

Smoking Out the Tobacco Companies

by Sarah Oates

Tolerance of smoking as a messy, yet excusable habit is fading as recent scientific and legal trends have strengthened the distaste of smoking for the two-thirds of the American population who don't smoke.

First, scientific studies now link breathing the smoke from someone else's cigarette—called passive smoking—with an increased risk of lung cancer. Interestingly, some of the key research on passive smoking has used Seventh-day Adventists as a control group. Second, and even more ominous for the tobacco industry, lawyers are coming closer to proving in court that the makers of cigarettes are responsible for damage to smokers' health. If well-publicized trials link the painful, lingering deaths of plaintiffs with smoking, the reputation of smoking will become even more tarnished in the public mind.

Passive Smoking

In recent years, attention-getting reports have linked the smoke from cigarettes to ill effects on non-smokers, prompting frightening headlines like "Smoking by Mother Said to Peril Child" (*Washington Post*, September 22, 1983) or

"Surgeon General Links Smokers to Lung Disease Among Others" (*New York Times*, May 24, 1984). So far, 14 scientific reports have tied passive smoking to serious health problems, such as lung cancer and heart attack risk, according to John F. Banzhaf III, a law professor at George Washington University who heads Action on Smoking and Health, a national non-smokers' rights group.

One of the most compelling reports, from September 1983, said that smoking by mothers was found to cut lung function in their children by an average of 4 to 5 percent. The results were based on a six-year study in which doctors tested the lung capacity of more than 1,100 children in the Boston area, comparing children whose mothers smoked with those whose mothers were non-smokers.

Passive smoking is considered dangerous to everyone, which means that the smoker in a restaurant or plane or the old friend who lights up in your living room could increase your risk of cancer. While Banzhaf is not willing to say that the evidence is conclusive at this point that passive smoking is a dangerous cancer risk, he does say that a non-smoker should feel free to tell the smoker to put it out. "We have to act before we have the evidence," said Banzhaf.

Surgeon General C. Everett Koop mentioned in a report in May of 1984 that there is "very solid" evidence that non-smokers contract lung disease merely from exposure to smoke from the cigarettes of others. In

Sarah Oates is a Washington reporter for the *Los Angeles Times*. A recent editor of the *Yale Daily News*, she has already reported for the *New York Times*, *Wall Street Journal* and *Washington Post*. While at the *Post* she wrote an extended article on tobacco smoking and hiring practices of American corporations.

the same report, Koop estimated that between 80 to 90 percent of the chronic lung disease in the United States is directly caused by cigarette smoking and that smoking causes 50,000 deaths annually from lung disease, 130,000 from cancer and 170,000 from heart disease.

With the increased concern over passive smoking, religious groups who don't smoke, such as Seventh-day Adventists and Mormons, become a possible control group for studies measuring the effect of passive smoking on the general population. James L. Repace, a physicist and policy analyst at the U.S. Environmental Protection Agency (EPA), and Alfred H. Lowrey, a research chemist for the Naval Research Laboratory, included Seventh-day Adventists in their controversial report on the effects of passive smoking. The report, issued in late 1984, indicated that passive smoking causes anywhere from 500 to 5,000 additional deaths from lung cancer each year, the higher number arrived at by comparing the general non-smoking population to Seventh-day Adventists.

Repace and Lowrey postulated that since Seventh-day Adventists not only don't smoke but frequently work with those of the same faith and often have no family members who smoke, they can be used as a control group that neither smokes nor is exposed to passive smoke. By comparing their health records to a comparable group of non-smokers who are not members of the church, Repace and Lowrey extrapolated their estimate of 5,000 additional cancer deaths annually in the general population.

"The results show that the non-Seventh-day Adventist group of non-smokers who had never smoked (but who were more likely to suffer involuntary exposure to tobacco smoke) had an average lung cancer mortality rate of 2.4 times that of the never-smoked Seventh-day Adventists (the group less likely to have suffered such exposure by virtue of their lifestyle)," the report reads. The study involved 50,126 non-smokers in the general population and 25,264 non-

smokers who are Seventh-day Adventists.

But Seventh-day Adventists, in addition to the fact that they don't smoke, tend to lead lives that are healthier than the general population. For example, doctors believe that abstinence from alcohol can improve general health and reduce the risks of certain diseases. Herman J. Gibb, an epidemiologist in the EPA's cancer assessment group, noted in a critique of the Repace and Lowrey report that the higher number, based on the comparison to the Seventh-day Adventist population, is probably invalid. Seventh-day Adventists forgo too many potentially harmful substances to make them a proper control group, he said.

Still, even if the lower estimate in the report is correct, it would make passive smoke the most dangerous airborne carcinogen in the country. A distant second would be coke oven emissions, which are said to cause up to 150 lung cancer deaths annually, according to the *New York Times*.

Even the lowest estimates indicate passive smoke to be the most dangerous airborne carcinogen in the United States. Coke oven emissions are a distant second.

One of the difficulties in determining what, if any, health hazard there is in secondhand tobacco smoke is computing the level of exposure to an individual. While a smoker can always count the number of cigarettes he or she smokes a day, a passive smoker has to gauge distance from cigarette smokers, airflow patterns, as well as the efficacy of ventilation in the area where he or she is exposed to smoke. A lone smoker in a small kitchen with closed windows could create a much more damaging cloud of smoke than several smokers in a large, well-ventilated office. Non-smokers can only

accurately determine their level of exposure by measuring the amount of nicotine in their urine.

There is a vast disparity between health professionals' judgment of the hazards attached to smoking and the view taken by the Tobacco Institute, a national lobbying organization for the tobacco industry, based in Washington, D.C. According to Anne Browder, assistant to the president of the Tobacco Institute, the institute rejects the view that smoking is universally harmful even to smokers themselves.

"We're saying that cigarette smoking may or may not be harmful to an individual," said Browder. She also rejects the statements

by Surgeon General Koop that smoking is the country's largest single avoidable cause of cancer.

Another issue gaining more prominence as public fears about the expense of health care grow is taxpayers' costs caused by cigarettes. According to a study released in September by the U.S. Office of Technology Assessment, disease and lost productivity due to smoking are costing the United States between \$38 billion and \$95 billion a year. The middle estimate of \$65 billion represents more than \$2 for every pack of cigarettes consumed. Meanwhile, tax on cigarettes yields only 16 cents per pack, or \$4.6 billion a year.

R.J. Reynolds Not Liable for Smoker's Death

by Miles Corwin

Santa Barbara (December 24, 1985)—A Superior Court jury here Monday rejected the claims of the family of a man who died after 54 years of smoking, voting 9 to 3 that the R.J. Reynolds Tobacco Co. is not liable for the man's death.

The verdict came on the second day of deliberations in a case that was closely watched by the \$60-billion tobacco industry and by many personal injury lawyers. It was the first of about 45 product liability lawsuits filed against tobacco companies to reach a jury.

The 12-member jury, which included one smoker, deliberated about nine hours before deciding against the family of John Galbraith, a Santa Barbara man who died in 1982 at age 69 of heart disease, lung cancer and other ailments. He had smoked up to three packs a day of Camels, Winstons and other cigarettes produced by Reynolds.

According to jury forewoman Stacie Proft, the jury majority simply was not convinced that Galbraith died of smoking-related causes or that he was addicted to smoking.

However, juror Toni McCarty, who voted in the minority, said she believed that smoking was a "substantial contributing factor" to Galbraith's death.

"The defect in cigarettes, besides causing cancer, is their addictive quality," she said. "I feel that the evidence in the courtroom showed scientifically that cigarettes are highly addictive drugs...and the tobacco companies don't take responsibility or warn you of that."

A Victory of Sorts

The jury verdict left both sides claiming victories of sorts.

John Strauch, an attorney who is coordinating all of Reynolds' product liability cases, said the company "takes a lot of comfort" in the verdict.

"People said we're in a new era, a new ballgame, and somehow, things have changed," Strauch said. "But we said personal responsibility is still the issue."

Paul Monziona, who represented the plaintiffs, along with Melvin Belli, said the split vote—only nine jurors are required to agree on a verdict in a civil case—and the length of the jury's deliberation were "encouraging." They had asked the jury for \$300,000 in damages.

"A lot of people thought this was a ridiculous case," Monziona said. "But the actions of the jury showed this kind of case is not an alien concept any longer."

Monziona said he plans to appeal the case.

The tobacco companies have never lost a product liability case or paid any damages, in or out of court. Earlier this month [December 1985] a federal judge in Knoxville, Tenn., threw out a \$55-million liability suit against Reynolds, because, he said, the plaintiff failed to show the jury that "the defendant's product was defective and unreasonably dangerous."

Still, Reynolds left little to chance, marshaling enormous resources for the Santa Barbara trial. During closing arguments, for example, Reynolds had eight attorneys sitting at the defense table or directly