

Please Don't Poop in My Salad

AND OTHER ESSAYS
AGAINST THE WAR ON SMOKING

by
Joseph L. Bast
President
The Heartland Institute

Foreword by Joel Sherman
President
Nat Sherman International

July 2006
Chicago, Illinois

Please Don't Poop in My Salad

Copyright ©2006 The Heartland Institute

Published by The Heartland Institute
19 South LaSalle Street #903
Chicago, IL 60603
phone 312/377-4000
fax 312/377-5000
<http://www.heartland.org>

All rights reserved, including the right to reproduce
this book or portions thereof in any form.

Opinions expressed are solely those of the authors.
Nothing in this book should be construed as
reflecting the views of The Heartland Institute,
or as an attempt to influence pending legislation.

Additional copies of this book
are available from The Heartland Institute
for the following prices:

1-10 copies	\$5.95 per copy
11-50 copies	\$4.95 per copy
51 - 100 copies	\$3.95 per copy
101 or more	\$2.95 per copy

Printed in the United States of America
ISBN 0-9786959-0-9

Manufactured in the United States of America

Table of Contents

Foreword	v
1. Introduction	1
2. Why Defend Smokers?	3
3. Leave Those Poor Smokers Alone!	11
4. An International Perspective on Smoking	15
5. Talking Points on Chicago's Smoking Ban	19
6. Please Don't Poop in My Salad	27
7. Liar, Liar, Pants on Fire!	31
8. A Smoker's New Year's Pledge	35
9. Why Do Public Health Advocates Lie?	37
10. Joe Camel Is Innocent!	39
11. Stop Messing with My Favorite Things!	43
12. Dear Melissa: A Perspective on the War Against Smoking ..	47
13. Smoking Under Siege: Why It Matters to You	51
14. Five Lies About Tobacco	55
15. Letter to the FTC on Harm Reduction	59
For More Information	71
About the Author	72

Foreword

By Joel Sherman
President, Nat Sherman International

I am pleased indeed to have been invited to contribute this preface to a book that I hope is widely read and discussed. In this series of essays, Joseph Bast gives us a clear-eyed and often humorous look at the underbelly of one of the most insidious yet persuasive attacks ever mounted against an American industry.

It is a story that needs to be told.

As a nation we have accepted blindly a change in the education of our children from teaching them what they *should* know to what a small but politically powerful minority *wants* them to know, robbing them of the ability in their adult life to exercise critical thought when processing a situation. The change affects many subjects and is widely discussed under the title “political correctness.”

The subject I have watched most closely is tobacco. My company, Nat Sherman, is a maker of luxury cigarettes and premium cigars sold in all 50 states and 40 countries around the world. Three generations of Shermans have guided the company over the years, striving to produce the finest products for our customers.

Having grown up in a family business I am proud of, I am deeply offended when my grandchildren report being told by their teachers that their parents and grandparents are “killers,” “drug pushers,” and worse. The propaganda is wall-to-wall in many schools and on television, radio, and in the popular press.

Where does this disinformation come from? From a small minority who are extremely vocal, well financed, and overtly vicious in their tactics. Either they get their way—imposing huge taxes on tobacco products, banning their advertising and promotion, or banning use of tobacco products in “public” places—or, failing that, they point to the rest of us and imply we are guilty of treason.

The public—most of us—has been brainwashed and programmed by “them.” Unfortunately the “them” is “us.” As that great twentieth century prophet Pogo Possum once said, “I have met the enemy ... and he is us.” We

blame teachers and the schools, but they only channel the opinions and biases of school boards, taxpayer-funded research and health advocacy groups, and the media. In other words, “they” are “us.”

A recent experience illustrates this point. A few years ago the *New York Times* announced it would no longer accept tobacco advertising. I was offended and took the opportunity to tell publisher Arthur Sulzberger so in a letter. I described how I had watched my father check the placement of his small but persistent ad on the upper right-hand corner of page three of the *Times* every morning for more than 20 years. I went on to point out that when the responsibility fell to me, I chose to buy larger space on an annual contract and did so until passing the responsibility to my son. I considered—and still consider—the *Times*’ decision to be discriminatory, unjust, and unfair.

In his reply, Mr. Sulzberger said he remembered all I had recounted but, unfortunately, most of the mail they received about tobacco advertising was negative in nature. He was only doing what the public said it wanted.

One would think an educated man responsible for informing the public with “All the News That’s Fit to Print” (as it says on the *Times*’ masthead) would know that the people who appreciate an ad go out and buy the product—they do not write letters to the editor thanking them for running the ad. Highly vocal and often professional prohibitionists, on the other hand, can produce a steady stream of letters deploring ads for products they don’t use and disapprove of.

Mr. Sulzberger is allowing a few vocal prohibitionists to determine what advertisers will appear on the pages of his newspaper. Too often, opinion writers, editors, and even reporters at the *Times* and other newspapers seem to follow the same rules, resulting in a near black-out of pro-tobacco views.

Fortunately, there is The Heartland Institute and a few other organizations like it still willing to practice the art of responsible communication from a public forum. Heartland’s president, Joseph Bast, is one of very few critical thinkers and analysts today willing to question the prevailing wisdom about tobacco.

In the series of articles that compose this small book, Bast uses common sense, real science, and the (almost) lost art of critical thinking to refute and debunk the outlandish claims and comments made by anti-smoking fundamentalists and those who have found great profits in fueling the hysteria.

Where Bast veers from unbiased to biased is when he observes how the

FOREWORD

sum of this deceit attacks and destroys our freedoms and ultimately our democracy. The slippery slope starts with government making personal choices on your behalf and then using junk science and outright falsehoods to justify their actions. It ends with the total loss of our basic American ideals of individual freedom, personal responsibility, and limited government.

On the subject of freedom, Bast is obviously passionate and his patriotic bias begins to show. On this, and on many other matters, he and I are in complete agreement. The first words that appear on my company's Web site read, "Freedom of choice is an inherent American value and the decision to smoke is an exercise of that freedom."

Bast applies the common sense and critical thinking that are often lost by others who search for fame and ratings instead of the truth. With a keen eye he asks the hard questions and tells it like it really is.

I believe you will enjoy this book. I certainly did.

Joel Sherman
President, Nat Sherman International
New York, New York

Chapter 1

Introduction

It is difficult to imagine, in the summer of 2006, something more politically incorrect than defending smokers. Other issues are controversial: immigration, medical marijuana, school choice, the War in Iraq. But in each of those cases, real debate is tolerated. Not so when it comes to tobacco.

The only people defending smokers and their tobacco products are either monsters or industry stooges, or so I am told repeatedly by professional anti-smoking activists, letter-to-the-editor writers, bloggers, and even some neighbors and friends. *Everyone knows* cigarettes kill smokers, secondhand smoke kills non-smokers, and tobacco use makes us all pay higher premiums for health and life insurance. Who in their right mind would want to defend such a terrible product?

Someone, perhaps, who has looked at the epidemiological studies of the health effects of secondhand smoke and found scant evidence in support of widely circulated claims. Someone who understands that smokers are well aware of the health risks posed by their habit—surveys show they actually over-estimate the risk—and therefore assume the risk of smoking. And someone, finally, who knows enough about health care economics to know that the cost smokers impose on the rest of society is far less than the taxes they pay on their products.

That someone, of course, is me. As president of The Heartland Institute, a national non-profit research organization (or “think tank”), I try to stay abreast of recent developments on a wide range of topics, including health care, taxes, environmental protection, and legal reform. It was in the course of reading, editing, and writing on these other topics that I noticed how smokers and their tobacco products were being abused—I can think of no better word to describe it—by a cabal of self-proclaimed public health advocates, tax-hungry politicians, environmental advocates, and trial lawyers. No one, it seemed, was willing to stand up for the lowly smoker. I figured I would volunteer for the job.

Several months ago, I got a call from a smokers’ rights group in Ohio

PLEASE DON'T POOP IN MY SALAD

asking me for help. Anti-smoking groups were whipping up support for a referendum that would impose a statewide smoking ban in public places. The caller asked if I could send him copies of everything I'd written on the subject over the years. No problem, I thought. It wouldn't be very much.

I went on The Heartland Institute's Web site at <http://www.heartland.org> and started searching for things I had written. I found six or seven essays, and sent them to Ohio. A few days later, it occurred to me that I missed a few, and I found and sent those as well. During the next three or four months, other essays I had written kept occurring to me, until I found I had assembled nearly 20 essays on the subject.

As I read through those essays, I was surprised to see that, with a few exceptions, there wasn't as much overlap between them as one might have expected. While the same themes echo through them all, each essay brings new evidence or focuses on a different aspect of the debate. The jokes are still funny, at least to me, and the other side has yet to rebut any of the facts I report.

So it is with some surprise that I present to you, the reader, a collection of 13 of the best of those essays and a letter to the Federal Trade Commission (in Chapter 15), all defending smokers and their tobacco products, and all written by me during the past 10 years. Together they make a compelling case against the extremists, the nannies, and the taxers in our midst.

I should note before closing that the title of this collection is taken from the title of one of the essays, presented as Chapter 6, which in turn came from an email sent to me by an anti-smoking activist. I apologize to sensitive readers for the scatological reference, but note that the email writer used an even more offensive term.

Chapter 2

Why Defend Smokers?

(January 2006, with Maureen Martin)

Everywhere you look, anti-smoking groups are campaigning against smokers. They claim smoking kills one-third or even half of all smokers; that secondhand smoke is a major public health problem; that smokers impose enormous costs on the rest of society; and that for all these reasons, taxes on cigarettes should be raised.

There are many reasons to be skeptical about what professional anti-smoking advocates say. They personally profit by exaggerating the health threats of smoking and winning passage of higher taxes and bans on smoking in public places. The anti-smoking movement is hardly a grassroots phenomenon: It is largely funded by taxpayers and a few major foundations with left-liberal agendas.

A growing number of independent policy experts from a wide range of professions and differing political views are speaking out against the anti-smoking campaign. They defend smokers for several reasons:

- Smokers already pay taxes that are too high to be fair, and far above any cost they impose on the rest of society.
- The public health community's campaign against smoking is based on junk science.
- Litigation against the tobacco industry is an example of lawsuit abuse and has "loaded the gun" for lawsuits against other industries.
- Smoking bans hurt small businesses and violate private property rights.
- The harm caused by smoking can be reduced by educating smokers about their options.

- Punishing smokers “for their own good” is repulsive to the basic libertarian principles that ought to limit the use of government force.

Taxing Smokers

Cigarettes are already the most heavily taxed commodity in the U.S. The federal excise tax is \$0.39 a pack and the national average state excise tax is about \$0.60 per pack, for a total of \$0.99 per pack. In addition, the 1998 Master Settlement Agreement (MSA) increased the price of a pack of cigarettes by about \$0.40 a pack. In a growing number of cities, a pack-a-day smoker pays more in cigarette taxes than he or she pays in state income taxes.

Such high and discriminatory taxes on smokers are unfair. They are also an inefficient and unreliable way to raise funds for government. Excise taxes require regular rate increases to keep pace with inflation, whereas income, sales, and property taxes all rise with inflation or economic growth. Because of their narrow bases, excise taxes are unstable revenue generators. And excise taxes require relatively high rates to raise funds. These rates, in turn, create opportunities for evasion and the transfer of economic activity to states with lower taxes.

Dramatic price hikes and extreme taxes on cigarettes are threatening to create a stampede of tax evasion, black-market transactions, counterfeiting, and even use of lethal violence against convenience store clerks and truck drivers. Tax hikes of \$1.00 a pack or more, as have been adopted recently by New York, Cook County (Illinois), and elsewhere threaten to take us to a neoprohibitionist era, with all the crime, expenses, and loss of respect for law enforcement that accompanied Prohibition.

Excise taxes are also regressive. People with low incomes not only pay a higher percentage of their incomes on cigarette taxes than do wealthier people, they even pay more in absolute terms. Persons earning less than \$10,000 paid an average of \$81 a year in tobacco taxes, versus \$49 for those who make \$50,000 or more. This was before recent massive tax hikes!

Social Costs

Are high taxes on cigarettes justified by the social costs smokers impose on the rest of society? No.

Harvard Professor Kip Viscusi has repeatedly demonstrated that

WHY DEFEND SMOKERS?

smokers already pay more in excise taxes than the social costs of their habits. Even before the MSA, “excise taxes on cigarettes equal or exceed the medical care costs associated with smoking.” For example, Illinois’ cigarette taxes, according to Viscusi, were \$0.13 more per pack than the social costs of smoking before the settlement added \$0.40 to the price of a pack of cigarettes, before the \$0.40 a pack tax hike approved by the state legislature in 2002, and before Cook County’s \$0.82 a pack boost in 2004.

Instead of raising cigarette taxes, simple justice demands that cigarette taxes be reduced to zero. In fact, states should consider taping a dime or a quarter to every pack of cigarettes as a way of thanking smokers for reducing the burden on taxpayers!

Junk Science

How harmful is smoking to smokers? Public health advocates who claim one out of every three, or even one out of every two, smokers will die from a smoking-related illness are grossly exaggerating the real threat. The actual odds of a smoker dying from smoking before the age of 75 are about 1 in 12. In other words, 11 out of 12 life-long smokers don’t die before the age of 75 from a smoking-related disease.

In a 1998 article titled “Lies, Damned Lies, and 400,000 Smoking-related Deaths,” Robert Levy and Rosalind Marimont showed how removing diseases for which a link between smoking and mortality has been alleged but not proven cuts the hypothetical number of smoking-related fatalities in half. Replacing an unrealistically low death rate for never-smokers with the real fatality rate cuts the number by a third.

Controlling for “confounding factors” —such as the fact that smokers tend to exercise less, drink more, and accept high-risk jobs—reduces the estimated number of deaths by about half again. Instead of 400,000 smoking-related deaths a year, Levy and Marimont estimate the number to be around 100,000.

This would place the lifetime odds of dying from smoking at 6 to 1 (45 million smokers divided by 100,000 deaths per year x 75 years), rather than 3 to 1. However, about half (45 percent) of all smoking-related deaths occur at age 75 or higher. Calling these deaths “premature” is stretching common usage of the word. The odds of a life-long smoker dying prematurely of a smoking-related disease, then, are about 12 to 1.

Secondhand Smoke

Is secondhand smoke a rationale for higher taxes on tobacco or smoking bans?

The research used to justify government regulation of secondhand smoke has been powerfully challenged by critics, including Congress's own research bureau. According to the Environmental Protection Agency, the risk ratio for 40 years of exposure to a pack-a-day smoker is just 1.19. Epidemiologists as a rule are skeptical of any relative risks lower than 3 and dismiss as random ratios less than 1.3. Science writer Michael Fumento and others have documented how the threat of secondhand smoke has been greatly exaggerated.

The latest word on second-smoke appeared in the May 12, 2003 issue of the *British Medical Journal*. Two epidemiologists, James Enstrom at UCLA and Geoffrey Kabat at the State University of New York at Stony Brook, analyzed data collected by the American Cancer Society from more than 100,000 Californians from 1959 through 1997.

"The results do not support a causal relation between environmental tobacco smoke and tobacco related mortality," the researchers wrote, although they do not rule out a small effect. "The association between tobacco smoke and coronary heart disease and lung cancer may be considerably weaker than generally believed."

"It is generally considered that exposure to environmental tobacco smoke is roughly equivalent to smoking one cigarette per day," according to Enstrom and Kabat. "If so, a small increase in lung cancer is possible, but the commonly reported 30 percent increase in heart disease risk—the purported cause of almost all the deaths attributed to secondhand smoke—is highly implausible."

Smoking Bans

Concern over the health effects of smoking and secondhand smoke have led to calls for bans on smoking in public spaces. Are these bans justified?

Most seats in most restaurants are already designated non-smoking, and there is little evidence that non-smokers who visit restaurants and bars believe smoking is a major concern. In restaurants with smoking and non-smoking sections, better ventilation systems rather than smoking bans can solve any remaining concerns.

Smoking bans have had severe negative effects on restaurants, bars, and

WHY DEFEND SMOKERS?

nightclubs in cities where such bans have been enacted. Smokers choose to stay home or visit friends who allow smoking in their homes, or spend less time (and less money) in bars and nightclubs before leaving. Smoking bans can also move noisy and potentially dangerous crowds onto sidewalks, and divert police resources from battling more serious crime.

Lawsuit Abuse

“The states’ legal crusade against the tobacco industry will one day rank as one of the worst developments in American public law in the twentieth century,” wrote Michael DeBow, a professor of law at Cumberland School of Law, Samford University.

In 1998, Philip Morris and other major tobacco companies settled a lawsuit brought by 46 states and five territories, promising them an astounding \$243 billion over 25 years, and then approximately \$18 billion a year in perpetuity. The cost of this so-called Master Settlement Agreement (MSA) is entirely passed through to smokers; it is not paid by “tobacco companies.” The agreement has already dramatically increased the retail price of cigarettes.

The MSA was supposed to end litigation against tobacco companies, but lawsuits continue to be filed anyway, with irresponsible juries awarding millions and even billions of dollars to smokers who knew the risks but continued to smoke anyway. Besides thousands of frivolous civil suits pursued by lawyers who long ago forgot the meaning of justice, the U.S. Justice Department is still pursuing a legal case against the tobacco industry initiated by the Clinton administration.

The MSA also “loaded the gun” for trial lawyers to go after other industries, generating approximately \$13.75 billion in projected payments to lawyers. It was, wrote DeBow, “the largest transfer of wealth as a result of litigation in the history of the human race, a transfer that is being and will continue to be financed almost entirely by smokers paying higher prices for cigarettes.”

Smokers’ Rights

Another reason to oppose the current campaign against smokers is because it violates the legitimate rights of smokers. John Stuart Mill, in a slender book published in 1859 titled *On Liberty*, wrote: “The only purpose for which power can be rightfully exercised over any member of a civilized

community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.” This is the basic premise of libertarianism, the political philosophy of the Founding Fathers.

Mill’s statement is directly applicable to the controversy over smoking. Quite simply, a just government does not have the authority to ban smoking on private property or to tell smokers to quit or to punish them if they do not. Smokers are adults, not children, and they deserve to have their informed choices respected by others.

If we pass laws forcing smokers to change their behavior “for their own good,” we need to ask: Where do we stop? Do we pass laws against smoking in private homes? Against frying food indoors (which also releases known carcinogens into the air)? Eating the wrong kinds of food? Eating too much? Weighing too much? Drinking too much (and not just when driving)? Exercising too little? Should we ban other risky behavior, such as skydiving, bungee-jumping, or riding motorcycles? How about drinking more than one cup of coffee each day?

Harm Reduction

Anti-smoking activists give smokers a stark choice: Stop smoking or die! In fact, there is a third path: Reduce the harm by shifting to less-hazardous kinds of tobacco products. For example, moving from unfiltered to filtered cigarettes, and from regular to “low tar” cigarettes, both appear to reduce the risk of lung cancer.

Switching from cigarettes to chewing tobacco dramatically reduces the health risk. For many years, the Swedish have used a kind of “spitless tobacco” called “snus.” At least partly because of the widespread use of snus, Sweden has the lowest rate of cigarette smoking and lung cancer in Europe. Surely there are lessons here for U.S. tobacco policy.

Unfortunately, in the U.S. advertising the comparative health effects of different tobacco products is strongly discouraged by the Food and Drug Administration, state attorneys general, the courts, and a variety of government-funded anti-tobacco organizations. As a result, few smokers know that the health risks of smoking can be dramatically reduced simply by reducing the number of cigarettes smoked or by switching to filtered and light cigarettes or to chewing tobacco.

Underaged Smoking

Kids shouldn't smoke cigarettes, but what is the best way to discourage underaged smoking? The tobacco industry is working hard to enforce minimum age standards by pushing retailers to require proof of age at the time of purchase. Despite hysteria on this matter from the anti-smoking establishment, cigarette advertising does not target young people.

Saying we need high taxes on cigarettes to discourage teenagers from smoking is dishonest, since most teenage smokers don't buy their cigarettes, getting them instead from parents and adult friends. It is unfair to impose dramatically higher taxes on the adults who buy 95 percent or more of all cigarettes sold in order to make cigarettes less attractive to the few teenagers who actually pay for their cigarettes.

Chapter 3

Leave Those Poor Smokers Alone!

January 1, 2006

A member of The Heartland Institute's board of directors called me recently to ask why I spend time defending smokers. It's a lost cause, he said, and it surely doesn't win us any friends.

I know smoking is widely condemned and that banning smoking in restaurants and bars is all the rage among state and local elected officials. I know many people think they unfairly shoulder the higher health costs of smokers, hate tobacco companies, and can't stand the smell of cigarettes. And I know my writing on this subject will irk some Heartland supporters.

I know all that ... but I still think it is important to defend smokers. Here are my reasons.

The Rights of Smokers

Forty-five million adults in the U.S.—about 21 percent of the population—choose to smoke. You probably know a few who do. You can detest their habit and support regulations that protect you from any adverse effects their smoking may have on you, but you cannot simply run rough-shod over their rights. They're still people. They still have rights.

John Stuart Mill wrote in 1859, "The only purpose for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant."

We live in a nation founded on that principle. People are free to do things both great and foolish so long as they do not conflict with an equal right held by others. That focus on individual liberty is the reason we are the most prosperous and tolerant people in human history. When we carve out exceptions to this principle, we ought to do so with great care and reluctance.

I see neither great care nor reluctance in the anti-smoking movement. Instead I see a \$600 million-a-year anti-smoking industry, funded largely by taxes on tobacco products, willing to use junk science, scare tactics,

PLEASE DON'T POOP IN MY SALAD

lawsuit abuse, and government force to demonize a product and its users. It's a textbook campaign for stealing the rights of a minority and making government bigger and more powerful. It should be repugnant to anyone who is a friend of freedom.

Smokers Pay for Their Habit

When calculating the "costs of smoking" it is important to remember that smokers assume the risk, which means they understand the risk to their health but decide that risk is worth taking for the enjoyment they derive from smoking. Whatever losses smokers themselves sustain are not "costs to society" that justify higher taxes or restrictions on smoking.

The 2004 average retail price of a pack of cigarettes was \$3.82. The federal tax was \$0.47, state tax \$1.41 ... nearly half the retail price. Smokers in some states pay more in taxes on cigarettes than in state income taxes, which is a polite way of saying smokers are forced to pay twice as much in state taxes as non-smokers.

Harvard University professor Kip Viscusi has repeatedly demonstrated that smokers paid more in excise taxes than the social costs of their habits even before the 1999 Master Settlement Agreement raised the price of a pack of cigarettes by \$0.40. (All that money goes directly into state government coffers and is spent largely for the benefit of non-smokers.) Says Viscusi, "excise taxes on cigarettes equal or exceed the medical care costs associated with smoking."

That was back in 2001 ... before the enormous hikes in cigarette taxes of recent years. It also doesn't take into account the politically incorrect but nevertheless undeniable fact that smokers save the rest of society money by qualifying for fewer years of Social Security and private pension benefits. Smokers die, on average, six to seven years before non-smokers.

Secondhand Junk

The only legitimate grounds for interfering in smokers' choices are the potentially harmful effects of secondhand smoke on non-smokers. Anti-smoking activists say secondhand smoke contains 4,000 poisons and carcinogens, that even a tiny dose can cause severe health effects. They claim "there is no safe level of exposure to secondhand smoke."

This is pure junk science. The first principle of toxicology is that the dose makes the poison. We are exposed to thousands of natural poisons and

carcinogens in our diets every day, but they don't hurt us because the exposure is too small to overcome our bodies' natural defenses. The same is true of secondhand smoke. No victim of cancer, heart disease, etc. can "prove" his or her cancer or heart disease was caused by exposure to secondhand smoke.

Perhaps the best recent academic study of the effects of second-smoke on non-smokers appeared in a 2003 issue of the *British Medical Journal*. The authors analyzed data collected by the American Cancer Society from more than 100,000 Californians from 1959 through 1997. They concluded: "The results do not support a causal relation between environmental tobacco smoke and tobacco-related mortality," although they do not rule out a small effect. "The association between tobacco smoke and coronary heart disease and lung cancer may be considerably weaker than generally believed."

Various radical environmental groups and liberal advocacy groups have been warning us about the supposed risk of "getting cancer" from everything from apples and soda to coffee, chocolate, french fries, and fish ... and now secondhand smoke. Yet each year Americans are living longer and healthier lives. Cancer rates are going down, not up. Do the math, guys.

Voluntary Action Working

We don't need more bans on smoking in public spaces because people are figuring this out on their own. In the first place, fewer people are smoking. Controlling for the tar content of cigarettes, per-capita cigarette consumption fell by three-fifths (60 percent) since 1950, according to Viscusi.

In most cities and towns, more than half the restaurants are already non-smoking by choice, and virtually every restaurant has seats reserved for non-smokers. A growing share have physical room dividers and ventilation systems to prevent smoke migration. Few smokers who share a home with a non-smoker smoke indoors anymore, or at least not in rooms likely to be occupied by non-smoking family members.

All this is working. Exposure to secondhand smoke, as measured by the amount of cotinine in the blood of non-smokers, has fallen 68 percent for kids and 75 percent for adults from the four-year period 1988-1991 to the four-year period 1999-2002, according to the Centers for Disease Control. Recall that even exposure to much higher levels of secondhand smoke in the past hasn't been plausibly associated with negative health effects ... so how

likely is it that today's much lower levels of exposure are a real public health threat? Not very.

Conclusion

So let's see. Taxes are already far above any reasonable estimate of social costs of smoking, sound science doesn't show a health risk from secondhand smoke, voluntary limits now make smoke-free restaurants and even bars widely available to non-smokers, and exposure to secondhand smoke is rapidly diminishing. Gee, what should we do?

Friedrich Hayek once wrote, "if we wish to preserve a free society, it is essential that we recognize that the desirability of a particular object is not sufficient justification for the use of coercion." Surely this is a case where further coercion is not justified.

Anti-smoking lobbyists want to go one step further by banning smoking in the few places left for smokers to go to enjoy their habits: those restaurants and bars whose owners still permit smoking. I don't blame them for wanting to do this because continuing to attack smokers is their business, and I mean that literally: They are paid to advocate smoking restrictions.

I'm not paid to defend smokers. Heartland probably loses funding every time I write on this subject. But as I see it, somebody has to stand up for the millions of American smokers who just want to be left alone. Enough already! Leave those poor smokers alone!

Chapter 4

An International Perspective on Smoking

October 16, 2002

(I coauthored this with Lene Johansen, a non-smoking journalist affiliated with Eudoxa, a think tank based in Stockholm, Sweden.)

After a day at work in Stockholm, Sweden, Lene heads for a nearby lounge where she knows her friends will be, for a big cup of mocha, a snifter full of single malt, and the rich smell of a friend's cigar. She loves the smell of cigars and pipes, and says it's much better than most of what you can get in a can or from incense sticks.

Half-way around the world and seven hours later, Joe, after his day's work, heads for the patio behind his condominium in suburban Chicago, pops open a beer, and enjoys a cigar. Each of the day's trials are considered and set aside as he studies the cigar's glowing tip and intricate patterns of smoke. Lulled by a little alcohol and soothed by a little nicotine, his brain down-shifts for a slower-paced evening and eventually a sound night's sleep.

This is what tobacco means to most of its 45 million users in the U.S. and more than 1 billion smokers worldwide. We all need "time outs" in this world, and our small vices make these retreats possible. Smoking tobacco has drawbacks, of course: Heavy smoking can lead to a long list of health problems, some of them fatal, and people around you may not share your private pleasure. But smoking, like drinking, when done in moderation provides great enjoyment to millions of people.

Scandinavians long ago found a way to enjoy the flavor and pharmacological effects of tobacco while minimizing the health risks and inconvenience to others. It is a smokeless, non-chewing tobacco called "snus" that Scandinavians have used for more than 200 years. It is similar to snuff, the smokeless tobacco available in most gas stations in the U.S.

Smokeless tobacco is much safer for users than smoking. One estimate

PLEASE DON'T POOP IN MY SALAD

is that lifetime heavy smokers die, on average, six to seven years before non-smokers, while smokeless tobacco users lose just 15 days, or 0.04 years, of life expectancy. Widespread use of snus is a major reason why Sweden has the lowest rate of adult smoking in Europe and one of the lowest lung cancer rates.

In late September, an international conference on smokeless tobacco took place in Stockholm. On the program was the potential use of smokeless tobacco to reduce the harm suffered by smokers. The public health benefits from switching are huge: If just 10 percent of the 45 million smokers in the U.S. today switched to smokeless tobacco, the result would be an almost incredible 26.8 million life-years saved.

Professional public health advocates in government and government-financed advocacy groups dominated the conference. Surprisingly, they showed little sympathy for the harm-reduction position. Many simply refused to acknowledge data showing smokeless tobacco to be less hazardous than smoking, insisting instead that the only comparison relevant to the discussion is between smokeless tobacco and complete abstinence.

One person at the conference, David Sweanor, a Canadian tobacco control advocate, seemed to “get it.” People use tobacco primarily for the nicotine, said Sweanor, which releases endorphins (anti-stress hormones secreted by the brain), which cause a euphoric effect. The pleasure of bicycling and long-distance running also comes, at least in part, from the release of endorphins. Urging smokers to switch to smokeless tobacco, then, is in some ways similar to urging bicyclists to wear helmets or long-distance runners to drink water, according to Sweanor. The drug effect is still obtained, but the hazards related to the activity are reduced.

Harm reduction is a familiar approach in virtually all parts of our lives except smoking. We do not see bans on cars and trucks even though they cause thousands of deaths each year due to collisions. Instead, we see laws requiring seatbelts and airbags and limits on the speed of travel. Prescription drugs come in child-proof bottles. Office buildings have sprinkler systems to put out fires. When you go shopping, you find information about fat and sugar on the containers of food products, allowing you to decide how much risk you wish to accept in your diet. Why, then, is harm reduction such a controversial concept when it comes to tobacco use?

Most government agencies in Europe and the U.S. have adopted a

stance of zero tolerance: Smoking is bad for you, period, they say. Smokers must quit or face certain death. Any message that deviates from this dogma is condemned as offering false hope to smokers or encouraging children to become addicted to nicotine. These may be legitimate concerns, but they pale alongside the collateral damage being caused by the rigid stance of public health officials.

Thanks to that dogmatic stance, smokers in the U.S. and around the world receive little or no information on the comparative health effects of smokeless tobacco and smoking, or even the different effects of filtered versus unfiltered cigarettes and light versus regular cigarettes. Such information would probably lead to millions of smokers changing their behavior, resulting in vast public health benefits. The information is known to health experts, but it is suppressed by regulators and their allies.

Maybe public health advocates don't think the average person is smart enough to decide for him or herself, on the basis of clearly presented facts, whether the risk is worth the pleasure of using tobacco. Maybe they fear that any crack in the wall they are trying to build would lessen their ability to raise and spend the public's money on their campaigns. Maybe they just don't know the facts.

Whatever the reasons, the public health community has become a threat to the health of the very people it claims to want to help. By disregarding the very real pleasure that millions of people derive from using tobacco products responsibly, they have also become a threat to civil liberties and individual freedom.

It is time to reject exaggerated claims about the hazards of enjoying tobacco products, and begin respecting the liberties of smokers and people who enjoy being around smokers.

Chapter 5

Talking Points on Chicago's Smoking Ban

January 6, 2002

Executive Summary

WHO SUPPORTS THE BAN?

1. Most seats in most restaurants are already designated non-smoking.
2. Non-smokers who visit restaurants and bars are not complaining.
3. The general public does not support smoking bans in restaurants.

REASONS TO OPPOSE THE BAN

4. A smoking ban would have a severe negative effect on local businesses.
5. Smoking bans elsewhere have reduced employment in restaurants, bars, and nightclubs.
6. The impact of a smoking ban in Chicago would be especially severe.
7. Bar and restaurant owners should be allowed to make the right decisions.
8. A just government does not have the authority to ban the use of a legal substance.

HEALTH CONSIDERATIONS

9. The threat of secondhand smoke has been greatly exaggerated.
10. Air cleaning equipment can remove any health threat secondhand smoke might pose.
11. Smokers know the risk that smoking poses to their health, and even over-estimate it.
12. Smokers already pay more, through taxes, than the cost their habits impose on the rest of society.

PLEASE DON'T POOP IN MY SALAD

UNINTENDED CONSEQUENCES

13. Smoking bans move noisy and potentially dangerous crowds onto sidewalks.
14. Enforcement of a smoking ban would be expensive.

Who Supports the Ban?

1. Most seats in most restaurants are already designated non-smoking.

Current statutes in Chicago require one-third of seats in restaurants to be designated non-smoking. Most restaurants set aside more, and a growing number are entirely non-smoking. At least half of all seats in Chicago restaurants are already reserved for non-

“Diners in this city have no shortage of options including telling the managers at their favorite haunts that other people’s smoking will drive their business elsewhere.”

—*Chicago Tribune* editorial,
December 10, 2002

smokers. Most restaurants connected to bars have invested heavily in ventilation and air cleaning systems to ensure smoke doesn’t travel from the bar to the restaurant.

2. Non-smokers who visit restaurants and bars are not complaining.

Advocates of the smoking ban claim they are acting on behalf of non-smokers who are annoyed by smoking at restaurants and bars, but the Public Health Department of the City of Chicago received just 16 complaints in 2001. If non-smokers are satisfied with current accommodations, who is driving the anti-smoking

“Clearly the tobacco control movement is not grassroots-initiated. It is funded by veteran liberal activists in the foundations, government and non-profit worlds. Given time, tobacco control advocates can wage an increasingly effective public relations assault and recruit more supporters.”

—Patrick Reilly, *Foundation Watch*
August 1998

campaign? A small group of professional anti-smoking activists affiliated with taxpayer-financed organizations such as the Illinois Coalition Against Tobacco and the American Lung Association.

3. The general public does not support smoking bans in restaurants.

Fifty-two percent of the public believe restaurants should set aside space for smokers, versus 44 percent who support a total ban. Fifty-eight percent support smoking areas in workplaces, and 66 percent support smoking rooms in hotels and motels. It is important to note that these surveys did not inform respondents that bans on smoking could cause the loss of jobs or closure of small businesses, or that all restaurants already make accommodations for smokers. [Source: “Gallup Poll In-Depth Analysis Tobacco and Smoking,” The Gallup Organization, Princeton, NJ, August 2002, citing data from polling conducted July 19-22, 2001.]

Reasons to Oppose the Ban

4. A smoking ban would have a severe negative effect on local businesses.

Chicago-area restaurants, bars, and hotels employ more than 118,000 people (with wages of more than \$1.85 billion). The industry generates millions of dollars in sales and property taxes that would have to be shifted to consumers and homeowners if restaurants and bars were forced out of business. Approximately one of every four adults in Chicago smoke, but half or more of the people who frequent bars, nightclubs, and restaurants attached to bars are smokers.

According to restaurant and bar owners, smokers spend more, on average, than non-smokers on alcohol, food, and tips. Consequently, a ban on smoking in restaurants and bars would reduce business and sales by more than 25 percent, and possibly by 50 percent or more.

5. Smoking bans elsewhere have reduced employment in restaurants, bars, and nightclubs.

In California from 1994 to 1999, the number of permits issued to restaurants and bars that serve liquor fell 3.3 percent.

A 1998 telephone survey of 300 owners or managers of California restaurants, bars, and nightclubs affected by the statewide smoking ban found 59.3 percent experienced a decrease in business since the ban. The average decline in sales was 26.2 percent. Nearly 30 percent reported laying off employees or cutting hours or shifts. Note that this is in California, where smoking outdoors is often a pleasant alternative.

"In other words, during a period in which we saw a tremendous increase in the overall economy, 1,039 restaurants or bars went out of business."

—Otto J. Meuksch, President
Californians for Smokers Rights
(Citing state government reports)

6. The impact of a smoking ban in Chicago would be especially severe.

California and Florida, the two states that have banned smoking in indoor public spaces, are both warm-weather states where smokers can be readily accommodated most times of the year in outdoor courtyards and patios. In Chicago, such spaces would be unpleasant or unusable for some nine months of the year. The loss of business would drive many of Chicago's small neighborhood bars and restaurants out of business.

"In virtually every city where [Stanton A.] Glantz and [Lisa R.A.] Smith alleged a smoking ban was imposed, there was a significant decline in sales at eating and drinking establishments."

—Dr. Michael K. Evans, Clinical
Professor of Economics, Kellogg
School, Northwestern University

7. Bar and restaurant owners should be allowed to make the right decisions.

With few exceptions, bars and restaurants are privately owned businesses that earn a profit by giving customers what they want. The owners of these establishments are in the best position to know what their customers want and how to deliver it. Since they own the property, their right to set the rules of conduct concerning guests should be respected. No one is forced to eat or work at establishments that allow smoking.

“If some of the best restaurateurs in the city say that a smoking ban would cost them customers and money, who are we to tell them they are wrong? Just because a voluntary smoking ban works at one kind of restaurant doesn’t mean that it would work at another.”

—Mark Brown, “Cigarette-hater doesn’t see reason for ban,” *Chicago Sun-Times*, December 18, 2002

8. A just government does not have the authority to ban the use of a legal substance.

John Stuart Mill, in a book published in 1859 titled *On Liberty*, wrote: “The only purpose for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.”

Mill’s statement is directly applicable to the controversy over smoking. Quite simply, a just government does not have the authority to ban smoking on private property or to tell smokers to quit or to punish them if they do not.

Health Considerations

9. The threat of secondhand smoke has been greatly exaggerated.

Claims that secondhand smoke causes as many as 65,000 early deaths in the U.S. each year have been widely debunked as “junk science.” Studies by the Congressional Research Service, World Health Organization, and U.S. Department of Energy all failed to find secondhand smoke to be a significant health risk.

In 1998, a U.S. District Court ruled against the Environmental Protection Agency’s attempt to classify secondhand smoke as a known human carcinogen. The judge wrote, “ ... EPA disregarded information and made findings on selective information; ... did not disseminate significant epidemiologic information; deviated from its Risk Assessment Guidelines; failed to disclose important findings and reasoning; and left significant questions without answers.”

“Exposures to environmental tobacco smoke may be lower than earlier studies indicated for bartenders, waiters and waitresses, according to a study conducted by researchers at the Department of Energy’s Oak Ridge National Laboratory (ORNL).”

—News release, ORNL, February 2, 2002

10. Air cleaning equipment can remove any health threat secondhand smoke might pose.

Harvey Davis, Ph.D., a professor of science and mathematics at Columbia College and president of Davis Environmental Services Group, Inc., in an assessment of a study of air cleaning equipment at the Great Lakes Naval Training Center, wrote, “it is my opinion that (a) the ETS

“John Colletti, managing partner at Gibson’s Steakhouse, said he shouldn’t have to turn away smokers when he has spent \$1 million at two restaurants for air filtration.”

—Associated Press, “Chicago weighs two smoking bans,” *Daily Herald*, December 11, 2002

[environmental tobacco smoke] can be reduced to a level that minimizes unwanted health risks and (b) interim occupational/recreational exposure limits could be established for ETS.”

11. Smokers know the risk that smoking poses to their health, and even over-estimate it.

Long-term heavy smoking is hazardous to your health. The odds of a life-long smoker dying prematurely (before the age of 75) of a smoking-related disease are about 12 to 1 (not the “3 to 1” odds claimed on anti-smoking billboards).

Surveys of smokers show they over-estimate the actual risk to their health. Smokers continue to smoke because they decide the enjoyment is worth the risk, just as long-distance runners, bicyclists, race car drivers, and countless other pursuers of pleasure willingly accept risk.

“The overwhelming majority of the sample overestimate the lung cancer risks associated with smoking. ... there are no particular problem groups that are not as aware of the mortality risks associated with cigarettes.”

—Dr. Kip Viccusi,
Smoke-Filled Rooms (University of Chicago Press, 2002), p. 150

12. Smokers already pay more, through taxes, than the cost their habits impose on the rest of society.

“Economists have argued for two decades that smokers do not incur larger health care costs than non-smokers. That is because non-smokers, statistically, live longer than smokers and reach ages in which they incur large healthcare costs. What is more, smokers pay heavy tobacco taxes and draw less from public pensions than non-smokers. So, if we look at transfers between groups, smokers subsidize non-smokers, not the other way around.” (Dr. Pierre Lemieux, University of Quebec at Hull, *Regulation*, Fall 2001)

The cost to society of smoking has been ridiculously exaggerated. Current excise taxes paid on cigarettes exceed the net medical expenses

caused by smoking. (Grossly inflated figures circulated by the Centers for Disease Control assume smokers would live forever and never need medical care if they didn't smoke!)

Since the average smoker lives a shorter life than the average non-smoker, smokers cost the rest of society less in nursing home and pension costs. According to Harvard professor Kip Viscusi, "On balance, smokers incur about 14 cents less per pack in costs paid by Massachusetts, while contributing an additional 51 cents per pack in excise taxes." In other words, taxpayers in Massachusetts (a typical state) benefit to the tune of 65 cents (14 cents plus 51 cents) for every pack of cigarettes smoked.

Unintended Consequences

13. Smoking bans move noisy and potentially dangerous crowds onto sidewalks.

Smokers go outside when bars and nightclubs disallow smoking inside, resulting in noise and activity that can annoy and even endanger neighborhood residents. Drinking and smoking on sidewalks is likely to be louder and more often lead to violence, crime, or injury-causing accidents than drinking and smoking inside a privately owned establishment because there is less supervision outside, greater ease of entry and exit, and immediate proximity to traffic.

14. Enforcement of a smoking ban would be expensive.

Chicago, with 645 murders in 2002, barely missed repeating its title as "murder capital of the U.S."

Diverting scarce law enforcement resources from fighting crime to writing tickets for smoking in one of the city's thousands of bars, restaurants, and nightclubs would be irresponsible and even deadly. Enforcement would be labor-intensive and necessarily arbitrary, providing many opportunities for corruption, favoritism, and harassment.

"I don't think we need to become the smoking police."

—Ald. Freddrenna Lyle
(Chicago 6th Ward)

Chapter 6

Please Don't Poop in My Salad

February 13, 2003

Anti-smoking advocates sure know how to hurl insults at those who defend smokers' rights. In response to an opinion piece of mine that ran recently in a daily newspaper, I received an email from "Harry" in Milwaukee saying if "Bast promises not to smoke within ten feet of me, I promise not to poop on his salad bowl while he's eating." Only he didn't say "poop."

Thanks, Harry. I hope the guys you have lunch with know about your curious habit.

Defending smokers isn't popular, but if you care about jobs, property rights, the rise of the Nanny State, and the use of junk science in public policy, you just can't look the other way when smoker abuse occurs.

On January 7, opponents of legislation to ban smoking in Chicago's restaurants and bars had a chance to testify at a hearing at City Hall. For the better part of a day, dozens of restaurateurs, bar owners and managers, waiters and waitresses, experts on ventilation, community leaders, and at least one public health expert testified that a ban is unwanted, unnecessary, would destroy jobs and hurt tourism, and would violate rights.

When it was over, Ald. Ed Smith, chairman of the Health Committee, told the *Chicago Tribune*, "there was nothing said in the hearing today that we had not heard all along. It's the same old soup just warmed over."

Ald. Smith apparently slept through some pretty compelling testimony. For example, a Gallup poll was cited showing 52 percent of the public believes restaurants should set aside space for smokers, versus 44 percent that support a ban. Support for a ban would have been even less if respondents were told restaurants already are required to make accommodations for non-smokers, or that bans on smoking could cause the loss of jobs or closure of small businesses.

Non-smokers who visit restaurants and bars are not complaining. The Public Health Department of the City of Chicago received just 16 complaints about cigarette smoke in restaurants and bars in all of 2001. If current accommodations are inadequate, why aren't non-smokers

complaining?

A smoking ban would have a severe negative effect on local businesses. Restaurant and bar owners testified that smokers spend more, on average, than non-smokers on alcohol, food, and tips. Consequently, a ban on smoking in restaurants and bars would reduce business and sales by 50 percent or more. Chicago-area restaurants, bars, and hotels employ more than 118,000 people (with wages of more than \$1.85 billion). A smoking ban would mean fewer jobs, less tourism, and the loss of millions of dollars in sales and property taxes.

Bar and restaurant owners stressed the fact that no one is forced to eat or work at establishments that allow smoking. Bars and restaurants are privately owned businesses that earn a profit by giving customers what they want. As demand grows for smoke-free entertainment, the owners of these establishments will deliver it; indeed, many already do. Since they own the property, their right to set the rules of conduct concerning guests should be respected.

Science writer Michael Fumento testified how the threat of secondhand smoke has been greatly exaggerated. Claims that secondhand smoke causes as many as 65,000 early deaths in the U.S. each year have been debunked as “junk science.” Studies by the Congressional Research Service, World Health Organization, and U.S. Department of Energy all failed to find secondhand smoke to be a significant health risk. In 1998, a U.S. District Court ruled against the Environmental Protection Agency’s attempt to classify secondhand smoke as a known human carcinogen.

Why, then, is Chicago’s City Council debating a ban on smoking in bars and restaurants when the public doesn’t want it, the public health benefits would be non-existent, and the costs in terms of jobs and our rights would be so heavy? Part of the answer lies in the corps of tax-financed professional anti-smoking activists. Lobbying for this legislation is how they earn a paycheck.

But I think there’s another reason. There are far more bars and restaurants in Chicago than there are cops to enforce a smoking ban. Deciding which establishments to ticket would provide many opportunities for corruption, favoritism, and harassment. I think Chicago’s crafty aldermen are looking for another way to shake down bar and restaurant owners, what we Chicagoans call “payola.”

With 645 murders in 2002, Chicago barely missed repeating its title as

PLEASE DON'T POOP IN MY SALAD

“murder capital of the U.S.” Diverting scarce law enforcement resources from fighting real crime to harassing smokers just so some alderman can line his pockets with bribes is disgusting, irresponsible, and could be downright deadly.

And that, Harry, is why I defend smokers’ rights.

Chapter 7

Liar, Liar, Pants on Fire!

July 2003

America seems to be experiencing a steep and disturbing decline in honesty. Consider, for example, three stories recently in the news: Jayson Blair, the University of Michigan diversity case, and the debate over smoking-related deaths.

Scandal at the *Times*

In May, the *New York Times* reported the resignation of Jayson Blair, a reporter caught lying about facts and sources, followed by the resignations of two senior editors who at first ignored and then tried to minimize the significance of his fraud. At least 36 of 73 articles written by Blair since October 2002 apparently contained faulty or false reporting.

The general public can be forgiven for not being shocked. An opinion survey conducted in 2002 found just 21 percent of us believe all or most of what we read in local newspapers, and 45 percent believe news stories are “often inaccurate.” The surprise, to the extent there was any, was that a prominent newspaper finally admitted what its readers knew all along.

This scandal didn’t occur at just any newspaper, but at the country’s self-described “newspaper of record.” The *Times*, though, has been a biased and unreliable source of news for many years. During the 1920s and 1930s, when Stalin was murdering millions of his own citizens, *Times* correspondent Walter Duranty won a Pulitzer Prize for reporting all was well in the socialist utopia.

Conservatives and libertarians could make a sport of counting instances of selective reporting, editorializing in news stories, and heavy-handed spin in every issue of the *Times*. They could, that is, if it weren’t so easy. The front page of the *Times*’ May 11 issue—the issue carrying an apology to readers for the Blair scandal—carried an editorial by David Rosenbaum opposing the Bush tax cuts and a story based on junk science titled “Neighbors of Vast Hog Farms Say Foul Air Endangers Their Health.”

In *Bias*, his book about liberal bias in the media, Bernard Goldberg

reports a study of *Times* coverage of homelessness which found the paper ran 50 stories on the subject in 1988, when George Bush was president, compared to only 10 stories in 1998, when Bill Clinton was president. The homeless problem was no less acute in 1998 than in 1988. The *Times* was simply less interested in using the issue as a club to beat a Democratic administration.

We can only hope the *Times*' recent travails will diminish the frequency with which its writing appears in other newspapers, or at least the influence of articles that appear under its byline.

Diversity Lies

The University of Michigan awards minority applicants 20 points (out of a maximum total score of 150 points) solely for being non-white. Opponents of such discrimination took the university to court, and the Supreme Court rejected the point system by a 6-3 vote on June 23.

This case belongs in a story about lying because in its defense, the University of Michigan cites a 1994 study it says proves its admissions practices have a positive effect on learning and student behavior. But when that study was initially released, its authors said it proved just the opposite. The study's original executive summary said racial preference programs stigmatized African-American students and caused increasing polarization on campus, and said diversity "quite simply ... does not, in itself, lead to a more informed, educated population."

Chetly Zarko, a freelance writer who acquired the original executive summary by filing Freedom of Information Act requests, described his pursuit of the truth in an op-ed in the *Wall Street Journal*. The university still refuses to make available to other researchers the raw data used to produce the report or to explain why the version of the study's executive summary now displayed on the university's Web site says the opposite of the original.

A national survey of 4,000 college students, faculty, and administrators conducted by Stanley Rothman, Seymour M. Lipset, and Neil Nevitte is probably a more reliable guide to the true effects of diversity. Rothman et al. found most respondents felt efforts to increase diversity had negative, not positive, effects on student achievement and race relations. In fact, increased diversity was associated with increased feelings among students that they had suffered discrimination on campus.

Tobacco Lies

Plenty of lies are told about the health effects of smoking, though it is even less politically correct to point them out than it is to question affirmative action programs.

Heavy smoking over the course of a lifetime increases the risk of lung cancer, heart disease, and other illnesses. No one doubts or denies that. However, the absolute risk to smokers and the risk to non-smokers from secondhand smoke have been exaggerated by public health nannies intent on making careers out of telling others how to live.

Public health officials long have claimed smoking is responsible for some 450,000 deaths a year in the U.S. However, starting two decades ago, scientists have discovered viruses play a bigger role in many types of cancer than previously thought. Did estimates of the number of deaths caused by smoking fall to reflect this new knowledge? No. Scientists have since discovered a quarter of all cancers may have genetic causes. Again the estimate of the number of smoking-related deaths remained unchanged.

In April 2003, experts reported obesity may cause 10 times as many cancer deaths each year as previously thought, accounting for some 14 percent of all cancer deaths in men and 20 percent of those in women. This finding should have caught the attention of anti-smoking activists because smoking and obesity are closely correlated; the number of deaths once attributed to smoking should be reduced by even more than the 14 to 20 percent estimates for the general population.

Have you read anywhere that health experts have reduced their estimates of the risk of smoking? Neither have I. Instead, they simply lie.

Secondhand Lies

Or they talk about secondhand smoke. Some anti-smoking activists claim it is “the third-leading cause of preventable death in the United States.” Another lie.

The latest scientific study on the health risks of secondhand smoke appeared in May in the prestigious *British Medical Journal*. The authors found no association between exposure to secondhand smoke and coronary heart disease and lung cancer. (Actually, the authors found risk factors of less than 1, meaning exposure could be beneficial to a person’s health.)

A news story in the May 16 edition of the *Wall Street Journal*, which often is as politically correct in its news reporting as the *New York Times*,

devoted just five sentences to summarizing (but never quoting) the study and 12 paragraphs to attacking one of the study's authors and quoting hyperventilating anti-smoking activists.

The story was so one-side it failed even to acknowledge the existence of coauthor Geoffrey Kabat, a respected epidemiologist at the State University of New York and member of the Environmental Protection Agency's Science Advisory Board on ETS (environmental tobacco smoke). Kabat was cited in the federal district court decision that threw out EPA's classification of secondhand smoke as a known carcinogen.

An excellent critique by Natalie Sirkin of the *Journal* story appeared in the June 7 "The Week That Was" column on the Science and Environmental Policy Project Web site (<http://www.sepp.org>). According to Sirkin, EPA's Science Advisory Board admitted "We presently know little about causes of lung cancer in persons who have never smoked." The relative risk factors found by EPA are, by a factor of 10, smaller than what professional epidemiologists believe necessary to constitute proof.

EPA's estimate of the relative risk of a non-smoking wife getting lung cancer from a smoker-husband, for example, is 1.19. Studies of exposure to electromagnetic fields estimate the risk to be nearly 10 times as great, yet EPA refused (rightly so) to classify EMF as a known carcinogen.

In a letter to the *Journal* published on June 4, Kabat wrote, "many of the criticisms cited are dealt with in detail in our article, which underwent a rigorous review by three prominent scientists." He says "vested interests in the American Cancer Society, to say nothing of the anti-smoking activists" reject the evidence "not because of its methods but because people are upset by our results."

In other words, they are lying.

Chapter 8

A Smoker's New Year's Pledge

February 1, 2003

This year on New Year's Day, I had to decide once again whether to stop smoking. Like millions of other smokers, I opted to continue to smoke but to "cut back" to a level that poses less threat to my health, wealth, and marriage.

This will not satisfy the nannies at the American Lung Association, Campaign for Tobacco-Free Kids, and other anti-smoking organizations. Their message is clear: "Quit or die!" They are prepared to use all the weapons of a police state—from punitive taxes to restrictions on free speech to outright bans on smoking in public places—to coerce me into quitting.

Are they right to do this to me? Am I so weak-willed and addled by nicotine addiction that I cannot be allowed to make this decision for myself?

It's difficult to exaggerate how politically incorrect it is today to defend smokers. Virtually all the country's elites—newspaper editors, elected and unelected government officials, celebrities, doctors, lawyers, and educators—have concluded smoking is bad for adults and worse for kids, and therefore we should all quit. If we don't voluntarily quit, conventional wisdom says we should be compelled to quit. The logic of this position, to its advocates, seems iron-clad.

But things look different from the other end of the cigarette, cigar, pipe, and pouch. Moderate use of tobacco products need not pose a significant health risk, any more than an occasional glass of wine, being slightly overweight, or riding a bicycle. Proper ventilation makes the over-hyped danger of secondhand smoke de minimus. So what gives you the right to tell me I can't occasionally smoke or chew?

Surveys show most smokers over-estimate the odds that they will die from a smoking-related illness, but choose to smoke anyway. This is, as Nobel Laureate economist Gary Becker has established, a rational choice no different from countless others we make every day. No activity is risk-free. Each of us weighs costs against benefits on scales that exist only

in our own minds.

By trying to get smokers to quit, the nannies have made the health risks of smoking worse. Regulators (and their allies, the trial lawyers) forbid tobacco companies from making comparative health claims about their products, or even calling on smokers to moderate their habits. How many lives would be saved if smokers knew the health trade-offs between smoking half-a-pack a day versus two packs? Or switching from cigarettes to a pipe?

We have a pretty good idea, in fact, about how many lives could be saved if people switched from cigarettes to chewing tobacco. Life-long smokers die, on average, six to seven years before non-smokers, while smokeless tobacco users lose just 15 days, or 0.04 years of life expectancy. If only 10 percent of the 45 million smokers in the U.S. today switched to smokeless tobacco, the result would be an almost incredible 26.8 million life-years saved.

In the name of “protecting” smokers, anti-smoking nannies oppose allowing the makers of chewing tobacco to tell their customers and potential customers that switching could save their lives. It’s an incredible blind spot that delegitimizes the entire anti-smoking camp.

At the end of the day, the debate over smoking is less about statistics and health and more about leaving people alone to govern themselves. John Stuart Mill, in a slender book published in 1859 titled *On Liberty*, wrote: “The only purpose for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.”

Mill’s statement is directly applicable to the controversy over smoking. Smokers have come under tremendous and unfair attacks in recent years, most often in the name of preventing an injury they cause only to themselves. Quite simply, a just government does not have the authority to ban smoking on private property, or to tell smokers to quit or punish them if they do not.

So this year, I will pledge to reduce, but not quit, smoking. If you are an anti-smoker, I ask you to consider making a New Year’s pledge too. Admit you may be over-estimating the health effects of smoking in moderation and underestimating the pleasure tobacco brings to the smoker’s life. Pledge to be more tolerant of the smokers in your midst. We, in turn, will do our best not to let our habit annoy you.

Chapter 9

Why Do Public Health Advocates Lie?

August 30, 2002

At the Northwestern train station in downtown Chicago, commuters are met with a billboard that reads: “Odds of dying in a car crash: 6,200 - 1; dying from smoking: 3 - 1.”

The ad, paid for by the Illinois and Chicago departments of public health, is obviously meant to encourage smokers to quit. But is it accurate?

Apples and Oranges

The billboard’s message is fraudulent two ways. First, it compares the risk of driving a car for one year with the risk of smoking for a lifetime, an apples and oranges comparison. The “odds of dying in a car crash” were apparently derived by dividing the total population of the U.S. by the annual number of vehicular deaths in the U.S.: about 280 million divided by 45,000. Given a life span of 75 years, the lifetime odds of dying from a car accident are really about 90 to 1, not 6,200 to 1.

Second, the billboard exaggerates the odds of dying from smoking. The actual odds a smoker faces of dying from smoking before the age of 75 are about 12 to 1. Describing how this estimate is derived simultaneously rebuts much higher estimates popular in the public health community.

The Surgeon General, using statistical models, estimates a total mortality risk from smoking between .18 and .36. The billboard’s claim of “3 - 1,” or .33, is at the high end of this range.

But the basis for these numbers has come under heavy fire from experts, such as Robert Levy, an adjunct law professor at Georgetown University, and Rosalind Marimont, a mathematician and scientist who worked for the National Institutes of Health for 16 years before retiring.

Lies and Statistics

In a 1998 article titled “Lies, Damned Lies, and 400,000 Smoking-Related Deaths,” Levy and Marimont show how removing diseases for which a link

PLEASE DON'T POOP IN MY SALAD

between smoking and mortality has been alleged but not proven cuts the hypothetical number of smoking-related fatalities in half.

Replacing an unrealistically low death rate for never-smokers with the real fatality rate cuts the number by another third.

Controlling for “confounding factors” —such as the fact that smokers tend to exercise less, drink more, and accept high-risk jobs—reduces it by about half again. Instead of 400,000 smoking-related deaths a year, Levy and Marimont estimate the number to be around 100,000.

This would place the lifetime odds of dying from smoking at 6 to 1 (45 million smokers divided by 100,000 deaths per year x 75 years), rather than 3 to 1. However, about half (45 percent) of all smoking-related deaths occur at age 75 or higher. These can be called “premature” only by stretching common usage of the word. The odds of a life-long smoker dying prematurely of a smoking-related disease, then, are about 12 to 1.

A billboard that reads “Odds of dying in a car crash: 90 - 1; dying from smoking, 12 - 1,” would more accurately convey the truth than the current model, but might be less likely to capture our attention. Is it okay for health officials to lie to get our attention?

Chapter 10

Joe Camel Is Innocent!

August 21, 1996

Somebody seems to have declared open season on cigarette smokers and their suppliers. On behalf of the 25 percent of the adult population that smokes, may I offer a few words in defense of smoking?

Cartoons Aren't Only for Kids

Earlier this summer, ABC's Peter Jennings hosted an hour-long "news special" titled "Never Say Die: Why the Tobacco Industry Keeps Winning." A Garry Wills column, titled "Lies Tobacco Companies Tell Us," has appeared in newspapers across the country. And Republican presidential nominee Bob Dole has been widely denounced for saying a few words that were vaguely supportive of smokers' rights.

According to both Wills and Jennings, the fact that "Joe Camel" is a cartoon somehow proves that Camels' manufacturer, R.J. Reynolds, is targeting kids. But cartoons are used to pitch scores of products that could only be of use to adults. Last time I checked, people under the age of 18 weren't major buyers of life insurance, household cleaners, automobile rustproofing, or tires—yet Snoopy, Mr. Clean, Rusty Jones, and the Michelin Man are used to promote those products. Joe Camel is innocent!

Those Evil Tobacco Companies

Wills and Jennings also claim that FDA regulation of cigarettes is opposed by Republicans because they receive campaign contributions from the tobacco industry. But it is more likely that the campaign contributions go to Republicans because they have been leading the fight against the use of "junk science" by the FDA and its evil twin, the Environmental Protection Agency (EPA). With respect to smoking, there's plenty of evidence—including a recent study by the Congressional Research Service—that sound science concerning the health effects of "secondhand smoke" doesn't support the claims being made by EPA and FDA.

With or without the inducement of campaign contributions, more

Republicans than Democrats would support smokers' rights. Asking the government to play "nanny" over adult citizens is a Democrat thing to do. Limiting the authority of government and leaving people "free to choose" are traditionally Republican positions.

Despite all this, Wills and Jennings apparently believe tobacco companies ought to fund Democrats at the same level as they fund Republicans. But since the former have declared war on the tobacco industry, it seems to me that would be a pretty stupid thing for tobacco executives to do.

Most of all, I'm curious about the timing of all this. Where were Wills and Jennings during all those years when Democrats won most of the elections in southern tobacco-growing states, and consequently received most of the tobacco money? Why does the claim that this money buys too much influence emerge only now, when Republicans occupy those seats?

Partisan Bias

And speaking of partisan bias, Jennings' choice of "experts" for the program included Illinois Congressman Dick Durbin (D) and California State Representative Tom Hayden (D), two left-wing extremists who can be counted on to attack any industry, any time. The extremism of Hayden—a one-time student protester and avowed socialist—was once well-known, but the events of the 1960s now predate the memories of even most thirty-somethings. How many viewers remembered? And how many viewers knew that Durbin is as far to the left as his radical colleague, receiving the worst rating possible from Citizens Against Government Waste, an "F" from National Taxpayers Union, and a "zero" from Americans for Tax Reform?

I, for one, didn't believe a word Durbin and Hayden had to say about the tobacco industry.

Wills and Jennings would have done better to direct their skepticism at such leading advocates of censorship as Durbin, Hayden, and President Clinton. After all, what is more believable: That these pols are born-again neo-Puritans, or that they are cynically using a public health controversy to score political points?

Waiting for an Apology

Unfortunately, Wills and Jennings are unlikely to set the record straight by

JOE CAMEL IS INNOCENT!

retracting their claims. And, of course, many fewer people will read this rebuttal than saw the Peter Jennings special or read Garry Wills' column. Tobacco will continue to be a useful tool for politicians afraid or unable to address the real issues.

The reader may recall that Peter Jennings' station, ABC, was forced in 1994 to apologize to tobacco companies for falsely accusing them of "spiking" cigarettes with nicotine. Smokers shouldn't hold their breath waiting for Apology II.

Chapter 11

Stop Messing with My Favorite Things!

June 1999

I'm a man of simple tastes and modest means. I don't collect guns, don't use illegal drugs, and can't afford a decent stereo system to play music loud. I prefer country music to classical, beer to mixed drinks, and minivans to luxury cars. On those rare occasions when I do drink too much, I get quiet, not loud.

For reasons I can't for the life of me figure out, a growing number of people don't like the things I like. Worse than that, they won't tolerate me going about my simple and modest business in my simple and modest way. They just won't stand for it. And to make their point, they've started messing with some of my favorite things.

I Like Beer

My beer, for starters. Diane and I usually have a can of Miller Genuine Draft every evening after work. On weekends, Diane's mom comes over and we have more than one but not often more than three. Why beer? It's like the old Tom T. Hall song says:

Whisky's too rough. Champagne costs too much. Vodka puts my mouth in gear. This little refrain should help to explain why as a matter of fact I like beer.

But politicians don't like beer. The taxes on an average can of beer come to \$0.33, nearly half of its selling price. A staggering \$21 billion of what consumers thought they were spending on malt and hops in 1993 actually went to the government as taxes. You might as well call the man behind the counter a tax collector rather than a bartender!

A Little Tobacco

I smoke one cigar every evening, sitting out on the patio with Diane (and our cans of MGD). I used to smoke a pipe (too messy) and, before that, cigarettes (too expensive). My cheap Swisher Sweets cost only \$0.30 each and last about 20 minutes. That's just enough time to relax and unwind after a busy day at the office.

Government really likes to mess with tobacco. Back in 1993, direct taxes on a pack of smokes amounted to \$0.53, about one-third of the retail price. They are higher now. Several good studies say smokers pay more in taxes than what they cost society in terms of higher medical expenses. Why aren't cigarette taxes earmarked for smoker's medical needs?

The deal between the tobacco industry and state governments struck last November will boost cigarette prices by another \$0.35 a pack. Lawyers will pocket \$8 billion (yeah, billion) in fees for their "work" on the case. The Clinton administration wants to give the Justice Department \$20 million more just to sue the tobacco industry for even more money. Somehow, all this is supposed to help the "victims" of tobacco.

My Little Peacekeeper

Another one of my favorite things is handguns. I own just one, but it gives me substantial peace of mind at night knowing I could, if necessary, repel an intruder. Diane is better with the gun than I am, so when I'm on the road I sleep well knowing Smith & Wesson is standing guard back at home.

Gun control advocates are trying to ban private possession of handguns. Actually, that's not correct. They're trying to ban possession of handguns by law-abiding citizens, like me—not the criminals who will get them regardless of what the laws say. In international relations, this is called unilateral disarmament. And it doesn't work.

I'm sympathetic to what the do-gooders say they are trying to achieve. Not everyone will use a gun responsibly. Accidents and tragedies will happen. I just think the gun laws being proposed would disarm the wrong people and make all of us less safe. I think the Constitution protects our right to bear arms for some very good reasons. And I don't want the government snooping around my home looking for an unregistered or unlocked handgun.

My Favorite Software

Like millions of other people, I spend the better part of my day in front of a personal computer that uses Microsoft's "Windows" software. All the computers in the office are connected with Windows NT, a network we've found easy to navigate and very stable.

Like all my other favorite things, the government is now messing with Windows. Microsoft is being sued for violating anti-trust laws, and it could be broken up or forced to surrender to competitors the "source code" of its operating system.

The Department of Justice plans to boost its anti-trust spending from \$98 million this year to \$114 million in 2000, a 16 percent increase. Since 1994, DOJ spending on its anti-trust division has grown over 58 percent, compared to 49 percent for criminal matters and 36 percent for civil rights matters. What's wrong with this picture?

Anti-trust doctrine was bogus when it first became federal law in 1890, and it is totally ridiculous in the 1990s. Anti-trust laws were written to protect politically influential companies from competition, not the other way around. The application of those laws has always been intensely political, and its results have always been anti-consumer. To see this hidebound and disreputable doctrine dusted off and used against the greatest business success story of the century is downright disheartening.

Me and My Minivan

My favorite bumper sticker reads: "If you don't like the way I drive, get off the sidewalk." Maybe because I'm short, I like riding high in a minivan. Someday, when there is no more drywall, two-by-fours, shrubs, nephews, and landscaping pavers to haul around, I may trade in my minivan for a sedan. But not before then.

My minivan, though, is on the list of politically incorrect vehicles. I don't get very good gas mileage, my exhaust contains more air pollutants than does the exhaust of most sedans, and it seems when a minivan (or other sport utility vehicle) collides with a sedan, the former gets the better of the deal.

To those who raise these concerns, I politely ask, "So what?"

Gas is as cheap as it has been at any time in nearly three decades (adjusted for inflation), and I pay for it, so butt out. My late-model minivan has far lower emissions than did the average sedan of 20 years ago, and it

emits less on a trip from Chicago to Milwaukee than does your gas-powered lawnmower in just one hour. Air quality in Chicago and virtually every other city in the country is rapidly improving.

And if you don't want to risk having an accident with me, well ... stay off the sidewalk.

What We Have Lost

Beer, tobacco, guns, Windows, and minivans have more in common than just being my favorite things. The first three are products with very long histories (archeologists have found pipes with charred tobacco-like remains in them that are hundreds of thousands of years old) that are risky if misused. We used to tolerate that risk in exchange for the benefits derived from their proper use. To encourage proper use, we held individuals responsible for their actions.

As a society, we now seem to take those benefits for granted, and we run to government for help when the benefits no longer rise to meet our needs. We have lost the will to hold people accountable for their mistakes. It's always "society's fault" or, even less plausibly, we blame the inanimate objects instead of their users.

Windows software and minivans epitomize American capitalism at its best: rapid product innovation to meet consumer demand, efficient production, safety and reliability, and skillful marketing. Their success in the marketplace, though, has prompted competitors and critics to turn to government for help: software rivals prompted the anti-trust lawsuit against Microsoft, and environmentalists lead the campaign for anti-minivan and anti-SUV regulations.

We seem to have lost the ability to allow anyone to lose in a fair competition, and yet we expect to reap the benefits of competition. Rather than viewing government as a last resort for solving problems, it is now the first lever reached for by special interest groups who don't like a particular new trend or product.

I may be at risk of losing some of my favorite things. But that inconvenience pales into insignificance compared to what we, as a society, are losing in the process.

Chapter 12

Dear Melissa: A Perspective on the War Against Smoking

January 1, 1999

A few days ago I received an e-mail message from a student named Melissa. It read:

hey what's up. my name is melissa. i am doing an oral presentation on the way perspectives effect the way people interact and the things that make up a person's perspective or point of view such as surroundings, background etc . . . upon doing my research i came across your blurb on joe camel / smokers point of view. it was very interesting and i was wondering if you could offer up any more info that could make for an interesting talk??? thanks and farewell.

Well, Melissa, I'm glad you found my essay and thought to follow up with your letter. Have they stopped teaching kids at your school how to use capital letters?

My essay on Joe Camel (titled "Joe Camel is Innocent!") and the more recent essays on tobacco you may have seen at The Heartland Institute's Web site don't reflect the smoker's point of view so much as they do the civil libertarian's point of view. (A civil libertarian is someone who defends the liberties enshrined in the Constitution's Bill of Rights.)

I'm an infrequent smoker and generally smoke only cheap cigars (one a day, after work, with a can of beer). I would never argue that smoking isn't bad for you: It is. Kids, especially, shouldn't smoke. But for adults, smoking in moderation can be enjoyable and poses very little health risk.

Your question about how "surroundings, background etc." helped to shape my perspective on smoking set me thinking. I grew up in a small town where people were pretty much responsible for making their own choices, and they were held accountable for the results. There wasn't a law

PLEASE DON'T POOP IN MY SALAD

against everything bad, or a law requiring us to do everything good. People avoided doing bad things, and generally did good things, most of the time, without the government or the police getting involved and without people suing one another.

The “war against smoking,” it seems to me, is mostly about denying people the right to choose that I remember having when I grew up.

I write about the war on smoking because it is part of a bigger trend toward relying more and more on government to tell us what we can and can't do. The effect of these new rules and laws is to turn citizens into children and government into a big nanny.

That certainly isn't how the founding fathers planned it. They wanted to limit government to a few specific tasks in order to protect and expand the range of individual freedom. They had seen the abuse of unlimited government power in Europe and throughout history, and they deliberately planned a different kind of system for the United States. Assuming that they haven't also stopped teaching civics at your school, most of this should sound familiar to you.

Lawyers and their allies in so-called “consumer groups” are out to ban, or at least bankrupt the producers of, many products that we used to be free to choose to own or consume. Today it's tobacco, tomorrow it will be guns, and the next day alcohol. Then what? Fast food, prescription drugs, autos, pesticides . . . the list of “inherently dangerous products” that these folks say government should protect us from is endless. Each time one of these products is banned or regulated, or its producer bankrupted, our civil liberties retreat another step.

That can't be right, and it can't work in the long run.

Someone once said that the truth is the first fatality of a war. That certainly has been true of the “war” against smoking. For example, I don't think it is particularly difficult to quit smoking (more than 25 million people have) or at least to cut back to safer levels. But if you say that in a public forum, people will act as if you broke the law or something. Maybe, in the near future, saying that will be against the law.

How can we discover the truth if we aren't allowed to say or read certain facts and opinions? What happens to our First Amendment right to free speech if newspapers and television programs refuse to present both sides of the story?

There is an alternative to treating adults like kids and kids like fools. It

DEAR MELISSA

is for each of us to obey the Golden Rule—treat others as you would want to be treated—and what I call the Silver Rule—mind your own business. Many of the world’s problems would be solved if more people just followed those two simple rules.

Chapter 13

Smoking Under Siege: Why It Matters to You

June 1, 1997

If you don't smoke, you may think the commotion over tobacco in recent months doesn't matter to you. You would be wrong.

Whether or not you smoke, the outcome of the war on tobacco will affect your civil and economic liberties in major ways. If tobacco companies are compelled to pay individual smokers or their families for the consequences of a voluntary and informed decision to smoke, the legal and moral tradition of self-responsibility will suffer a major setback. And if government can cash in on what ought to be a legal matter between an industry and its customers, the doors will open to government-led shakedowns of industries that produce a wide variety of products and services, including many that you use.

Before I go any further, let me disclose two facts. First, I am an on-again, off-again (but mostly on-again) smoker, having moved through cigarettes to a pipe and now cigars. I love 'em all. Second, Philip Morris, the nation's largest cigarette maker, contributes modestly to The Heartland Institute. This article will come as a surprise to the folks at Philip Morris, however, since they have never asked us to write on this subject and have made it clear that they fund us for reasons other than my opinions on tobacco.

Why Now? And Why Cigarettes?

There have always been critics of cigarettes, but the anti-smoking campaign appears to be reaching critical mass today. One reason was the settlement of a class action lawsuit against the manufacturers of silicone breast implants. Trial lawyers discovered that by forcing a major industry to settle out of court rather than contest thousands of lawsuits, they could win hundreds of millions of dollars in fees ... even when the balance of scientific evidence did not support their courtroom claims.

A group of multi-millionaire trial lawyers has pooled its resources to hound tobacco companies in court, knowing it stands to win billions of dollars in contingency fees if it starts winning or can intimidate tobacco companies into a multi-billion-dollar settlement. Most of the 32 states that are also suing tobacco companies have brought in lawyers from the private sector on a contingency fee basis to argue their Medicaid cases. These lawyers are funding liberal advocacy groups, such as Public Citizen, to put a “public interest” face on what they really want.

The number of smokers relative to the rest of the population has fallen to the point where politicians can now satisfy majority opinions and biases by attacking smokers. The state attorneys general who have filed suit against the tobacco companies are elected officials who know that filing billion-dollar lawsuits against an unpopular industry heightens their name recognition and might advance their careers. And President Clinton, a leading spokesperson against smoking, is an expert at championing causes that are popular but unrelated to the job of being president.

Another engine driving the anti-smoking campaign is the federal government bureaucracy. David Kessler, former commissioner of the FDA, used the agency to launch a fierce anti-smoking campaign. Kessler's campaign conveniently meshed with his anti-corporate ideology, desire to increase the power and budget of his government agency, and need to divert attention from the carnage caused by the FDA's failure to give speedy approval to life-saving drugs. Kessler is no longer at the FDA, but the agency's campaign continues. Along with money from trial lawyers, grants from the FDA and other government agencies are financing a large part of the so-called “independent sector” of the anti-smoking movement.

Gutting Personal Responsibility

Tobacco companies have been amazingly effective at winning court cases brought against them by smokers and their allies. The reasons are that any specific case of lung cancer may or may not have been caused by the victim's smoking, and smokers are well aware of the health risks of smoking but choose to continue smoking anyway. Juries conclude, correctly, that decades of warnings printed on cigarette packages, public service notices, and warnings from doctors make smokers themselves responsible for their actions.

The campaign against cigarette manufacturers seeks to overturn the

presumption of self-responsibility. What makes the case remarkable is that it potentially involves over a quarter of the total population of the U.S. and a product that has been legally sold for more than 100 years. It would gut personal responsibility despite overwhelming evidence that smokers understand (and even over-estimate, according to most research on the subject) the health risks that come with their habits; despite the fact that the general public believes (according to a March 1997 Gallup poll) by a 66 percent to 28 percent margin that smokers, not tobacco companies, should be held legally responsible for the consequences of smoking.

If the presumption of self-responsibility is overturned in the case of tobacco, how long before it is overturned in the case of beer and alcohol? How long before everything from diseased livers to broken marriages and car accidents become the fault of Big Brewers instead of individual drinkers?

Beyond Alcohol and Tobacco

Beyond cigarettes, beer, and alcohol lies a lawyer's dream of opportunities for litigation ... and a consumer's nightmare. Most foods contain small traces of naturally occurring carcinogens that may contribute to the number of cancer cases occurring in the U.S. Why not file a class action lawsuit against farmers? While we're at it, let's file a second suit against those who produce foods that are high in fat and cholesterol. Automobiles could be made safer than they are (at the expense of gas mileage, speed, affordability, and other values); why not sue Chrysler, Ford, and General Motors every time a car accident occurs?

Success of the campaign against tobacco would mean open season on the manufacturers of everything from bicycles and swimming pools to paint and pesticides. All of these things pose small risks to users who are not careful, in return for large social benefits. Each is more or less legally protected now thanks to the presumption of self-responsibility. That presumption comes to an end if the anti-smoking forces win the tobacco wars.

But it is worse than that. The tobacco suits filed by the state attorneys general call for retroactive liability—liability *after the fact* for doing something that was at the time held to produce no liability. Such a novel legal theory would profoundly shake public confidence in the law as it is now written and interpreted. Business could see huge changes to their

bottom lines overnight as liabilities (or potential liabilities) are suddenly discovered, too late to change conduct to avoid committing the tort. The rewards to lawyers for successful litigation or settlements would be multiplied enormously, further fueling a litigation explosion.

But it is even worse than that. A precedent would be set that an industry must pay *government*, not its victims, for committing a “retroactive tort.” This raises all sorts of questions, including the motivation and knowledge problems facing government agencies, whether the burden of proof should be the same in each case (and if it is not, why not), what limits would be placed on the right of individuals to also file suit, and what limits (if any) would apply to the government’s ability to file suits on behalf of individuals.

Don’t Stand By and Do Nothing

Much more about this subject has been written. The interested reader will want to get a copy of Heartland’s most recent *Policy Study*, titled “The States vs. the Tobacco Industry: Smoke and Assorted Mirrors,” by Michael E. DeBow (<http://www.heartland.org/article.cfm?artId=19142>). Mr. DeBow demolishes the legal and economic case being put forward by the state attorneys general, and points out that smokers already pay, through taxes and lost entitlement payments, more than they cost the rest of society in medical bills.

So whether or not you smoke, you have good reasons to oppose the lawsuits against tobacco companies as well as any proposed settlement. Please don’t stand quietly by while any industry is taken down by a gang of self-serving lawyers, bureaucrats, and politicians. The next industry to be targeted might be the one whose products *you* especially enjoy.

Chapter 14

Five Lies About Tobacco

July 1, 1998

On June 17, 43 Republicans and 3 Democrats in the U.S. Senate voted to kill a bill that would have raised taxes on cigarettes by \$1.10 per pack and restricted cigarette advertising. That this was a major victory for the tobacco industry has been widely reported. Less widely noted, however, is the victory for truth and freedom against the corrupt tactic of the Big Lie.

Smokers Pay Their Way

The first lie of the anti-tobacco campaign is that smokers impose a burden on the rest of society by not paying the full cost of their medical care and social insurance benefits. The image often evoked is of an indigent retiree suffering from lung cancer relying on Medicaid to pay for surgery or chemotherapy. But that image is incomplete.

To determine whether smoking increases or decreases a person's burden on society, we need to subtract from a smoker's lifetime costs to society the amount that would have been spent if he or she had never smoked. Such a calculation reveals that smokers, by dying younger than non-smokers, actually save society billions of dollars in nursing home, Medicaid, Social Security, and private pension payments. Harvard law and economics professor Kip Viscusi estimates that smokers actually save society about \$0.32 per pack of cigarettes smoked.

Smokers also pay billions of dollars each year in taxes, a forced "contribution" that the politicians curiously fail to mention when blasting smokers. Federal, state, and local cigarette taxes amounted to \$15 billion in 1994, about \$0.58 per pack. When added to the lower spending on medical care and social insurance, the total net savings to society is \$0.90 per pack.

Secondhand Junk Science

The second lie is that more regulation and higher taxes are justified because secondhand smoke hurts non-smokers. The Environmental Protection Agency's (EPA) claim that secondhand smoke causes 3,000 cancer deaths

a year in the U.S. is often cited. Less often mentioned, however, is the World Health Organization's finding that the risk is "either non-existent or too small to be measured at any meaningful level." Can we trust EPA's "science"?

EPA had to twist and torture its data to find a public health risk from secondhand smoke. Its analysis pools the results of 11 different studies, 10 of which showed no statistically significant effect of secondhand smoke. EPA excluded altogether a major recent study that found no effect. Even the pooled results were not significant at EPA's usually required 95 percent confidence interval, so the agency arbitrarily dropped its requirement to 90 percent.

EPA's leadership is currently under fire by its own scientists for suppressing research that does not support a political agenda calling for more regulation and more spending on public health programs. Critiques of EPA calculations of the costs and benefits of the Great Lakes Initiative and new air quality standards, and the health effects of radon and dioxin, have exposed a cavalier disregard for sound science, independent peer review, and accurate reporting of research results.

Smokers Know the Risk

The anti-smoking lobby alleges that millions of us have been fooled into overlooking or minimizing the health hazards of smoking. Surveys show, however, that most smokers actually overestimate the risk to their health posed by smoking. The reason tobacco companies so rarely lose in court is because they can easily show the plaintiffs were aware of the health risks associated with smoking but chose to continue smoking anyway.

If cigarette executives in fact crossed the line between legitimate product promotion and fraud, they can and should be punished under existing laws. New legislation isn't required. Either way, the evidence suggests the public wasn't fooled.

Do smokers keep smoking because they are hopelessly addicted to nicotine? Hardly. Twenty-five million people in the U.S. have quit smoking, and devices to help smokers stop—filters, gum, pills, patches, and even a nicotine-laced soft drink—crowd the market. Economists Gary Becker and Michael Grossman estimate that for every 10 percent increase in cigarette taxes, cigarette consumption eventually falls by 8 percent. Such a relationship would not exist if smokers were "hooked for life."

Smoking in Moderation

A fourth lie is that even moderate smoking is deadly. Several experts (including two who are very anti-smoking) have told me that smoking fewer than seven cigarettes a day does not raise a smoker's risk of lung cancer. When have you ever seen that fact reported in a newspaper or admitted by a public health official?

Exposure to small amounts of a toxic substance is often benign because the human body has a natural ability to repair itself. Our bodies shed and create anew millions of cells every day, in the process repairing much of the damage done by exposure to toxins and other kinds of wear and tear. The result is thresholds of exposure to potentially harmful substances below which there is no irreversible damage. The fact that smoking in moderation has few, if any, adverse health effects has astounding importance in the tobacco debate. Virtually any product (water, salt, and vitamins come to mind), if used in excess, is a health hazard. The rule applied to virtually all consumer products, except tobacco, is that the consumer assumes the duty to use a product responsibly. Applying the rule to smoking would seem to bring a quick end to most lawsuits against tobacco companies.

It Isn't about Kids

Finally, the biggest lie of all is that the tobacco bill was about saving our children from the health risks of tobacco. If that was really its purpose, the bill would have concentrated on enforcing current laws against juvenile smoking. As Patrick Buchanan correctly asks, "How does robbing a working-class couple of \$1,200 a year keep teenagers from smoking?" Where is the logic in increasing taxes on all buyers of a legal product in order to discourage purchases by a tiny minority?

The evidence that tobacco companies target teenagers is hardly convincing. Internal memos and letters disclosed during litigation show that marketing to kids was discussed, but not that the tactic was adopted as corporate policy. The tobacco industry directly employs some 400,000 people: How many of the millions of internal memos they produce each year reflect or influence official company policies?

For the lawyers who filed lawsuits against tobacco companies, the real motivation was not children's health, but \$50 billion or more in contingency fees. This windfall is so huge it constitutes evidence of corruption or gross incompetence by the (largely Democratic) state attorneys general who

struck those deals.

For President Clinton, the tobacco bill offered \$65 billion a year for new social programs and a way to tar Republicans with the bogus “anti-kids” label. For Sen. John McCain and other liberal Republicans, the bill eventually became a way to end the marriage penalty in the income tax code and extend a tax deduction to the self-employed.

Those who opposed the tobacco bill were also unconcerned about its effects on kids. Republicans, after nearly two years of joining in the tobacco-bashing festivities, reversed course to pacify their party’s conservative wing and to distinguish themselves from tax-and-spend Democrats. Conservative pundits opposed the bill because they feared it would lead to persecution of consumers of alcohol, caffeine, and fast foods, and users of guns, automobiles, and fill-in-the-blank. The tobacco industry fought the bill simply to avoid extinction.

It’s about Freedom

My view of the attack on the tobacco industry is unchanged from a year ago, when I last wrote about this issue in *The Heartlander*. The campaign against tobacco is less about public health than it is about lawyers failing to act as true officers of the courts; politicians and bureaucrats seeking power and prestige at the expense of civil and economic liberties; and the steady deterioration of personal responsibility as a standard of law and private morality. At its root, it is all about freedom.

We will soon have a good test of whether the war on tobacco really is about kids. House Republicans are drafting a no-new-taxes tobacco bill that focuses on reducing youth smoking, not raising money for unrelated causes or pushing the tobacco industry into bankruptcy. Tobacco’s critics are voicing their opposition even before the bill has been submitted, and President Clinton has signaled he will probably veto it if it reaches his desk.

So much for the kids.

Chapter 15

Letter to the FTC

May 29, 2002

The Honorable Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Secretary Clark:

I am writing to voice my support for the request, submitted by U.S. Smokeless Tobacco Company on February 5, for an advisory opinion on whether smokeless tobacco producers may communicate through advertising that smokeless tobacco products are considered to be a reduced risk alternative to cigarette smoking. Please submit my comments to the public record.

I am the president of The Heartland Institute, an independent non-profit research organization based in Chicago, Illinois. For the past 18 years, I have been conducting my own research and writing, and editing and publishing the work of nearly 100 others, on a wide range of public policy issues, including tobacco litigation, regulation, and taxation. Heartland's work is supported by some 1,300 individuals, foundations, and corporations. Philip Morris is a modest supporter of The Heartland Institute; it was not consulted during the writing of this letter and probably would disagree with parts of it.

I am also one of the approximately 45 million smokers in the U.S. who will be directly affected by the Federal Trade Commission's decision in this case. Yesterday I attended a debate on this very subject, sponsored by Northwestern University's Law School and featuring, among others, Matthew Meyers of the Campaign for Tobacco-Free Kids. I came to the debate eager to hear both sides, but came away offended and sometimes

confused by Mr. Meyers' statements. This letter will refer several times to Mr. Meyers' comments made at that debate. They are similar to positions taken in his letter to you dated February 25, in which he urged the FTC to reject UST's request.

Customers have a right to know the choices they face

During the past 23 years I have smoked cigarettes, pipes, and (currently) cigars. I have never been informed of the comparative risk between these three choices or the likely health consequences of switching to smokeless tobacco. I do not know if low-tar cigarettes are "safer" than regular or unfiltered cigarettes. I don't know how much risk I am facing by smoking one cigar every evening rather than switching to chewing tobacco, or perhaps smoking two filtered cigarettes.

How are smokers, the people with the most at stake in the decisions to use tobacco products and the frequency of such use, to make informed choices? None of the ads for the above-mentioned products make comparative health claims, nor does such information appear on their packaging. A search for "chewing tobacco" on the Web site of the Centers for Disease Control links to a feature¹ that asks, "Is smokeless tobacco safer than smoking?" In large letters it answers: "No Way!" Yet there is virtual consensus in the medical community that smokeless tobacco is less threatening to health than smoking (a point addressed below).

An hour on the CDC Web site reveals no information about the health benefits, if any, of switching to low-tar cigarettes. Tobacco companies (are required to) report the level of tar in their cigarettes, but smokers have no idea if low-tar cigarettes are actually safer than high-tar brands, or for that matter, a pipe or cigars. According to at least one expert, after adjusting for changes in smoker habits, low-tar cigarettes "are about 20 percent safer in terms of the lung cancer risks, but there is no comparable evidence indicating an effect for heart disease."²

I do not know a single fellow smoker who, if asked, could tell me that smoking light cigarettes reduces his chance of lung cancer by about 20

¹<http://www.cdc.gov/tobacco/sgr/sgr4kids/smokless.htm>

² W. Kip Viscusi, *Smoke Filled Rooms: A Postmortem on the Tobacco Deal* (Chicago, IL: University of Chicago Press, 2002), p. 67.

percent. Similarly, in my 23 years of smoking, I have been told just once that smoking *less* has genuine health benefits.³ Why isn't that part of the public health message on smoking?

As a smoker, I want to know about the risks of the products I may wish to buy. I am not too stupid to understand comparative health claims, and the spread of light cigarettes demonstrates that my fellow smokers are not too apathetic to change their conduct in response to information. Research by Nobel Laureate economist Gary Becker and others⁴ demonstrates that people with strong habits and addictions tend to react rationally to information and incentives. Yet, the assumption underlying efforts to prohibit comparative-risk advertising is that we smokers are too stupid, apathetic, or addicted to use information that potentially could prolong our lives and spare our loved ones from emotional suffering and financial hardship.

Mr. Meyers suggests that adult smokers must be denied access to this information in order to avoid attracting children to tobacco products. The logic used by anti-tobacco activists in the debate over whether tobacco companies direct their advertising to children is dubious.⁵ But more to the point, Mr. Meyers has no right to deprive smokers of information about the choices they are making. In his personal reflections on morality and justice

³ That one person was a cardiologist in Rockford, Illinois, who said smoking fewer than seven cigarettes a day was probably harmless ... an observation so astounding to me that I have repeated it to many fellow smokers over the years, prompting more than a few to attempt to reduce (but not quit entirely) their smoking.

⁴ Gary S. Becker's "theory of rational addiction" was originally set forth in three working papers by the Center for the Study of the Economy and the State at the University of Chicago: "A Theory of Rational Addiction" (with Kevin M. Murphy, Working Paper #41, 1986); "Rational Addiction and the Effect of Price on Consumption" (with Michael Grossman and Kevin M. Murphy, Working Paper #68, 1991), and "Habits, Addictions, and Traditions" (Working Paper #71, 1991).

⁵ Anti-smoking activists often argue that since Joe Camel was a cartoon, R.J. Reynolds was targeting kids. But as I pointed out in an essay that first appeared in 1996, cartoons are used by the producers of many consumer products that can only be purchased and used by adults, including life insurance, household cleaners, automobile rustproofing, and tires. The argument is a non sequitur. See Joseph Bast, "Joe Camel Is Innocent!" *The Heartlander*, August 1996, pp. 1, 3. Available at <http://www.heartland.org/perspectives/tobacco.htm>.

he is free to put the interests of children ahead of adult smokers if he likes; he has no right to use the power of the state to impose that choice on others.

Prohibiting comparative health claims from appearing in tobacco advertising deprives 25 percent of the adult population of information they genuinely want and would put to good use. This is an injustice at least, and probably an act of aggression done under the cloak of “public interest advocacy.” Either way, it is a violation of my rights and the rights of some 45 million other Americans.

Producers have a right to communicate to consumers

The U.S. Supreme Court has held that producers have the conditional right to convey truthful information about their products to consumers.⁶ The First Amendment says “Congress shall make no law ... abridging the freedom of speech, or of the press ...” I have never been able to find in these words an exception for commercial speech, though some courts have and many regulations currently assume such an exception.

While courts and regulators have been less than consistent in upholding a First Amendment right to commercial speech, it is a bedrock issue for civil and economic libertarians. As Robert B. Ekelund, Jr. and David S. Saurman write:

The crucial point is that advertising is an expression of opinion in addition to being factually informative. For personal and individual freedom to exist in a society, government cannot regulate or suppress the free exchange of opinion between free people, be it news, literature, editorial commentary, or advertising. Individual

⁶ The Supreme Court has ruled that commercial speech can be regulated or prohibited if it does not accurately inform the public about lawful activity, if the state can assert a substantial interest to be achieved by restrictions on commercial speech, if such restrictions “directly advance” the governmental interest, and if the governmental interest could not be served as well by lesser restrictions on commercial speech. See *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.* (1976), *Central Hudson Gas & Electric Corp. v. Public Service Communication* (1980), *Shapero v. Kentucky Bar Association* (1988), etc.

freedom is eroded once governmental regulation and control of the market for ideas is imposed.⁷

Carving out from the First Amendment an exception for commercial speech assumes false distinctions between ideas and goods, and thoughts and actions. Can freedom of speech genuinely be protected if speech referring to goods or services we wish to make available to others is somehow considered “non-speech”? What ideas and thoughts do we have that *do not* relate in some way to what we are willing to do for others, and under what terms? As historian Richard Pipes wrote recently, “what a man is, what he does, and what he owns are of a piece, so that the assault on his belongings is an assault also on his individuality and his right to life.”⁸ “Advertising,” write Ekelund and Saurman, “seems to be the lone exception to the rule of no government interference in the ideas market, an exception steeped in illogical and contradictory argument.”⁹

Tobacco companies are discouraged or prohibited by the courts, FDA, and the surgeon general from making comparative health claims in their advertising. Matthew Meyers, during the debate yesterday, said tobacco companies should be allowed to make such claims only if they submit to regulation of their products by the Food and Drug Administration (FDA). But Mr. Meyers knows the FDA does not have such authority currently, and without new rules treating tobacco as a unique product, giving the FDA authority over tobacco would require that it ban the sale of cigarettes entirely.

Mr. Meyers claimed in his letter of February 25, and said repeatedly during the debate, that UST wants “a government stamp of approval” on its product without submitting to additional regulation, and that consumers would be denied “the same government protections that consumers get for every other product.” This is not, he said, a First Amendment issue.

In fact this case *is* about free speech. UST is seeking regulatory

⁷ Robert B. Ekelund, Jr. and David S. Saurman, *Advertising and the Market Process* (San Francisco, CA: Pacific Research Institute, 1988), p. 181.

⁸ Richard Pipes, *Property and Freedom* (New York, NY: Random House, 1999), p. 210.

⁹ Ekelund and Saurman, *supra* note 7, p. 180.

certainty, not privilege. The language it proposes doesn't claim government approval of its statement. UST's application to the FTC for permission to run certain ads easily falls within the FTC's traditional purview. Given the hostility toward all tobacco products and advertising shown by the FDA and statutes restricting FDA's authority over tobacco products, it is reasonable that UST would take its case to the FTC, the government agency that has shown a more modern understanding of the role of advertising in a market economy.

Contrary to Mr. Meyers' assertion, producers of other products do not submit to close government regulation in exchange for "permission" to advertise their products. They have a *right* to communicate with their customers, subject to reasonable regulation and liability for fraud or misrepresentation. UST is seeking assurance by regulators that its plan to exercise its legal right to advertise does not run afoul of current legal restrictions.

Of course if tobacco companies make health claims in their advertisements, those claims must be accurate. Common law already provides penalties for fraud, and there appears to be no shortage of lawyers willing to file suits against tobacco companies alleging fraud. There may be a case on efficiency grounds for government to regulate advertising claims, rather than rely on the tort system: In fact, this is a major part of the theoretical justification for the FTC's existence. But it is surely putting the horse on the saddle to allow government to severely limit or even ban advertising in the name of improving its accuracy.

To say advertising must be accurate is not the same as requiring that ads give full disclosure of the content of the product or all its potential health impacts. To attract consumers' attention, ads must be brief and memorable. Full disclosure would make some ads encyclopedic, making them too expensive to run or, if they were run, likely to be ignored by consumers. As J. Howard Beales and Timothy Muris wrote:

Regulatory requirements that give advertisers the choice between nearly complete information or no information will often leave consumers with no information. And if advertising cannot inform

consumers of product differences, producers have less incentive to improve products in ways that consumers would desire.¹⁰

During yesterday's debate, Matthew Meyers displayed colorful ads for "Rooster" chewing tobacco, one of UST's products, and said it was obvious such ads are not aimed solely at persuading current smokers to switch to smokeless tobacco for the sake of their health.¹¹ Adding a small statement about the comparative health benefits of chewing versus smoking, he said, would not wash away the ads' apparent sin of being attention-getting.

So long as UST is discouraged from making health claims, we can expect it to continue to run colorful ads with limited text aimed at creating the image of a "cool" or "hip" product, and such ads will appeal to people of all age groups. The ads Mr. Meyers displayed, in other words, are the product of the very policies he defends.

In point of fact, UST has the right to advertise its products today without making any comparative health claims. While Mr. Meyers may wish the company would run black and white text-only ads, that is not the law today nor ought such a restriction even be under consideration. Chewing tobacco is a legal product that poses only a slight health risk to its users and no threat to non-users. Its producers have a right to advertise their products aggressively and truthfully.

Advertising is integral to a free and efficient market

Robust advertising is integral to ensuring that markets are competitive, since advertising is the only way producers can communicate with consumers about new products and the benefits of current products. Restrictions on advertising protect some firms (typically the market leaders) and handicap competitors and potential new entrants to the market, leading to higher prices and less product innovation.

¹⁰ J. Howard Beales and Timothy J. Muris, *State and Federal Regulation of National Advertising* (Washington, DC: American Enterprise Institute, 1993), p. 33.

¹¹ Apparently the Rooster ads are what Mr. Myers had in mind when, in his February 25 letter, he refers to "the continued use of themes and images that experts agree appeal to young people ..."

This theory of advertising is almost unchallenged among economists.¹² It has also long been the view of the FTC. As Beales and Muris wrote:

Past and present FTC officials have long been unanimous in their belief that truthful advertising is an important competitive weapon that should be encouraged. Robert Pitofsky, observing the changes that occurred in FTC enforcement during the 1970s, wrote that “the major recent programs designed ... [to regulate advertising] are based on a revised and more sensible view of the function of advertising in the market and should result in higher levels of consumer welfare.” And former chairman and commissioner Michael Pertschuk wrote, “Overregulation of advertising can chill aggressive competition and impose fruitless burdens on a shaky economy.”¹³

The chilling effect of overregulation of advertising can plainly be seen in the tobacco industry. Restrictions on advertising tar and nicotine claims, adopted by the FTC in 1960, dramatically slowed a promising downward trend in tar content, the result of what had been lively competition among and rapid innovation by cigarette companies.¹⁴ Only when the ban was lifted in 1968 did innovation resume and tar content continue its previous rate of decline.

David Sweanor, senior legal counsel for the Smoking and Health Action Foundation located in Ottawa, Ontario,¹⁵ observes that excessive regulation and restrictions on advertising have created a “nicotine maintenance monopoly” whereby “individuals who need nicotine on a

¹² See Robert B. Ekelund, Jr. and David S. Saurman, *supra* note 7.

¹³ Beales and Muris, *supra* note 10, p. 13.

¹⁴ The story is told by an FTC Bureau of Economics Report: John Calfee, *Cigarette Advertising, Health Information and Regulation Before 1970* (December 1985).

¹⁵ Sweanor was also present at the debate at Northwestern University on May 29, 2002.

maintenance basis have little choice other than to use tobacco products.”¹⁶ Characteristic of highly regulated markets, the tobacco industry has trended toward concentration, with Philip Morris, for example, having 50 percent of the tobacco market in the U.S.

Sweanor, who is strongly anti-tobacco, is dead-on in his analysis of the negative impact of heavy-handed regulation of tobacco substitutes and advertising restrictions. Regulation is the most common cause of concentration and monopoly in the U.S.,¹⁷ and it has severely distorted the marketplace for tobacco products. “The safest products (NRT [nicotine replacement therapy] preparations) are subject to stringent regulation and are relatively difficult to obtain, and the most toxic products (cigarettes) are virtually unrestricted and widely available.”¹⁸

Sweanor’s analysis helps expose the fallacy of Matthew Meyers’ insistence that producers must allow their products to be regulated before getting “permission” to advertise. FDA regulation of smokeless tobacco would not help its producers compete more effectively against cigarette companies. Rather, it would have just the opposite effect: Smokeless tobacco would become like every other form of nicotine delivery other than tobacco: tightly regulated as a drug delivery device, perhaps available only by prescription, and at a price sufficiently high to discourage smokers from switching.

Allowing advertising ought to be the default presumption in every debate over regulatory policy because it has been so convincingly demonstrated that advertising benefits consumers. Experience in the tobacco industry, both past and present, makes the case all the more compelling.

The public health benefits would be considerable

Allowing smokeless tobacco producers to make comparative health claims in their advertisements would amount to recognition that our zero tolerance,

¹⁶ David Sweanor, “Policy Options to Reduce Tobacco-Caused Mortality,” *Journal of Addictive Diseases*, Vol. 18 (3), 1999, p. 4.

¹⁷ Yale Brozen, *Is Government the Source of Monopoly? And Other Essays* (Washington, DC: Cato Institute, 1980).

¹⁸ Sweanor, *supra* note 16, p. 3.

“quit or die” approach hasn’t worked. In its place would be a “risk reduction strategy” that aims for the more modest goal of less risk. Would the public health benefits of this second-best strategy be worth giving up the hope of achieving the complete elimination of tobacco?

The math seems undebatable. Smokers die, on average, six to seven years before non-smokers, while smokeless tobacco users lose 15 days, or 0.04 years of life expectancy.¹⁹ If just 10 percent of the 45 million smokers in the U.S. today switched to smokeless tobacco, the result would be an almost incredible 26.8 million life-years saved. The UST letter of February 5 lists some 50 publications in the scientific literature relevant to this point, so I will not belabor it.

Similar risk reduction strategies have worked in other fields with little or no controversy. Deaths due to automobile accidents are a national tragedy almost on par with the death toll attributable to smoking, yet as a nation we do not pursue a “walk or die” strategy of attempting to scare people into staying home or walking instead of driving a car. We have made cars safer by adding seatbelts and airbags, stressing driving responsibly, and allowing auto manufacturers to advertise the government safety ratings of their vehicles. Similar strategies are working in our fights with alcohol and sexually transmitted diseases.

Consumers of tobacco products historically have responded positively to comparative health claims. Consider, for example, the popularity of filtered cigarettes in the U.S., which rose from zero to more than 90 percent of the total cigarette market since their introduction in 1950, and the decline by about three-fifths in per-capita cigarette consumption adjusted for the tar content of cigarettes.²⁰ As W. Kip Viscusi writes:

The data on changes in tar levels, filter cigarette usage, and per capita cigarette consumption all provide a consistent pattern in which there has been increased attention to the health-related properties of cigarettes. Consumers have ultimately responded by smoking fewer cigarettes, but more importantly, they have

¹⁹ B. Rodu and P. Cole, “Tobacco-related mortality,” [letter to the editor] *Nature*, Vol. 370 (1994), p. 184.

²⁰ Viscusi, *supra* note 2, p. 197.

attempted to change the kind of cigarettes they smoke, focusing on filter cigarettes and low-tar cigarettes.²¹

Matthew Meyers apparently disputes the health benefits of declining tar levels in cigarettes, and believes the “tar wars” of the late 1950s and early 1960s illustrate the power of advertising to mislead rather than to educate consumers. But Viscusi, whose past work on risk management shows him to be predisposed to take seriously offsetting behavioral responses,²² takes into account such responses as deeper inhaling and smoking more cigarettes and still finds a 20 percent risk reduction from falling tar levels.

It is difficult not to speculate that Matthew Meyers’ intense opposition to the tobacco industry blinds him to the fact that switching from smoking to smokeless tobacco would save many lives. Promoting individual welfare, not imposing one person’s or one group’s values on others, is the only legitimate justification for regulation of tobacco. Mr. Meyers seems to have lost sight of this simple but important truth.

Conclusion

UST asks the FTC to consult with other government agencies, including the FDA, with consumer advocacy groups, and with other scientists and experts before ruling on its request. It is clear from its February 25 letter that the anti-smoking lobby opposes even allowing such deliberations to proceed. Its position in this debate resembles a crusade, not a reasonable position based on science, law, or common sense.

Smokers need information about the risks they face when deciding what tobacco products to use and how frequently to use them. They have proven they have the capacity to understand such information when it is made available and to act responsibly on the basis of such information. The producers of tobacco products have the right to provide that information, subject to reasonable regulation and tort liability for false or misleading claims. These facts combine to make a powerful case for approving UST’s petition.

²¹ Viscusi, *supra* note 2, p. 200.

²² W. Kip Viscusi, *Regulating Consumer Product Safety* (Washington, DC: American Enterprise Institute, 1984).

PLEASE DON'T POOP IN MY SALAD

Not everyone recognizes the rights of consumers or producers to exchange information, so this letter also contains two pragmatic or utilitarian justifications for approving the UST request. Allowing comparative health claims in tobacco advertising would encourage competition and innovation, as it does in every other industry. The tobacco industry desperately needs an injection of these forces to protect and benefit consumers who wish to continue to ingest nicotine but want to avoid the adverse health effects of smoking. The health benefits if even a small portion of current smokers switched to chewing tobacco would be enormous: 26.8 million life-years saved if just 10 percent of current smokers switched.

As a policy analyst, I find the case in support of UST's petition compelling. As a long-time smoker, I am personally moved to ask the Commission to grant this petition. By blocking smokers' access to potentially life-saving information, public health advocates such as Matthew Meyers are failing to do their job. Not only are their assumptions wrong (and insulting to smokers), but they offer no alternative strategy that promises to do as much, for as many, as allowing comparative health claims in tobacco advertising.

Sincerely,

Joseph L. Bast
President

For More Information

The Heartland Institute's Web site, at <http://www.heartland.org>, has a feature, called "The Smoker's Lounge," featuring the essay that appears in Chapter 2. The online version of the essay has many links to research documents and commentaries that support the points made by the authors.

Also on Heartland's Web site is *PolicyBot*TM, a database of research and commentary from many different "think tanks" and advocacy groups. *PolicyBot*TM is a free service that makes it easy for users to find and read or download to their computers articles on a wide range of topics, including smoking and other tobacco-related topics.

Some very good Web sites on the smoking issue include <http://www.forces.org>, <http://www.mysmokersrights.com>, and <http://www.smokersclub.com>. The FORCES Web site includes a list of links to other sites.

Three very credible and interesting people who write frequently on tobacco issues are Jacob Sullum, Michael Fumento, and Kip Viscusi. You can find articles by them on The Heartland Institute's Web site at <http://www.heartland.org> simply by searching for their names in the site search box.

The anti-smoking movement, fueled with billions of dollars a year in taxpayer dollars and grants from liberal foundations, also has Web sites devoted to attacking smokers. A list of links to those sites appears in Heartland's Smoker's Lounge. If you visit any anti-smoking sites, make a mental note to see how many of them link to pro-smoking sites. It should tell you something about their commitment to honest debate.

About the Author



Joseph L. Bast is president and CEO of The Heartland Institute, a 22-year-old national non-profit research center located in Chicago, Illinois. According to a recent telephone survey, among state elected officials The Heartland Institute is among the nation's best-known and most highly regarded "think tanks."

Mr. Bast is the coauthor of 10 books, including *Rebuilding America's Schools* (1990), *Why We Spend Too Much on Health Care* (1992), *Eco-Sanity: A Common-Sense Guide to Environmentalism* (1994), and *Education & Capitalism* (2003). His writing has appeared in *Phi Delta Kappan*, *The Wall Street Journal*, *Investor's Business Daily*, *Cato Journal*, *USA Today*, and many of the country's largest-circulation newspapers.

He is publisher of four monthly newspapers with a combined circulation of nearly 200,000 copies. Those publications are titled *School Reform News*, *Environment & Climate News*, *Health Care News*, and *Budget & Tax News*.

Mr. Bast has been recognized for his contributions to public policy research and debate, including being named one of "The 88 to Watch in 1988" by the *Chicago Tribune*; recipient of the 1994 Roe Award from State Policy Network; commissioned a Kentucky Colonel by Gov. Paul E. Patton on June 19, 1996; co-recipient of the 1996 Sir Antony Fisher International Memorial Award; recipient of the 1998 Eagle Award from Eagle Forum; and recipient of the 2004 Champion of Liberty award from the Libertarian National Committee. He was elected a member of the Philadelphia Society in 2002.