Editorial

Where There's Smoke There's Ire

by Daryl B. Matthews, M.D., Ph.D.

In the lead article, Tom Christoffel and Sandra Stein open with the powerful assertion that the law's inefficacy in safeguarding the public's health from the hazards of cigarette smoking derives from the political and economic strength of the tobacco industry, yet they conclude with the innocuous suggestion that the anti-smoking forces set up an information clearinghouse. While the industry's leaders light up and heave a bronchitic sigh of relief, it is worth pondering why Christoffel and Stein were unable to come up with something rather more incisive. My guess is that both their frustration and their unfocused recommendations flow from a relatively narrow view of the phenomenon of tobacco use, which I sense derives in turn from their moral outrage against it.

While it would be a mistake to ignore the role of the tobacco industry in perpetuating smoking, it is a greater mistake to ignore the fact that people have used tobacco in various forms for centuries — long before the emergence of the industry as it is presently constituted and despite the most restrictive legal sanctions imaginable. Sultan Murad IV of Constantinople meted out the death penalty to Turkish smokers in the early 1600's, deigning in his more merciful moments to merely crush their hands and feet. Czar Michael Feodorovitch Romanoff slit open the nostrils of Russian smokers, while Japanese shoguns punished smokers, tobacco growers, and tobacco sellers with confiscation of property, fines, and imprisonment. Those who have reviewed the historical evidence conclude that smoking persisted, even increased, in these places, penalties notwithstanding.[1] Surely forces other than the purely political or economic were at work. Tobacco, as Christoffel and Stein note, does contain nicotine, an addicting drug which some find pleasurable to use. But their ire impedes recognizing that laws and corporate advertising are not the sole determinants of human behavior. Despite its legal prohibition and the absence of a "*marijuana industry*" to promote it, millions of Americans took to using this also pleasurable drug during the 60's and 70's, even though it does not produce physical dependence as does tobacco.

There is hardly a major social problem that Christoffel and Stein fail to oversimplify in support of their crusade: "While restrictions on personal behavior are generally not popular, it has been far easier to restrict alcohol, narcotics, hazardous consumer products, gambling, and the like." This is certainly questionable. It may have been easier to legislate or regulate in these areas, but effective restriction remains an elusive goal in all of them. The National Institute on Alcoholism and Alcohol Abuse reported last year that the proportion of drinkers among high school students rose steadily from World War II to 1965 and has remained relatively constant since then. Drinking among college students has risen steadily since 1936.[2] The same report documents a generally increased availability of alcoholic beverages to the population in recent years.[3] These data reflect difficulty in restriction, not ease. Despite Christoffel and Stein's apparent belief that other drug problems have been resolved by legal action, the fact is that our society has found it quite difficult to control the personal use of psychoactive chemicals through legal measures.[4]

It is particularly distressing that, in their zeal, Christoffel and Stein flirt with a victim-blaming ideology which seems to contradict both their identification of the industry as their opponent and their correct understanding that nicotine is an exceptionally addicting drug. They mention private litigation against smokers only to note that, like suits against manufacturers, success is unlikely as a practical matter. Prohibition of smoking and laws restricting the private use of cigarettes are of interest to them only insofar as they see such measures as legally valid; any adverse social consequences to users and others are ignored along with the important questions of social philosophy which are raised. Their moral posture against smokers (not just smoking) is further illustrated by their discussion of mechanisms for distributing the economic costs of smoking "more equitably," that is, toward the smoker. Christoffel and Stein repeatedly assert that smoking is an unwanted addiction "from which the individual is often incapable of freeing himself." This is certainly true and, as a result, smoking despite the desire to quit will be defined in the forthcoming third edition of the *Diagnostic and Statistical Manual of Mental Disorders* as "tobacco use disorder," a *bona fide* mental illness.[5] As Christoffel and Stein note, nicotine addiction often develops when tobacco users are "at a tender age when the law generally does not hold them responsible for their deeds." If unwanted cigarette smoking is an involuntarily acquired disease, the doctrine of redistribution of costs, as it is usually put, would suggest that smokers should be spared the financial burden of the consequences of their illness. Recall too that smokers within the United States are disproportionately drawn from socio-economically disadvantaged groups.[6]

But even if we don't want to let smokers off the hook by virtue of being relatively unable to change their behavior, there is a further problem with the redistribution of cost notion as seemingly advocated by the authors. The doctrine is fair only if the costs of other harmful things people do to themselves are redistributed as well: overeating; eating foods high in cholesterol, saturated fats, salt, and sugar; riding motorcycles; heavy drinking; failing to exercise . . . the list goes on. And why just redistribute the *health care* costs generated by such behaviors — why not other economic costs to society as well? In an era of energy shortages and world hunger, it is of interest to note that the total fossil energy equivalent of the food calories that would be saved if all obese adult Americans dieted to attain ideal body weight (and thereby lost a total of 2.3 billion pounds) has been estimated at 1.3 billion gallons of gasoline. The annual energy savings that would accrue if this group stayed at optimal weight would be sufficient to supply the residential electrical de-

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mands of Boston, Chicago, San Francisco, and Washington, D.C.[7]

In general, Christoffel and Stein fall into the same intellectual trap as do all moral entrepreneurs: they disattend to that which either contradicts or is peripheral to their mission. While health practices are certainly shaped by political and economic forces, their view that these are the only forces operating is extraordinarily naive. It is easy to endorse their notion that, for example, "the most effective anti-smoking strategy would be to help teens and pre-teens before they became addicted to cigarettes." It is far harder to accept the unsubstantiated and unsubstantiatable assertion that the failure of health education in this area "*simply reflects political realities.*" Health education also fails in addressing other health problems and for a myriad of reasons, including the probability that health is not as salient a value to pre-teens as it is to Christoffel and Stein, and the certainty that merely providing people with information about the unhealthy consequences of behaviors does not preclude their adopting them. In a review of every empirical study (concerning a host of health-related practices, not just smoking) reported in eleven major health education journals during the period 1975-1977, it was reported that only 7 per cent demonstrated statistically significant results consisting of more than minimal improvements on desired cognitive, attitudinal, or behavioral dimensions. Other reviews concur in presenting "a rather bleak picture of health education's ability to alter behavior meaningfully."[8]

Christoffel and Stein also use the word "bleak" in describing the outlook faced by their proposed clearinghouse. Their despair seems to reflect a perceived ideological assault: they conclude that "the theory that the legal system can be an effective mechanism for social change finds little support when it comes to tobacco." If they mean by social change a diminution of the political and economic power of large corporations or the inducement of populations to give up unhealthy practices, this theory also finds little support anywhere else. They do, however, highlight one area where the law has been somewhat more effective: protecting non-smokers from the consequences of people smoking in their presence. Analogous successes have been found in the case of other drug problems as well. For example, experience abroad suggests that strong, consistent legal efforts to curb driving while intoxicated by alcohol may be effective in reducing automobile fatalities.[9] If future members of the proposed clearinghouse would like some relatively easy victories to buoy their spirits, they should probably avoid the lure of the soap box and direct much of their initial effort to the relatively non-political issue of protecting the health and comfort of non-smokers. Not because "society does not condone smoking as an acceptable *social habit*" — *much of society*, especially outside schools of public health, clearly does. But rather, because there is far greater public consensus, as Christoffel and Stein themselves have indicated, about the role of law in protecting the non-smoker, a consensus that no astute political activist should overlook.

References

1. E.M. Brecher and the Editors of *Consumer Reports*, LICIT AND ILLICIT DRUGS, (Little, Brown and Company, Boston) (1972) pp. 210-213; J. RUBLOWSKY, THE STONED AGE: A HISTORY OF DRUGS IN AMERICA, (G.P. Putnam's Sons, New York, New York) (1974) pp. 78-81.
2. THIRD SPECIAL REPORT TO THE UNITED STATES CONGRESS ON ALCOHOL AND HEALTH, (National Institute on Alcoholism and Alcohol Abuse, Washington, D.C.) (1978) p. 23.
3. Id. at 1.
4. *See, e.g.*, R.J. Bonnie, and C.H. Whitebread II, THE MARIHUANA CONVICTION: A HISTORY OF MARIHUANA PROHIBITION IN THE UNITED STATES, (University of Virginia Press, Charlottesville) (1974); D.F. Musto, THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL, (Yale University Press, New Haven) (1973); L. Grinspoon, and P. Hedblom, THE SPEED CULTURE: AMPHETAMINE USE AND ABUSE IN AMERICA, (Harvard University Press, Cambridge) (1975).
5. Task Force on Nomenclature and Statistics of The American Psychiatric Association, *DSM-III Draft: Diagnostic and Statistical Manual of Mental Disorders* (third edition), (American Psychiatric Association, Washington, D.C.) (1978) B:20-23.
6. *The Smoking Digest: Progress Report on a Nation Kicking the Habit*, (National Cancer Institue, Bethesda, Md.) (1977) p. 6.
7. Hannon, B.M., and Lohman, T. G., *The Energy Cost of Overweight in the United States*, AMERICAN JOURNAL OF PUBLIC HEALTH 68:767 (1978).
8. Cohen, C.I., and Cohen, E.J., *Health Education: Panacea, Pernicious or Pointless?* NEW ENGLAND JOURNAL OF MEDICINE 299:718 (1978).
9. Ross, H.L., *Law, Science and Accidents: The British Road Safety Act of 1967* 2 JOURNAL OF LEGAL STUDIES (1973); Ross, H.L., *Deterrence Regained: The Chesire Constabulary's 'Breathalyser Blitz'*, JOURNAL OF LEGAL STUDIES 6:241 (1974).

Medicolegal Meeting Calendar

OTHER ORGANIZATIONS

Medical Malpractice: Trial Strategy and Techniques, at the Hilton Hotel in New Orleans, Louisiana (January 11-12, 1980), and at the Sir Francis Drake Hotel in San Francisco, California (February 1-2, 1980). Contact: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019.

Help for the Juvenile Offender, at the Hotel del Coronado, Coronado, San Diego (January 19-20, 1980). Contact: Southern California Neuropsychiatric Institute, 6794 La Jolla Blvd., La Jolla, CA 92037.

Legal Issues in Medicine: Living with the New Laws, in Fort Lauderdale, Florida (February 16-17, 1980). Contact: Robert L. Sadoff, M.D., Pennsylvania Hospital Seminars, P.O. Box 388, Philadelphia, PA 19105.

Health in the Workplace, an exploration of the workplace as a potential place for both the prevention and the cause of illness, at the Sheraton-Palace Hotel in San Francisco, California (February 23-24, 1980). Contact: University of California, San Francisco, Continuing Education Health Sciences, 1308 3rd Avenue, San Francisco, CA 94143.

Medical-Legal Seminar, in Steamboat Springs, Colorado (March 14-23, 1980). Subjects include medical malpractice, hospital law, medical expert testimony, and physician-patient-attorney relationships. Contact: Cyril H. Wecht, M.D., J.D., Pittsburgh Institute of Legal Medicine, 1519 Frick Bldg., Pittsburgh, PA 15219.

20th International Conference on Legal Medicine, at the Houston Oaks Hotel in Houston, Texas (May 14-17, 1980). Contact: Marshall B. Segal, M.D., J.D., American College of Legal Medicine, 1340 North Astor Street, Chicago, IL 60610.