing before this committee today to discuss the subject of nonsmokers' exposure to tobacco smoke. I am

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particularly concerned that alleged health effects form the basis for ordinances. Based on my review of the scientific and medical literature, it is my opinion that tobacco smoke in public places is not an established risk to the health of the nonsmoker.

My opinion finds strong support in the views of other physicians and scientists who have addressed this issue publicly.

It may be helpful to this committee in its deliberations on the proposed legislation for me to review briefly the public testimony of some of these respected scientists. After my summary I would like to comment on the scientific literature.

Dr. Hiram T. Langston, a thoracic surgeon and clinical Professor of Surgery at the Northwestern University Medical School, has stated, "An assertion that tobaco smoke is a health hazard to the normal nonsmoker is untenable. The weight of evidence as it exists in the world literature does not support a claim of adverse health effects for those exposed to 'passive smoking.' The regulation of public smoking, under the guise of a mandate to protect the public health, is without scientific justification." Dr. Langston also has addressed the claim that tobacco smoke is a substantial hazard for those persons with pre-existing severe cardio-

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vascular and respiratory problems. Dr. Langston's observation, in my mind, deserves particular attention. "The question of protecting individuals with heart and lung diseases is a difficult one. Sympathy for their problems should not, however, obscure our recognition of the scientific invalidity, based on current knowlege, of restricting tobacco smoke in public places as a means of protecting them. In fact, these people may have a far greater need for protection from certain adverse weather conditions, general air pollution, excitement, exertion, etc."

Dr. Duncan Hutcheon, Professor of Pharmacology and Medicine at the New Jersey College of Medicine and Dentistry in Newark, testified, "Thus, I do not believe that there is adequate scientific research to conclude that nonsmokers suffer advese health effects as a result of exposure to tobacco smoke in public places."

Another physician, Dr. Edwin R. Fisher, Professor of Pathology at the University of Pittsburg, told a Congressional Subcommittee, "In summary, insofar as I am concerned, there is a lack of scientific information incriminating atmospheric tobacco smoke as a hazard. This lack of information prompts me to conclude that the proposals to place restrictions upon the use of tobacco in public places are at this time unjustified." I might add that Dr. Fisher is the author of over 450 scientific publications and has received recognition for

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his research findings.

In the area of cardiovascular disease, cardiologist Dr. Suzanne B. Knoebel, Professor of Medicine at the Indiana University School of Medicine, noted, "In conclusion, there are no indications that tobacco smoke in the atmosphere either causes or accelerates cardiovascular disease in the healthy nonsmoker. Nor do available studies establish that atmospheric tobacco smoke under realistic conditions adversely affects nonsmokers with preexistent cardiovascular disease."

A specialist in allergy and immunology, Dr. John Salvaggio of Tulane University observed, "Contrary to claims about tobacco smoke allergy, in my judgment, it has not been clearly established that allergens for man are present in tobacco smoke."

Dr. Kenneth Moser, Professor of Medicine and Director of the Pulmonary Division of University Hospital, University of California at San Diego, whose field of specialty is lung disease, recently said, "In my opinion, there is not now a sufficient body of hard facts to support the view that public smoking poses a health hazard to the lungs of the nonsmoker. I believe strongly that what we need now is more research about the basic issues I have reviewed, not legislation based on the false premise that the answers already are available. To do so would, in fact, indirectly

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stifle legitimate inquiry into these important health issues."

Even the 1979 report of the Surgeon General contains the following language: "Healthy nonsmokers exposed to cigarette smoke have little or no physiologic response to smoke and what response does occur may be due to psychological factors."

The views of these eminent scientists and the quoted language from the Surgeon General's Report of 1979 provide persuasive corroboration for my own conclusion, based on my review of the existing scientific evidence that tobacco smoke in public places has not been proven to cause adverse health effects in nonsmokers.

Let me now turn to an article published in the New England Journal of Medicine in March, 1980, authored by Drs. White and Froeb. The authors reported on the pulmonary functions of office workers in the San Diego area selected from participants in a "physical fitness profile" course. They attempted to group their participants according to their exposure to tobacco smoke, as determined by each subject's responses to a self-administered questionaire. The authors then averaged the results of a spirometric test of lung function for each group. They compared the test results of nonsmokers who had worked for more than 20 years

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where no smoking was allowed with measurements of nonsmokers who had worked the same length of time in offices where smoking was permitted. Based on very small differences between the average scores of the two groups, White and Froeb reported that "chronic exposure to tobacco smoke in the work environment is deleterious to the nonsmoker and significantly reduces small-airways functions."

Despite the widespread media attention the paper has received, it does not provide relevant and persuasive evidence. Scientists have been critical of the procedures, techniques and conclusions reached by the authors.

In an editorial accompanying the White-Froeb article, Dr. Claude Lenfant of the National Institutes of Health asked whether this new evidence is "sufficient to initiate new legislative action that would further restrict smoking in public places." He responded to his own question with the observation that this is a "difficult and delicate question" and concluded that the White-Froeb study "is confined to only one aspect of an issue too complex to be resolved on such a limited basis."

In August of the same year, the same journal that published the White-Froeb paper published a series of letters highly critical of the techniques used and conclusions reached by White-Froeb. These letters submitted by well known scientists concluded that the selection and grouping of

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people were subject to bias, the test results obtained were of questionable clinical significance, the instrument used was of poor quality and not within the technical specifications established by the American Thoracic Society and because the study had a complicated design that involved a myriad of technical, medical and behavioral variables, its results were suspect.

When I put all of this available information into perspective, it is very difficult indeed to accept the conclusion that the nonsmoking subjects who had been exposed to tobacco smoke, even over such a long work history, have become diseased from such exposure. A slight reduction in the results of two unproven and indirect tests, results whose average still must be called normal according to experts in the field, cannot be taken as proof of any adverse health effects.

In January, 1981, Dr. Takeshi Hirayama published a study of a Japanese population in which he claimed that nonsmoking wives of heavy smokers had a higher risk of dying from lung cancer because of their husbands' smoking. Many highly critical letters about the study appeared shortly after its publication. One group of scientists, expressing doubts about Hirayama's findings wrote: "In view of so many open questions Dr. Hirayama's conclusions do not appear very well-founded."

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In June, 1981, Lawrence Garfinkel & the American Cancer Society reported findings from a larger American study which contradicted the conclusions reached in the Japanese study. Garfinkel concluded that the nonsmoking wives of smoking husbands had very little, if any, increased risk of lung cancer.

A German scientist who reviewed the literature including the Hirayama work on nonsmokers' exposure to the tobacco smoke of others concluded that passive smoking may mean an annoyance for healthy adults, but in all probability, it is not connected with damage to health.

Havard's Dr. Timothy Johnson, a nationally syndicated medical columnist, wrote, "I think some serious questions must be raised about that Japanese study."

Dr. Claude Lenfant, of the National Institutes of Health, was doubting, too. "We just don't have any evidence for the same thing in this country," he told a national medical news magazine. He noted that Hirayama's data differed strikingly from data published by other researchers.

Another article appeared in the May 1980 issue of the Journal Science; levels of particulate matter in indoor atmosphere were reported. This study received little attention in the literature following its publication.

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Although the authors implied health effects as the result of particulate matter they claimed was due to cigarette smoke, it must be pointed out that the authors did not study humans - they only measured levels of particulate matter with instruments and performed mathematical calculations on the results.

The evidence relating exposures of the nonsmoker to tobacco smoking with adverse health effects remains "sparse, incomplete and unconvincing" in the words of Dr. Lenfant. It does indeed call for further study, but it does not justify restrictions on smoking in indoor places to protect the public health.

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