

Chapter 12

THE ANTISMOKING CRUSADE AND THE CORRUPTION OF LAW

When the Puritan righteous among us get their hands on the levers of the state, the property and liberty of all of us are likely soon to be at risk.

— Robert H. Nelson¹

If there are no smokers, how are we going to pay for health reform? But then again, if we can pay farmers for not growing tobacco, perhaps we can tax nonsmokers for however much they're not smoking.

— Rep. Dick Armey (R-Texas)²

Smoking may possibly harm your health, so please be careful not to smoke too much, and please observe good smoking manners.

— Warning label on Japanese cigarette packages³

WRITING THIS BOOK has been one of the most difficult and frustrating things I have ever done. Two factors that made the project so hard (as well as so long) are:

1) There seems to be *no end* to the onslaught of antismoking propaganda. Time and again I have had to go back to chapters I thought were finished to add more information or to address yet another “latest study” or some new development in the crusade against smoking.

2) The fear and loathing of tobacco and smoking has become so ingrained in the American mind that there seems to be *no way* that anything I or anybody else says or does can stem, much less halt or reverse, the crusade.

On the first score, it has been almost a decade since, with no real purpose in view, I first began idly collecting antismoking articles from newspapers and magazines and other sources. In the early '90s, however, I began noticing that more and more such articles were appearing. Literally almost every day, either in the papers or on the television news, there was some new “revelation” about the dangers of smoking.

This was not paranoia on my part. Analysts with the Media Research Center reviewed all of the stories about several risky products on the morning and evening news shows on ABC, CBS and NBC, as well as CNN's World News and World Today shows, between August 1, 1995 and July 31, 1996.⁴ They found that:

— **Tobacco as a risk problem is overemphasized.** Tobacco and smoking were the subject of 413 news stories, compared to 136 stories for obesity/fatty foods, 94 for auto safety, and 58 for alcohol. Tobacco even drew more coverage than cocaine, heroin, LSD and marijuana combined, which were the subjects of 340 stories.

In the print media, the disparity was even greater. A Nexis search of headlines in American newspapers found that the terms “tobacco or smoking or cigarette” were employed 9,067 times during the study period. Over the same time period, however, the terms “cocaine or heroin or LSD or marijuana or illegal drugs” were used only 3,875 times. In other words, there were nearly two and a half times as many stories focusing on tobacco and smoking than there were stories focusing on illegal drugs.

“Which is worse,” they ask rhetorically, “a legal product that if used over many decades can be life-threatening, or an illegal product that can be of more immediate danger? For America's news media, the answer is overwhelmingly the former.”

— **The media have allowed the Clinton Administration to use tobacco as a political weapon.** President Clinton was the driving force behind a good deal of the tobacco news. Eighty-five stories focused on his efforts to regulate tobacco, portraying him as courageously taking on a powerful industry. Only 45 of the stories about illegal drugs mentioned Clinton, and almost all of these references were positive.

There is a double standard in coverage of tobacco as a political issue. Jack Kemp's flip-flops on affirmative action and immigration were noted in five evening news stories during the 1996 Republican Con-

vention. Al Gore's tobacco flip-flop—politically exploiting his sister's smoking-related death after having boasted in 1988 about his tobacco farming history—didn't receive any evening news coverage during the Democratic Convention.

— **Antitobacco sources far exceed protobacco sources in terms of both quality and quantity.** Reporters ran soundbites from 270 antitobacco/proregulation sources, compared to 116 from protobacco/antiregulation sources. They also gave antitobacco/proregulation sources the last word in 132 stories, compared to only 40 for the other side, and it's the last word that viewers or listeners usually remember.

The analysts elaborate further on their findings, with biting comments, but the foregoing is enough to give the picture.

BECAUSE OF THE nation's media-fed obsession with tobacco and smoking, which began well before 1995, whenever my wife and I visited with friends or family, all of them nonsmokers or ex-smokers, the conversation would always—*always*—turn sooner or later to smoking.

I remember my sister saying, in a reference to the onetime popularity of the habit (in which she had never indulged), "But we didn't *know* back then that smoking was bad." Why didn't we know? For the same reason we never knew that radon in the home or chlorine in drinking water was so dangerous until the Environmental Protection Agency, looking for something to justify its existence, decided they were and told us so. Or why we never knew that a million kids needed to take drugs for "Attention Deficit Disorder" until the psychiatrists (and pharmaceutical companies) told us they did.

When I was a kid, nobody had to tell us that poliomyelitis was bad. The disease was extremely rare; no one in my hometown was ever stricken by it, even during the worst outbreaks in the 1940s. But we saw pictures of people in iron lungs. We knew that President Roosevelt had been paralyzed by polio, though this was seldom mentioned. We read about Sister Kenny (who, like Mother Teresa, could have continued her ameliorating efforts for a hundred years and what she was ameliorating would still have existed).

It didn't require a slew of epidemiological studies or statistical correlations to tell us about polio, for medical science had identified the

cause. Polio was caused by a virus, and only by that virus. No “confounding variables” had been involved in the search for the cause and the eventual cure.

Everybody had always known that pneumonia was bad. It carried away my maternal grandmother and other relatives; it had nearly killed me. No fancy statistical footwork like “retrogression analysis” had been employed in the attempt to identify the cause back in the 19th century, only a microscope. If you caught the bacterium, you caught pneumonia, which I did one Saturday on a shopping trip to Pittsburgh with my mother. If someone had suggested to the doctor, who came to our house at all hours of the day or night to treat me, that the disease was “associated” with my father’s smoking which had weakened my immune system, he would have considered the knowledge as useful as advice from a shaman to shake rattles over my chest.

The same was true of the other “traditional” diseases—smallpox, typhoid, diphtheria, syphilis—which medical science can cure or prevent, if not eradicate completely. The same is true of new diseases, like legionnaires’, hantavirus and AIDS. All have single, identifiable causes (although in the case of AIDS the disease becomes more complex the more we learn about it).

The reason we know what we know about all these diseases is that we know what causes them. The same cannot be said of cancer or, more accurately, cancers. The search for certain causes and sure cures for cancers in all their varieties still goes on nearly three decades after President Nixon proclaimed a war against “it.” Ditto for respiratory diseases for which no single causes have been identified—bronchitis/emphysema, asthma. Genes may be involved. Environmental factors may be involved. Just about anything may be involved, and smoking is but one of a host of possible factors.

At the same time, we’re learning more about diseases for which smoking has unjustifiably been implicated as the most important risk factor. For example, stomach ulcers, which are now known to be caused by a bacterium. The same bacterium may be a causative agent in heart disease as well.

How did we learn that smoking is bad? Not because we saw it for ourselves but because we were *told* it was bad, that it all by itself *causes* diseases. And once we were told, and because it certainly seems biologically plausible in the case of lung cancer and respiratory diseases,

we suddenly realized, why yes, the guy down the street was never without a cigarette and didn't he get lung cancer? Or so-and-so smoked and died of emphysema or something like that. Somebody else had a heart attack, and he was smoker, wasn't he? Eventually every nonsmoker and reformed smoker could relate a horror story about a relative or neighbor or acquaintance or somebody they'd heard about who had been a smoker and had joined the dear departed. Many in the medical profession, few of whose members were trained in epidemiology, were as spooked by the statistics as the rest of us and began to see "smoking-related" diseases or health problems everywhere they looked.

But we kept on being told . . . and told . . . and told about smoking. *What is going on?* I thought. Everybody has known since 1964 that smoking is not good for you. What is the purpose of this incessant hammering on the subject? A lot of things aren't good for you. Why this constant, unceasing preoccupation with smoking?

I didn't know what to make of it. On the one hand was my own lifetime's experience of smoking in good health and the absence of any clear and unmistakable harm done to any other smoker I knew. On the other hand was my ignorance of epidemiology and statistics, which left me in no position to question the flood of studies "proving" over and over and over the terrible and inevitable consequences of this, to me, harmless habit. I didn't even *imagine* that the studies might be subject to questioning. These were *scientific* studies, weren't they? They wouldn't publish them if they weren't true, would they? It never occurred to me that some of the people conducting them might be other than wholly disinterested investigators. I was unaware of the deep and abiding and pure and undistilled *hatred* of tobacco that motivated many of them, as well as the opportunism that motivated others in the form of obtaining grant money for yet another study about smoking.

Something else I didn't appreciate about such studies until I began this book—something that may well be a factor in their findings—was expressed by motivational psychologist Ernest Dichter, whose list of reasons people smoke cigarettes I quoted from at the end of Chapter 4:

The mind has a powerful influence on the body, and may produce symptoms of physical illness. Guilt feelings may cause harmful physical effects not at all caused by the cigarettes used, which may be extremely mild. Such guilt feelings alone may be the real cause of the injurious consequences.⁵

It that was true in 1947, how much truer must it be today when smokers encounter health warnings, criticism, discrimination and intimidation at every turn, day in and day out?

Not only may smoking be bad for your health; antismoking propaganda that makes you feel bad about yourself may be just as dangerous!

If what I said under 2) at the beginning of this chapter—my inability, as well as that of other people who can write better than I, to stem the antismoking crusade—has resulted in a high state of personal frustration and feelings of hopelessness and futility, what I said under 1) continues to bewilder me. I mean especially the ongoing flood of “new studies” about smoking.

One of the latest that came out while I was writing this chapter was the allegation that smoking reduces the size of the penis. (Somehow this doesn’t bother me; I wouldn’t have won any prizes in that category even before I started smoking.)

I don’t know if this new fear has caused any males to stop smoking, but it’s interesting that the study was released about the time the potency drug Viagra came on the market, and that despite reports of a number of heart attack deaths to users of Viagra, the popularity of the drug hasn’t been affected. Which goes to show that people will take risks if they value the benefits of something highly enough.

Every time I read some of these smoking studies, with their dozens or scores of references to other studies, I am reminded of nothing so much as the apocryphal village whose inhabitants supported themselves by taking in each other’s washing. That is how science is done, of course: scientists build on the work of others. Yet for every paper that represents a true advance in knowledge, whether about smoking or anything else, a hundred others merely recycle old intellectual washing and hang it up on the line as if it were new.

Science is also so specialized today and there are so many thousands of journals⁶ that comprise “the literature” that someone reading a paper outside his field may be in no better position to understand it than the ordinary layman. Even if a paper or article is in their own field, I wonder how many scientists have the time, or take the time, to check the multitude of references. Or are they simply impressed by the sheer bulk of them, as the layman is impressed?

But on the futility index, as a septuagenarian with at most a decade or two to live, I am better off than Martha Perske, who has been ren-

dered incapable of pursuing her career as a talented artist, at an age when that career should be in full blossom, because of emotional turmoil and agitation induced in her by the antismokers and their propaganda. She now devotes all her energies to writing articles that expose and counter their most brazen lies.

Adding to her distress is the knowledge that the general public never sees what she writes. Her audience is confined to those who already agree with her—the members of smokers' advocate groups like the American Smokers Alliance or the National Smokers Alliance or FORCES USA and FORCES Canada.

Yet she and a relative handful of others like her persevere. Sometime, somewhere, someone may listen.

NOT TO DIGRESS already, but I will, FORCES USA has posted on its Website the famous quotation by anti-Nazi Pastor Martin Niemuller:

In Germany they first came for the Communists, and I didn't speak up because I wasn't a Communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the trade unionists, and I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics, and I didn't speak up because I was a Protestant. Then they came for me. And by that time, no one was left to speak up.

Some many consider the appropriation by smokers of those words to be a laughable exaggeration of the threat to everyone's freedom that they claim is posed by the antismokers. Yet at least one scholar has—entirely unintentionally, I surely trust, and only in the area of smoking, I emphasize—at least partially rehabilitated the popular image of the Nazis. Robert Proctor, a professor of the history of science at Pennsylvania State University, wrote in the *British Medical Journal*:

Historians and epidemiologists have only recently begun to explore the Nazi anti-tobacco movement. Germany had the world's strongest anti-smoking movement in the 1930s and early 1940s, encompassing bans on smoking in public spaces, bans on advertising, restrictions on tobacco rations for women, and the world's most refined tobacco epidemiology, linking tobacco use with the already evident epidemic of lung cancer . . .

Franz H. Muller in 1939 and Eberhard Schairer and Erich Schoniger in 1943 were the first to use case-control epidemiological

methods to document the lung cancer hazard from cigarettes. Muller concluded that the “extraordinary rise in tobacco use” was “the single most important cause of the rising incidence of lung cancer.” Heart disease was another focus and was not infrequently said to be the most serious illness brought on by smoking. Late in the war nicotine was suspected as a cause of the coronary heart failure suffered by a surprising number of soldiers on the eastern front. A 1944 report by an army field pathologist found that all 32 young soldiers whom he had examined after death from heart attack on the front had been “enthusiastic smokers.” The author cited the Freiburg pathologist Franz Buchner’s view that cigarettes should be considered “a coronary poison of the first order.”*

After the war Germany lost its position as home to the world’s most aggressive antitobacco science. Tobacco-hating Hitler was dead, as were many of his antitobacco underlings. Others either lost their jobs or were otherwise “silenced.” Karl Aster, head of the University of Jena’s Institute for Tobacco Hazards Research and an officer in the SS, committed suicide in his office on the night of April 3-4, 1945. Reich Health Fuehrer Leonardo Conti, another antitobacco activist, committed suicide on October 6, 1945 in an Allied prison while awaiting prosecution for his role in the euthanasia program. Hans Reiter, the Reich Health Office president who once characterized nicotine as “the greatest enemy of the people’s health” and “the number one drag on the German economy” was interned in an American prison camp for two years. Gauleiter Fritz Sauckel, the guiding light behind Thuringia’s anti-smoking campaign and the man who drafted the grant application for Aster’s antitobacco institute, was executed on October 1, 1946 for crimes against humanity.⁷

Thus it is hardly surprising, says Proctor, that much of the wind was taken out of the sails of Germany’s antitobacco movement (a movement, I would add, that with good reason has never been revived in Germany with anything approaching the power it now exercises in

*Although heart disease among young people is relatively rare and usually caused by a congenital defect, the fact that 32 young soldiers who had been found fit enough to serve in the Wehrmacht died of heart failure on the eastern front might not necessarily be unbelievable, given the stresses of the battlefield. But that it was in every case caused by smoking *is* hard to believe in view of the number of years medical science says it takes for tobacco to work its evil. On the other hand, that this claim was a complete fabrication designed to please Hitler is not at all hard to believe.

these United States). In any event, he says, “The [German] antitobacco campaign must be understood against the backdrop of the Nazi quest for racial and bodily purity, which also motivated many other public health efforts of the era.”

That doesn’t mean that antismoking movements are inherently fascist, he concludes. “It means simply that scientific memories are often clouded by the celebrations of victors and that the political history of science is occasionally less pleasant than we would wish.”

Proctor seems to be saying that it’s too bad the Nazis were such bastards that their pioneer research into smoking was forgotten. Well, gee, maybe we ought to uncloud our memories and take another look at the Nazi “science” that proved the inferiority of Jews and Slavs and Gypsies and other “subspecies” of humanity. Just because it was used for an evil purpose doesn’t mean they weren’t on to something.

The Nazis have become useful to the antismokers in another way. In his book, *Smokescreen: The Truth Behind the Tobacco Industry Cover-up*, Philip J. Hilts “explains” the behavior of tobacco company executives by comparing them with the people who ran the Nazi death camps.

The one rationalizes that people are going to smoke. “What’s better? Giving people their small risky pleasures, or prohibition and a civil war over morals?” The other justified what they were doing by asking, “What is better for [the prisoner]—whether he croaks in shit or goes to heaven in a cloud of gas?”

Commented Malcolm Gladwell in a review in *The New Republic*:

What is grotesque about this passage is not just the casualness with which Hilts enlists the Holocaust in his campaign against the Marlboro Man; Auschwitz, after all, has been cheapened before. It is also the incredible moral and analytical simplification, the obliteration of notions of responsibility, that is required to compare the act of selling people cigarettes to the act of herding people into a gas chamber. At the moment of its greatest victory, the anti-tobacco movement has begun to acquire a noxious odor of its own.⁸

Some people may consider Hilts’s comparison not so much noxious as only a bit overstated. The tobacco company execs don’t *deliberately* kill people because, after all, every dead smoker is one less customer. That doesn’t mean they are any better than outright murderers, however. That they are in fact no better than murderers was the basis for a March 31, 1998 cartoon by *The Atlanta Journal-Constitution’s* Pulitzer

Prize-winning editorial cartoonist, Mike Luckovich, that was inspired by Florida's execution of the first woman in that state in 150 years. He drew the woman sitting in the electric chair and saying, "Couldn't I just pay a fine, like the tobacco companies?"

Maybe Mike will earn another Pulitzer for that one.

No, "they" haven't come for the smokers—yet. But they *have* come for the tobacco industry. The smokers will be next after the industry that has enslaved them is destroyed. The crusade for a smoke-free America more and more resembles another Nazi campaign that blackened the history of this century—a *Judenfrei Reich*.

IT WAS IN EARLY 1994, by which time I had accumulated several bulging folders of material, that then head of the Food and Drug Administration, Dr. David Kessler—"shocked" to have learned that tobacco contains nicotine—took it upon himself to assert that he, one man among 260 million Americans, acting under the statutory authority of his agency, had the right and duty to regulate the nicotine content of cigarettes. It was then that I became seriously alarmed about what was happening in this country and realized that a true crusade against smoking was going on.

As a former journalist familiar with the hyperbolic excesses of the media, I should have known better, but my alarm was fueled by headlines that followed Kessler's announcement:

"The crusade against smoking shifts into higher gear," said *Time* in its cover story, "The Butt Stops Here." "Should Cigarettes Be Outlawed?" asked (suggested?) *U.S. News & World Report* in the title of its cover story. "Tobacco industry fighting for its life," said *The Atlanta Journal-Constitution*.

That same year another little man named Rep. Henry Waxman had haled the CEOs of seven tobacco companies before his subcommittee for the most shameful inquisition of American citizens since the heyday of the infamous House Committee on Un-American Activities. Although the spectacle was televised, at least one member of the media distorted what happened by writing that "One by one they [the CEOs] temporized, fudged and waffled about two simple facts that everyone knows to be true: that cigarettes are addictive and that they cause mortal illness."⁹

But you can hardly "fudge and waffle" if you aren't allowed to

speak. It was: “Yes or no. Do you believe cigarettes are addictive?” When they tried to enlarge upon their statements that they did not so believe, Waxman brusquely cut them off.

None dared call it pipsqueakery.

And because the tobacco CEOs—under oath—denied believing what everyone else in the world “knew” to be true, the Justice Department announced it was investigating them for possible perjury charges. The FBI still has a page on its Website “seeking assistance from past or present tobacco company researchers, scientists, product development personnel, or manufacturing officials knowledgeable about the cigarette development and manufacturing process” as part of “an investigation to determine whether tobacco industry representatives made false or misleading statements to Congress or the Food and Drug Administration concerning tobacco, nicotine, cigarettes, the cigarette manufacturing process, or the manipulation of nicotine during that process.”¹⁰

Such “assistance” would be kept confidential, if requested. To do otherwise, of course, would be to accord the tobacco miscreants the traditional right of an accused to confront his accuser. All that’s missing from the site are mug shots of the perps.

Within two years, five major grand jury investigations of the tobacco industry were under way in as many cities:

- In the District of Columbia, whether tobacco executives lied to Congress when they stated they did not believe nicotine is addictive.
- In New York City, whether tobacco executives attempted to hide their knowledge of the hazards of tobacco to defraud shareholders.
- In New Orleans, whether Brown & Williamson employees were aware of a scheme to smuggle cigarettes into Canada to avoid that country’s cigarette tax.
- In Brooklyn, an investigation of the nonprofit status of the industry-funded Council for Tobacco Research.
- In Alexandria, Virginia, a probe of documents from Healthy Buildings International (HBI) to determine its relationship with the tobacco industry and whether HBI employees falsified data on second-hand smoke during testimony to federal, state and local officials.¹¹

In 1996, Action on Smoking and Health chimed in by offering \$25,000 “to anyone who provides information leading to convictions for ‘cigarette-related felonies.’”¹²

(No one has ever collected that reward nor have any indictments

that I'm aware of ever been handed down as a result of the Justice Department or grand jury investigations.)

In short, by 1996 the antismoking crusade had not only shifted into higher gear but had greatly accelerated. If I thought I was ever going to do something within my meager powers to try to influence the course the nation had embarked upon, it was high time to stop collecting and to start writing, and the most feasible way to do that was in the form of a book. Yet so much was there (and still is) to collect, and so hard and fast came (and still come) more developments in the anti-smoking crusade, that it wasn't until near the end of that year that I actually embarked upon this book.

An addendum of possible interest:

In March 1998, four years after the Waxman inquisition, former Surgeon General C. Everett Koop and David Kessler abruptly canceled scheduled appearances before the House Commerce Committee upon learning that they would be required to testify under oath. Requiring them to take an oath, they said, would be to treat their testimony on legislation to regulate tobacco as comparable to that given by the tobacco company executives.¹³ *The Resistance*, published by the National Smokers Alliance, had the unmitigated gall to question the motives of these two noble benefactors of mankind.

Koop, it suggested, might not have wanted to be questioned closely about the basis for his claim that obesity kills 300,000 Americans a year or about the commercial interests and sponsors of a campaign he founded called "Shape Up America!" which is devoted to doing unto overweight people what he was so instrumental in doing unto smokers during his tenure as surgeon general.

Kessler, the newsletter speculated, might have wanted to avoid being asked to explain irregularities in his expense account when he was head of the FDA.¹⁴

One expects such picky-pickiness from a smokers' rights organization. But things have come to a sorry pass when a committee of the U.S. House of Representatives muzzles two of the most outstanding leaders of the antismoking crusade because of adherence to a silly rule that doesn't differentiate between the good guys and the bad guys but treats them all as if they were equals before the law.

SO NOW I AM at long last arrived at the twelfth and last chapter of this book, which has been the most difficult one of all to write. I began it in early 1998 but because of a flood of new developments in the crusade the constant rewriting of it took up the entire year.

Everything I have written in the preceding eleven chapters pales into relative insignificance compared with what the title of this chapter states is happening in America (although everything that went before has inevitably led up to it). That is the abolishment, by legislative or judicial fiat, of some of the most fundamental rights that have always been accorded defendants in the nation's courts of law—if they are tobacco companies.

It occurred to the most outrageous extent in only one state—Florida—and was directed—at that time—at only one defendant, the tobacco industry, and its rationale is something else “everyone knows to be true”: that sick smokers are a parasitic drain on state Medicaid funds. But in many of the 39 other states that sued the industry on the same basis, various limits were placed upon the industry's ability to defend itself. Equally as unsavory is that in the recent settlement that embraces all 50 states, the industry voluntarily colluded in the abrogation of whatever rights it once had under the Constitution in the foolish hope that it will be left alone from now on.

In that fateful year of 1994, the Florida legislature revised its “Medicaid Third-Party Liability Act” in a way that, in the words of Robert Levy, “strips tobacco companies of their traditional rights and puts in their place a shockingly simple rule of law: the state needs money; the industry has money; so the industry shall give and the state shall take.”

Levy, a senior fellow in constitutional law at the Cato Institute, wrote a masterful analysis of the tobacco-Medicaid litigation scandal that should have been required reading for every member of Congress.¹⁵

In six essential respects, he wrote, the amendments to the Florida statute tilted the playing field hopelessly against the tobacco industry:

- **First:** “Assumption of risk and all other affirmative defenses normally available to a liable third party are to be abrogated to the extent necessary to ensure full recovery by Medicaid from third-party resources” (i.e., the coffers of the tobacco companies).

Translation: The tobacco companies may not employ in their defense the argument that smokers voluntarily assume the risks of smok-

ing, a defense which in all but one of the suits filed against them over the past 40 years has resulted in jury verdicts in their favor or denial of damages to the plaintiff (and that one is under appeal).

It was precisely because of the expense and time involved and the uncertainty of obtaining favorable jury verdicts in individual product-liability cases that the plaintiffs' bar turned to class-action suits on behalf of whole populations of allegedly injured consumers—to use a machine-gun instead of a rifle—first with asbestos and breast implants and then tobacco. A further incentive was that because of the immense punitive damages they faced in such suits, targeted industries were more likely to settle for something short of the amount sued for in order to avoid the risk of a jury trial and to get the vultures off their backs.

- Second: “Causation and damages . . . may be proven by use of statistical analysis” without any showing of a link between a particular smoker’s illness and his use of tobacco products.

Translation: the state need not demonstrate that any actual Medicaid recipient, anywhere or anytime, was ever harmed by smoking for the simple reason that it is impossible to prove that any person’s particular illness was caused by smoking. Therefore the great god Statistics shall rule all.

- Third: The state “shall not be required to . . . identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made on behalf of an entire class of recipients.”

Translation: it is immaterial how many, if any, Medicaid beneficiaries were or are smokers. The state is entitled to recover for funds dispensed for *all* beneficiaries, whether or not they ever smoked.

- Fourth: In assigning liability to the individual tobacco companies, the state “shall be allowed to proceed under a market share theory, provided that the products involved are substantially interchangeable among brands” (as, of course, cigarettes are).

Translation: It is immaterial what brand of cigarettes a not-to-be-identified Medicaid beneficiary may have smoked, or even if he smoked a brand made by a company not named in the litigation, or even if he

smoked in another state and later moved to Florida, or even if stopped smoking before or after moving to Florida. All makers of cigarettes are to be looted.

- Fifth: “the defense of repose [i.e., the statute of limitations] shall not apply to any action brought under [the act].”

Translation: the tobacco industry is to be subject to litigation for all instances of alleged damages to the state, however distant in the past they may be.

- Sixth: if the state recovers damages, it is authorized to pay “reasonable litigation costs or expenses” to an outside private attorney, plus a litigation fee not to exceed “30 percent of the amount collected.”

Translation: Bonanzaville for a lucky few of those who were smart enough to go into law instead of something useful to society, like becoming teachers or policemen. (With sincere apologies to all the decent and conscientious lawyers I have known. Yet where were their voices when their Florida brethren were fashioning this legal travesty?)

As far as I know, only one other state, Iowa, considered emulating Florida. There a similar law relieving the state of the burden of proof in its suit against the tobacco industry was proposed but not acted upon.¹⁶

In March 1996, the Florida legislature came to its senses and passed a bill repealing the Medicaid Third-Party Liability Act, but it was vetoed by Gov. Lawton Chiles and opponents were unable to muster the two-thirds vote needed to override the veto.

I was in Florida at the time and saw how at least one newspaper greeted this event. “Yippee!” said the *Sarasota Herald-Tribune*, or words to that effect. “The forces of good and the forces of greed have combined to deal the tobacco industry a one-two punch which we hope will cut the giant down to size.”¹⁷

Yes, so evil is the tobacco industry that the use of evil by the defenders of the good is justified in combating it.

So is hypocrisy. At the time it filed its suit, Florida had some \$285 million in pension assets invested in tobacco stocks. And although it purportedly sought recovery for all “tobacco-related disease,” it did not sue cigar companies, perhaps, suggests Levy, because the state is home to the nation’s leading producer of high-grade cigars.

Also, for nearly a decade in the 1970s and 1980s, the Florida prison system manufactured unfiltered cigarettes, giving some free to inmates and selling some to local governments. Yet when a prisoner filed a lawsuit seeking access to nicotine patches and other treatment for alleged addiction to nicotine, the state claimed innocence and said it was not responsible for his decision to smoke cigarettes. “Plaintiff is in no way entitled to medical intervention to ‘cure’ a habit which Plaintiff himself continues to indulge, and over which Plaintiff has ultimate control.”¹⁸

This is another example of the “forces of good” having it both ways. When it suits their purposes, smoking is an “addiction” which is not the fault of an individual but that of the cigarette makers who enslaved him; when the shoe is on the other foot, it’s merely an individual’s voluntarily assumed “habit.”

Even Uncle Sam, whom Americans have learned to beseech for protection of their rights and the redress of their grievances, will turn a deaf ear when the petitioner is a smoker. The Veterans Administration had been paying benefits to veterans who could show that their illness was connected to smoking that began during their military service. But the Clinton administration decided to stop that, and both the Senate and House Budget Committees endorsed the cutoff. The VA estimated it could save \$17 billion by denying claims by an expected half-million veterans for compensation for “smoking-related” diseases they incurred because, in the words of Bill Russo of the Vietnam Veterans of America, “the military pushed a dangerous, addictive drug on the troops.”¹⁹

Not that I believe that ill veterans or ill anybody else are entitled to recompense, either from the government or from the tobacco industry, because they smoke or once smoked. I’m merely observing how quickly the hearts of the public’s servants turn to stone when “their” money is involved.

A month after the Florida legislature’s failure to repeal the Medicaid Third-Party Liability Act, the Florida Supreme Court, ruling on a suit challenging the constitutionality of the act, threw out some of its provisions, such as the abolition of the statute of limitations and the section that authorized the state to sue the tobacco industry without identifying a single Medicaid patient. It otherwise left the statute intact.

Yet in conformity with that part of the ruling requiring the state

to identify Medicaid recipients, when trial of the suit began in West Palm Beach, Judge Harold Cohen generously granted the defendants the right to see the medical records of 25 persons picked at random out of 400,000—with no way of knowing if any of them had ever smoked a cigarette. No wonder the tobacco companies decided to end the fiasco by buying off the extorters.

Although I was incensed and unbelieving at the time—because there was all kinds of evidence the industry could have used to prove that, far from being a drain on Medicaid, smokers actually subsidize the healthcare of nonsmokers, not least or which was a study by the Congressional Research Service—I can almost understand why the industry capitulated and bought off the real parasites to the tune of \$11.3 billion. And why it had shortly before done the same in Mississippi—the state that had started a feeding frenzy that was eventually joined in by 39 other states, and which had taken care that its suit *not* be conducted before a jury—by paying its extortionists \$3.6 billion (peanuts alongside Florida's take). Or why it next settled with Texas's legal boodlers to the tune of \$15.3 billion.

It would be unseemly of me to suggest that the attorneys arguing those suits were not chosen because they were models of probity and idealism and legal acumen and were interested in no reward other than the knowledge that they were fighting the good fight for all of us (plus, of course, modest and reasonable fees). It would be even more unseemly to suggest that political connections and cronyism might be involved.

However, Levy notes that in Mississippi, Attorney General Mike Moore selected his number one campaign manager, Richard Scruggs, to lead that state's Medicaid recovery suit. Scruggs also received a \$2.4-million contingency fee for a state asbestos lawsuit in 1992, after contributing over \$20,000 to Moore's re-election campaign the year before. In Texas, Attorney General Dan Morales chose five firms to handle that state's suit, four of which contributed nearly \$150,000 to Morales's political pot from 1990 to 1995.

In Florida, a Fort Lauderdale lawyer, one Hugh Rodham, who happens to be the president's brother-in-law, somehow got involved in the negotiations that led to the so-called "global" tobacco settlement with the 40 states. Robert Montgomery, the state's lead attorney in its suit, described Rodham as "one of several 'Johnnie-come-lately's' who have sought to insert themselves into the potentially lucrative tobacco case."²⁰

It would also be unseemly to note, but I will anyway, that the Association of Trial Lawyers of America was the third-largest political contributor to the 1996 election campaign, giving \$3.5 million, of which 85 percent went to Democrats. Individual trial lawyers gave millions more.²¹ It would be unseemly because only the tobacco industry's political contributions, unlike those of any other industry or interest group, are designed to influence legislation in its favor.

Why didn't Florida businessmen hop all over the hypocritical Medicaid Third-Party Liability Act? After all, nowhere did it name the tobacco industry; it applied to any business or industry that sold a product that could conceivably cause injury to someone who used that product—alcoholic beverages, junk food, sports equipment, home appliances, just about anything.

For that matter, any company anywhere in the country that sold a product in Florida could be sued by that state for reimbursement of Medicaid expenditures. Why were they silent? Silly question. It was because it was the hated tobacco industry's ox, not theirs, that was being gored and because gutlessness is not the exclusive property of the cigarette makers.

A group called Associated Industries of Florida, a statewide employers association representing more than 8,000 businesses, did worry about that possibility when the law was being considered, but did not formally protest until *after* it had been successfully used against the tobacco industry. On the very day that the news came of the industry's cave-in, Jon L. Shebel, president and chief executive officer of the AIF, wrote Gov. Chiles:

As you stated to me shortly after the passage of the law, you were advised by the proponents that the law only applied to tobacco and not any other products; and you subsequently offered to throw your support behind an amendment to the law which would release all of the [other] products and individuals from potential liability.

Now is the time for you to come out in support for a total repeal of this blatantly unfair and unconstitutional law. You have accomplished the goals that you stated to me and to the citizens of Florida [the savaging of the tobacco industry—D.O]. It is now time for you to show that you are the fair-minded individual we have all always believed you to be. I know you must have shuddered at times as to "the end justifies the means" aspect of this law, and now is the time for you to do the right thing.

Of course, the trial lawyers are “foaming at the mouth” as to the prospects of the next case and subsequent cases. You are well aware of this! This has all gone too far and it is time to bring this terrible inequity to a halt! This has nothing to do with tobacco and your personal feelings for the product; but it has everything to do with fairness, equity and justice for all citizens, individual and corporate, and their right to expect to be able to defend themselves in a court of law in our state.²²

Fairness. Equity. Justice. What noble and laudable ideals. *Except* when it comes to the tobacco industry. Then “good joins greed” and the end truly justifies the means.

At the end of his paper, Levy quotes from Robert Bolt’s play, “A Man For All Seasons,” the following exchange between Sir Thomas More, King Henry VIII’s Lord Chancellor, and his daughter’s intended, William Roper. The latter exclaims:

“So now you’d give the Devil the benefit of law!”

“Yes. What would you do? Cut a great road through the law to get after the Devil?”

“I’d cut down every law in England to do that!”

“Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? . . . [D]’you think you could stand upright in the winds that would blow then? Yes, I’d give the Devil the benefit of the law, for my own safety’s sake.”

Such quaint, old-fashioned integrity has no place in 20th-century America, not on the part of businessmen or lawyers or legislators, not with the nation in the midst of the gravest crisis it has ever faced: *people smoking cigarettes*. So grave is the crisis and so powerful is the enemy that necessity requires the employment of any means at our disposal, constitutional or not, to combat it.

Another old-fashioned Englishman, the elder William Pitt, had some words about that kind of thinking:

“Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.”

TO DIGRESS BRIEFLY again, a better example of hypocrisy and a double standard of justice than Florida’s Medicaid Third-Party Liability Act would be hard to find. But there’s a close runner-up.

When the U.S. Senate approved a measure that would lower, nationwide, the level at which automobile drivers are considered to be under the influence, from a blood alcohol content of 0.10 to 0.08, the alcoholic beverage and restaurant industries rushed to arms to defeat the measure in the House.

“This is all politics, all about grabbing headlines,” declared a spokesman for the American Beverage Institute. (Antismoking rhetoric is never about grabbing headlines.) The National Restaurant Association flew 150 restaurateurs from 40 states to Washington to make their case. Some of the most powerful lobbyists in the capital joined in a veritable blitzkrieg against the legislation, arguing that the proposal would badly hurt restaurant and bar sales, penalize responsible social drinkers and have no effect on the real drunk drivers.²³

I am entirely neutral on this issue because I am too much of a tightwad to buy more than one drink in a restaurant or bar, so it wouldn't affect me. (“When they came for the social drinkers I didn't speak up because . . .”) I only wonder where the restaurant association and the beverage institute were when Maryland, for example, instituted a virtually total ban on smoking in restaurants and when California banned smoking even in bars.

Well, no, I don't wonder. They said nothing because restaurants and bars don't make any money from cigarettes, except perhaps a cut from vending machines, which are going to be outlawed anyway. (As we all know, it's almost impossible to get a table in a restaurant or a stool at a bar because of the crowds of children lined up at the cigarette vending machines.)

While it's true that individual restaurant and bar owners in some areas, especially in California, have protested that bans on smoking are hurting their businesses by driving smokers away, such protests have amounted to little more than disgruntled muttering compared to the outcry by their representative organizations against a proposal that could *really* hit them in the pocketbook.

A COUPLE MORE items about Florida, and then I'll be happy to leave that state.

In the immediate aftermath of the industry's surrender, Florida lawmakers were in a quandary: how to spend a kitty of \$200 million that was separate from the \$11.3-billion shakedown and earmarked for

antitobacco programs. It had to be spent within two years or they would lose it. (How did the evil industry get away with that provision?)

Gov. Chiles proposed spending \$57 million in the then current 1997-98 fiscal year and including the remaining \$143 million in the 1998-99 budget. The first year's spending would consist of \$18 million for marketing and communications, \$17 million for youth programs run by local coalitions, \$13 million for education and training, \$5 million for enforcement and \$4 million for evaluation and research.

("Local coalitions." "Youth programs." One can just see the professional antismokers' ears perk up and their mouths salivate. California wasn't going to be the only "Golden State" for antismokers!)

But Senate Republican Leader Locke Burt of Ormond Beach questioned whether antitobacco programs were effective. "I feel a little awkward about a large appropriation when we don't know what works," he said.

"Unfortunately," admitted Chuck Wolfe, an aide to the governor, "no one in the country knows exactly what works."²⁴

But when has the fact that politicians don't know what they're doing ever been an obstacle to grandiose social programs?

Florida Education Commissioner Frank Brogan suggested that some of the money be spent on school construction. Child advocates replied that it would be "hypocritical" for a legislature that voted down tax increases for new schools to look now at the tobacco windfall as an easy solution. It would be "unfair" if lawmakers spent the booty on school construction rather than preventive healthcare and antitobacco programs for kids.²⁵

Unfair to professional child advocates, that is. Heaven forbid that Florida should spend its windfall on something that might actually be of real benefit to its children. That would be tantamount to saying that the crusade against smoking is not the most important thing in the universe, or at least not the most important thing in a state that ranks near the bottom in education and in which there were 128,000 reports of child abuse between June 1996 and June 1997, with 62 child-abuse deaths.²⁶

(In case it needs to be said again, these kinds of deaths are *real*. Deaths of *real* children, not statistical projections of "smoking-related" deaths of "kids" several decades in the future.)

What if multimillion-dollar antismoking youth programs, none of

which anybody knows if they work, don't work? Florida has another statutory stick. Beginning in September 1997, any person under 18 caught smoking, or just in possession of, cigarettes, could be fined \$25 or be sentenced to community service or have his driver's license suspended.²⁷

The penalties are far too mild, I say. In Malaysia, students caught smoking can be flogged.²⁸ Surely Floridians should want to be as progressive as Malaysians.

I won't even go into the fight in Florida over how much the attorneys should get from the settlement, or similar edifying squabbles in Mississippi and Texas over how to spend their ill-gotten gains, or those three states' panic and outrage when the feds said they wanted their share of the Medicaid boodle, to which they are entitled by law. (The federal government provides between 50 and 70 percent of what the states spend on Medicaid.) That would be unseemly too.

But in all this salivating in Florida and everywhere else over multibillion-dollar windfalls, in all the newspaper editorials celebrating the comeupance of the tobacco industry, nobody ever mentions the fact that it is *not* the evil tobacco industry that is being punished but millions of ordinary people who have chosen to smoke cigarettes, for it is *their* money, not the industry's, that is being confiscated.

Another possibly interesting addendum:

Shortly before the tobacco industry capitulated in the Florida Medicaid suit, attorneys for the state announced that they planned to introduce at the trial an incriminating document showing how the industry deliberately targets youth. It was a handwritten, undated memo from the files of the British American Tobacco Company (BAT), the parent of Brown & Williamson, proposing a cigarette that smelled like root beer or fruit juice—a new brand that “‘breaks the rules’ to appeal to a new generation and shock their parents [and] make conventional brands look bland and weary.”²⁹

What iniquity! Or was it, as p.r. people say, more like a matter of someone at BAT running a cockamamie idea up the flagpole to see if anyone saluted? Although nothing came of the proposal, the tobacco industry is pilloried not only for anything it has ever done but for anything it has ever *thought* of doing.

MAYBE I'M NAÏVE, but despite the legal raping of “Big Tobacco” (again read: smokers, who will ultimately have to pay) in Florida, Texas and

Mississippi I retain the belief that there must be some kind of ordinary common sense at the foundation of the legal system, some concept of fair play informing the rules of evidence. But consider Minnesota's suit against the tobacco industry, which was getting under way when I began this chapter and was the only one of the 40 to go all the way to trial.

In St. Paul, when at a pretrial hearing a Philip Morris Company lawyer started to introduce the argument that smokers save the state money by dying early because of their health-destroying habit/addiction, Ramsey County District Judge Kenneth Fitzpatrick interrupted him and said he wouldn't allow such a "ghoulish" argument.

"[C]ounsel," said the judge, "can you imagine my sitting here during the trial of this case and allowing you to present what is ultimately a position that you deserve a credit because of the death of people that was premature by reason of smoking?"³⁰

I hope I never find myself in the hands of this judge. In the first place, Philip Morris was not seeking "credit" for but simple consideration of the (alleged) fact that smokers die prematurely, thus saving the state monies it would otherwise have to spend later on their healthcare had they survived into old age. In the second place, it is not the tobacco industry that has claimed that smokers die prematurely but the antismoking industry. In the third place, it is not the tobacco industry but the antismoking industry that has claimed that smokers pass their healthcare costs on to the rest of society. Shouldn't the tobacco industry be allowed to introduce figures disputing that claim? But again, the forces of good were to have it both ways.*

Judge Fitzpatrick also indicated that he wouldn't permit the tobacco industry to employ another argument—that the state's (alleged, never proven) smoking-related Medicaid healthcare costs should be offset by the \$175 million collected annually by Minnesota's cigarette excise tax.

"No courts have ever allowed that," he said.

Let me see if I've got that straight. The industry pays \$175 million a year in cigarette taxes to the state. That is, individual smokers do. But

*In their suits against the industry, the states not only pretended that nonsmokers never get sick; they also ignored the fact that long-term nursing-home care for the elderly accounts for 43 percent of Medicaid expenditures.³¹ Even antismoking demagogue Stanton Glantz agrees that the supposed excess costs of smoking amount to a mere 4.8 percent of total Medicaid costs.³²

that doesn't count. Apparently, all that tax money collected from smokers in Minnesota, and the 49 other states, just disappears into their general treasuries. It would be "unfair" to apply any of that money collected from smokers toward helping pay for "smoking-related" Medicaid costs allegedly incurred by those same smokers. Sounds like a kind of double jeopardy to me.

But then, smokers aren't really citizens, are they? Not full-fledged ones anyway. In my former hometown of Cleveland, smokers paid for a new baseball stadium, which they are welcome to enjoy—as long as they don't smoke in it.

The industry would also seem to have had an even better defense against Minnesota Blue Cross/Blue Shield, which was a party to the state's suit. Smokers who belong to this health insurance group pay their own premiums; the money doesn't come from innocent nonsmokers.

Yes, the group could counter, but sick smokers account for a disproportionate share of benefits claims. But even if that were true, is that a problem the sovereign state of Minnesota had to remedy or was it something Blue Cross/Blue Shield should find a way to handle?

To my knowledge, no life insurance company has ever sued the tobacco industry to recoup benefits it has paid to the survivors of dead smokers. They simply charge higher premiums for smokers. No doubt some, perhaps many, smokers lie and say they are nonsmokers. But that does not seem to be a major problem for these companies.

Also not allowed to be considered in the general jubilation over the tobacco industry finally getting what had been coming to it for a long time is the fact, as one observer pointed out, that:

"[Not] one of these states knows how many of its Medicaid patients even smoke or ever have smoked. Not one is prepared to produce a sick Medicaid patient and prove, with scientific evidence, that the patient's illness is a direct result of cigarette smoking . . . The states have no such evidence. They are like a state suing General Motors on the grounds that automobiles are involved in accidents and that victims in accidents have run up the cost of Medicaid."³³

Actually, it would be much more logical for a state to sue the automobile industry than to sue the tobacco industry because you can count the number of people injured in traffic accidents. You can name their names and tell when and how their injuries happened and you can total their actual medical costs. As for an unknown number of Medicaid

recipients who might have incurred health problems because of all the carcinogenic chemicals spewed into the air by automobiles, you could, like Florida in the case of smoking, employ “statistical analysis.”

If the automobile industry objected that it was saving the state future healthcare costs by killing thousands of people prematurely, what right-minded judge would allow such a “ghoulish” argument? And if the industry pointed out that individual car owners were already paying millions to the state in gasoline excise and other taxes, what judge would allow a “credit” for that?

This is all fantasy, of course. If any state so much as suggested such a suit, you would see a popular uprising because the money extracted from the industry (perhaps, like Florida, on a “market share” basis) would eventually have to be paid by individual automobile owners in the form of higher prices for their wheels. People may hate smoking but they love their cars. When it comes to gouging the tobacco industry, however, which means gouging smokers, they will stand for—make that go for—anything.

But darn, there I go forgetting again: the gang-up against the tobacco industry was not about filthy lucre but was *in a good cause*. If it happens to enrich a lot of lawyers, surely they deserve that reward for bringing the tobacco industry to justice for all the harm it has done to society. Why can't I get that through my head?

I guess I'm just confused. I keep thinking: if it's really true that “smoking-related” illnesses are a drain on state treasuries, why didn't each state simply take a wild stab at how much and raise its cigarette tax to compensate for it? Why go through the long, drawn-out litigation process and hire expensive attorneys and force smokers to pay them literally billions of dollars that could be used directly to offset Medicaid expenditures? For Florida, Texas and Mississippi alone, the payoff an arbitration panel awarded to those states' lawyers was \$8.1 billion!—with more billions to come from the settlement with Minnesota and the rest of the 50 states.³⁴

Nobody answers me, so I can only conclude that it's a stupid question and I just don't understand how the world works. Everybody else apparently understands and likes the way it works. It couldn't be because the plaintiffs' bar runs the show.

(Another stupid question: how many states do you think will actually use the money taken from smokers to replenish their Medicaid

funds “everybody knows” have been drained by smokers, and how many states do you think will spend their windfalls on all kinds of pet projects? I’ll give you a clue: the answers are “zero” and “fifty.”)

Initially, the defendants in the Minnesota suit turned over to the court 33 *million* pages of internal company documents. (Why in the world did they keep all this stuff? For that matter, *where* in the world did they keep it? No doubt they now fervently wish they’d shredded it long before, just as Richard Nixon regretted not destroying his Watergate tapes.) The state then demanded, and got by order by the U.S. Supreme Court, 39,000 more documents totaling about 200,000 pages.

These are by no means the first “secret” tobacco company documents unearthed. We’ve been hearing about them for years. Stanton Glantz published a thick tome of them culled from a bundle stolen from Brown & Williamson. One presumes these selections were the most incriminating of the lot. But I plowed through the whole thing, and nowhere did I find—and nowhere else have I heard of—a single instance of any document revealing that the tobacco industry had ever discovered anything about smoking that was not already known to the medical establishment.

Nothing so well illustrates our national schizophrenia on this issue. One half of the public brain has known since at least 1964 that smoking can be harmful to the health. The other half firmly believes that the tobacco companies suppressed the truth about smoking and lied to us, keeping us in the dark all these decades.

TO DIGRESS AGAIN, will Medicaid or general healthcare nirvana have arrived when America is smoke-free? I’ll cite just one study, “ghoulish” though it may be, that predicts an answer to that question.

A nation of nonsmokers might end up spending more, not less, on healthcare, say researchers at the Erasmus University Department of Public in Rotterdam, the Netherlands, in a study analyzed in the October 1997 *New England Journal of Medicine*.³⁵

If everyone stopped smoking tomorrow, national healthcare costs would initially be lower than they had been as the incidence of smoking-related disease tapered off. However, as smoking-related deaths decline, they wrote, “the population (as a whole) starts to age. Growing numbers of people in the older age groups mean higher costs for healthcare because the extended lifespan of nonsmokers (relative to

smokers) also brings an added risk for the often expensive chronic diseases associated with old age.” [Parentheses in original.]

In a theoretical “smoke-free” society, medical costs would begin to exceed those of the old “smoking” society about 15 years after universal smoking cessation, the researchers estimated. In time, “a new steady state is reached in which costs continue to be about seven percent higher than those of populations experiencing current rates of tobacco use.”

Of course, they were quick to add, mere dollars should not be the yardstick by which we measure the value of antismoking efforts. Smoking is “a major health hazard” and should be discouraged on that basis alone, they said. (Antismokers only use dollars as a yardstick when they’re socking it to smokers.)

The only thing that bothers me about citing a study like this is that in doing so I am tacitly endorsing the thesis that great numbers of smokers die prematurely from expensive illnesses. But again, it’s the antismokers who have advanced the claim that smokers are a burden on society and we smokers have no choice but to challenge them on their own ground.

Nor will any other kind of nirvana arrive when the last smoker is dead and everybody else lives forever. “Many of our nation’s baby boomers have a time bomb ticking in their heads today,” said Stephen McConnell, a spokesman for the Alzheimer’s Association, as the group lobbied Congress for \$100 million in new research money. Unless ways are found to prevent or cure the disease, the association predicts that by 2050, when the youngest baby boomers will be in their 80s, 14 million Americans could suffer from the disease, compared with four million today.³⁶

Epidemiologists are fond of correlations. I’ll give them one for free. It’s kind of a mirror image of the one between the increase in smoking in the first half of the 20th century and the rise in the incidence of lung cancer. In this case, the dramatic increase in the incidence of Alzheimer’s disease in the second half of the century correlates neatly with the dramatic decline in the rate of smoking in the same period.

I am not trying to be cute. There is tantalizing evidence of a protective effect of nicotine against Alzheimer’s, as well as Parkinson’s. Unfortunately, it is unlikely that researchers will follow up on this because nicotine comes from tobacco, and anything that would make nicotine

look good would reflect favorably on tobacco and the smoking of it, and smoking is “a major health hazard.” That is all ye know and all ye need to know.

AS I MENTIONED in the Preface to this book, the first part of the subtitle I originally chose was “America’s Insane Crusade Against Smoking”. Besides the fact that the crusade was going off on nuttier and nuttier tangents and occupying more and more newspaper space and television time, I did so for a couple of basic reasons.

One derived from a fundamental commonsense attitude that even if cigarette smoking had been established as a cause, or even *the* cause, of lung cancer (and it is with lung cancer, and only lung cancer, that the epidemiological evidence is at all “statistically significant”)—*so what?* If there are risks to smoking, so are there risks to a lot of things we do simply because we like to do them. Skiing can break your legs, or worse. A certain number of people are killed every year while skydiving. *So what?* The vast majority of skiers and skydivers never incur fatal or life-threatening injuries. Similarly, the vast majority of smokers never get lung cancer. And whatever risks there are in any of these behaviors, they are voluntarily assumed.

Unfortunately, the public health establishment quickly moved beyond its legitimate function of alerting smokers to the *potential* dangers of their habit. In the years following the 1964 surgeon general’s report, warning was added to warning until in popular thinking the consequences were not merely potential but well-nigh certain. To the ordinary person, “smoking-related” came to mean the same thing as “smoking-caused.”*

When exhortation and the ceaseless piling of evidence upon evidence failed to persuade more than 50 million smokers to stop smoking, the next stage was coercion against the stubborn holdouts by making them feel guilty and ashamed that their dirty, self-destructive habit was harming not just them but innocent others, which led easily to the next stage—social ostracization, to which smokers acquiesced without protest because of that very guilt and shame.

*“The leading causes of death are now all listed as smoking-related: heart disease, strokes, respiratory diseases, cancers. That means if you lived all your life on a desert island and never smoked, and died of a heart attack, it could be said that it was smoking-related because heart attacks are listed as smoking-related.”³⁷

But the main reason I decided that the antismoking crusade was manifesting symptoms of derangement was that the more familiar I became with the multitude of studies associating cigarette smoking with an endless number of health problems, the more I saw how little relation they had to actual cause and effect and the more they revealed themselves to be the product of antismoking bias. This was especially true of those involving “environmental tobacco smoke” (ETS), which became the most effective weapon in the antismoking arsenal, even though there is *not one* study that has shown even close to accepted standards of statistical significance that secondhand smoke has ever harmed anyone. These studies nevertheless have been used as the basis of and justification for all manner of draconian restrictions against smoking and self-righteous discrimination against smokers.

And that’s where the “scam” comes from in the subtitle I finally settled on, as well as being the cause of my personal “slow burn” over what was happening in America regarding a habit I had enjoyed for half a century.

At a confab of antismokers in Perth, Australia, in 1990, officially called the Seventh World Conference on Tobacco and Health, Stanton Glantz said, “The main thing the science has done on the issue of ETS, in addition to help people like me pay mortgages, is it has legitimized the concerns that people have that they don’t like cigarette smoke. And that is the strong emotional force that needs to be harnessed and used. We’re on a roll, and the bastards are on the run. And I urge you to keep chasing them.”³⁸

(Some smokers jumped all over Glantz’s remark about his personal financial benefit from his antismoking activities, but I think he should be given some charity here. I think he was just trying to inject a little humor in his speech. More revealing was his calling the target of his activities “bastards,” meaning the tobacco companies. In any crusade or war, the first thing you do is deride and dehumanize your enemy.)

As the ’90s unfolded, the antismokers were indeed on a roll and had successfully harnessed “the strong emotional force” of public opinion in pursuance of a relentless crusade against a habit that has given and still gives pleasure to millions, a personal indulgence which like any number of other behaviors may or may not sometime harm them, and only them. Eventually, cigarette smoking was elevated to a matter of crucial national concern over and above anything else—the crime and

violence and deaths spawned in the nation's cities by the illegal drug trade and the other insane crusade against it that has only exacerbated it; the creeping down of violent behavior to younger and younger children; child and spousal abuse; teenage pregnancy; unmet educational needs; the approaching crisis in social security; the scandal of political campaign financing, and on and on.

If this is not the picture of a society gone wacko, it is one whose priorities are seriously out of whack.

In the beginning though, I did not conceive that the crusade would reach the point it did in 1997: the attempt to bring the tobacco industry to its knees, if not utterly destroy it, through the threat of perpetual class-action lawsuits unless it submitted to one great massive shake-down, a shakedown on a scale no Mafia don every dreamed of. This was the \$368.5-billion "global" settlement arrived at on June 20, 1997 between 40 state attorneys general and the nation's four largest cigarette makers—Philip Morris, R.J. Reynolds, Brown & Williamson and Lorillard. (The smallest of the majors, the Liggett Group, had set the stage for this sweeping agreement when it made a separate deal with the AGs the previous year.)

It was a settlement, incidentally, from which smokers—the supposed victims of the tobacco industry but who would nevertheless be saddled with the industry's bill—would have received nothing except, as someone put it in reference to smoking cessation programs the industry agreed to finance, "A nicotine patch and a pat on the back."

As for the industry, what it would get (it fondly hoped) would be future "financial certainty" by being freed from the threat of class-action suits—as if, having brought the industry so close to self-destruction the antismokers would stop there. But the people who run the tobacco companies today are no longer emotionally tied to tobacco; there are no figures among them like the "Major James Singleton" of Chapter 1, for whom tobacco was his very life's blood. Today it's just another business, and if it requires the payment of blackmail to the states to stay in business, name your price.

Without doubt, the industry has every reason to fear class-action suits. Inspired by the success of the attorneys general, other groups are looking to get a piece of the action. Hard on the heels of the settlement with the suing states, in September 1997 a coalition of labor union healthcare funds filed lawsuits in federal courts in 21 states claiming

that the tobacco industry had been targeting blue-collar workers for years and was guilty of racketeering and conspiring to mislead the public about the health risks of smoking. And just for insurance, in one of the suits that was filed in West Palm Beach, Florida, Jim Ray, whose Washington firm is handling all 21 suits, planned to ask a federal judge to extend to private plaintiffs the protection of the 1994 Florida law that virtually abolished the industry's ability to defend itself against that state's Medicaid lawsuit.³⁹

According to coalition spokesman Dave Jewell, a study of the union funds showed that costs continued to rise even as claims by workers had been declining. The fund administrators determined that those extra costs were coming from treatment for smokers. (Sure, the general inflation in medical costs that has been going for years—in no little part because of our readiness to sue doctors at the drop of a syringe—might also have something to do with it. But heck, you can't sue an entire profession. Much, much easier to sue a single industry, especially one everybody hates.)

Even so, I am at a loss to understand how the four companies (who mainly constitute "the industry") could possibly have agreed to the extent of the blackmail. \$368.5 billion was a colossal sum of money, even if strung out over 25 years, which was as far ahead as the agreement looked. It was a *stupendous* sum. \$368.5 billion is more than total U.S. Treasury receipts in the first 160 years of the nation's existence, from its founding in 1789 through 1949, from the first president, George Washington, to the 33rd, Harry S. Truman. The first time that expenditures by the government of the United States exceeded \$368 billion in a single year—for all its agencies and departments and programs, for Congress, the Supreme Court, the armed forces, for *everything*—was not in one of the World War II years, or even all four of those unlimited-spending years, but relatively recently: 1976.

(Of course, if you were to translate the figures for each of those 160 years into 1998 dollars, \$368.5 billion might then equal only, say, the government's income for the first 50 or 75 years. That would be offset, however, by the fact that scheduled payments by the industry were to be increased by an inflation factor of three percent a year. According to a study by the Congressional Budget Office (CBO), that would bring the total to about \$550 billion over 25 years—if cigarette consumption remained at its current level, which it would not.⁴⁰)

Even less, however, did I conceive that when Congress began deliberation on the settlement there would ensue a frenzied “I-am-more-antitobacco-than-thou” rivalry between Republicans and Democrats, inspired not by concern over what was best for the nation but what would be best for them in the next election. As if \$368.5 billion were not incomprehensible enough, Arizona Republican Sen. John McCain all of a sudden zoomed the ante to \$506 billion! Now we were talking a sum equal to total U.S. Treasury income from 1789 through 1952 and 20 times the cost of the nine-year Apollo moon landing program. Adding in inflation over the next 25 years would put us into a neighborhood approaching a *trillion* dollars.

Just where did McCain or anybody else think all these billions and billions were to come from?

According to various government sources, tobacco industry after-tax profits are currently around \$8 billion a year. (This includes all the companies in the industry, not just the big four.) Every penny of that \$8 billion would have to be confiscated for the next 63 years to pay out \$506 billion. Stanton Glantz estimated the industry’s profits could be increased to \$30 billion a year if the price of cigarettes were lofted to \$4 a pack. (Then we’d only have to confiscate its profits for 17 years.) Such an increase would happily also reduce cigarette consumption by 47 percent, with all the public health benefits that would bring, he said.⁴¹

But he was figuring that \$30 billion on the basis of current consumption. If consumption declined by 47 percent, wouldn’t the industry’s earnings also decline by 47 percent? And if the companies raised prices again to try to regain some of their lost profits, consumption would decline even further.

This is the kind of cloud-cuckooland these people inhabit. They think they can strangle the tobacco goose and still harvest its golden eggs.

Anyway, the McCain proposal called for an increase of \$1.10 a pack, not \$4. However you slice it, it’s a mystery to me how they expected to squeeze \$506 billion out of four tobacco companies, or even the original \$368.5 billion.

The Congressional Budget Office agreed. After examining the terms of the original settlement, its staff concluded that “[T]here is no plausible set of assumptions under which tobacco companies would actually make payments of \$368.5 billion. Even if the settlement was com-

pletely ineffective in reducing smoking [through higher prices for cigarettes], the downward secular trend in consumption that has prevailed for many years would lead to a reduction in payments well below that amount.”⁴²

That certainly applied in spades to McCain’s \$506-billion grand theft. Does Congress pay any attention to its own researchers?

UNDER THE SETTLEMENT—either the original one or the Senate-revised one—the tobacco companies would also have surrendered their First Amendment right to advertise, except for black-and-white ads with no human or cartoon figures and only in a few magazines that teenagers supposedly wouldn’t see. At the same time they would finance propaganda campaigns and programs by the antismoking industry condemning their own product and urging people not to buy it. The settlement earmarked half-a-billion dollars for that, which topped the nearly \$490 million the industry spent on advertising in the U.S. in 1996, according to Competitive Media Reporting, a research service, and about equals what McDonald’s spent to promote its artery-clogging hamburgers and french fries the same year.⁴³

This was another magic bullet against smoking that would misfire. Italy banned cigarette advertising shortly after World War II. Norway banned all tobacco advertising more than two decades ago. Finland instituted a partial ban in 1978. All of these countries have smoking rates comparable to the United States, despite their severe and our comparatively mild (at this time) restrictions.

In New Zealand, 27 percent of adults still smoke, a figure that hasn’t changed since 1990 when an advertising ban was enacted. More Canadians are smoking today than did in 1989, when Parliament passed a cigarette advertising ban (later declared unconstitutional, as was a similar ban in, of all countries, Iran!).⁴⁴ When I was in Montreal in 1997, it seemed like every third person on the street had a cigarette in his hand.

Doesn’t matter. It’s an article of the antismoking faith (when it serves their purposes) that people smoke only because they are hooked on it, and they are hooked on it only because of the tobacco industry’s pervasive and seductive advertising. Anybody who argues otherwise and brings up something called personal responsibility is either “blaming the victim” or is a tool of the merchants of death.

The industry also agreed to allowing the Food and Drug Administration to regulate the nicotine content of cigarettes about nine years after the settlement went into effect, which if the David Kesslers had their way would mean no-nicotine cigarettes and—*surprise*—a brilliantly lucrative incentive for smuggling and bootlegging. Not without justification was the McCain legislation dubbed “The Lawyers’ Enrichment and Bootleggers’ Protection Act of 1998.” (More about the latter aspect below.)

It got even crazier. The industry agreed to pay penalties (to be capped at a mere \$3.5 billion a year) if the rate of teenage smoking wasn’t cut by 60 percent in 10 years. Just how the industry was supposed to accomplish this when antismoking propaganda that begins in kindergarten hasn’t been able to make much of a dent was not spelled out. This provision of course was based on the myth that advertising creates cigarette smokers. Yet drug use is a continuing, if not worsening, problem among youths, and I’ve never seen any magazine ads or billboards promoting marijuana or cocaine.

The funny thing is, no cigarette company sells cigarettes to teenagers. Stores do, or the teenagers get them some other way. Every state and the District of Columbia has a law against selling cigarettes to minors, and more of them are enacting penalties against the youths themselves for mere possession of cigarettes. If laws and propaganda can’t prevent teens from smoking, how were the cigarette companies supposed to do it?

According to the latest Youth Risk Behavior Survey by the Centers for Disease Control and Prevention, cigarette use by high school students rose by one-third between 1991 and 1997, from 27.5 percent to 36.4 percent. Among black youths, who formerly shunned the habit, smoking was said to have jumped by 80 percent, from 12.6 percent to 22.7 percent.⁴⁵

At first glance, this was the most encouraging news I’d heard in years. Alas, when it comes to lying to the public, the government beats anybody, even the tobacco industry, six ways from Sunday.

Steven Milloy points out that the CDC omitted to mention that teen smoking prevalence was reported to be at 32.3 percent in 1990, which means it went down by nearly five percent in 1991. But the Centers opted to compare the 1991 survey with 1997 because of the larger difference. Considering the survey’s error margins, typically in the range

of plus or minus two percentage points, it is quite possible that there was no change in teen smoking levels from 1990 to 1997.⁴⁶

Why would the CDC want to make the rate of teen smoking look worse than it really is? For the same reason antismokers ignore studies showing no harm from secondhand smoke: if there is no crisis, there is no need for crisis managers.

One thing we can believe is that when it came time to determine the size of the penalty the industry had to pay because teen smoking hadn't gone down, figures would be found to require the maximum amount. (As David Murray, research director of an organization called the Statistical Assessments Service, says, "There are no real numbers in Washington. There are just useful numbers and nonuseful numbers."⁴⁷)

The antismoking industry actually has a vested interest in a high teen smoking rate. I don't mean to intimate that these sour-souled but purehearted folks would sacrifice the nation's youth for their pecuniary advantage. To paraphrase myself, it's just that if we ever reached a point where there was no teen smoking crisis, there would no longer be a need for teen smoking crisis managers.

My local source for antismoking idiocy, *The Atlanta Journal-Constitution*, naturally accepted the CDC's figures without question, as did, I'm sure, every other newspaper in the country. One of the reasons for this reported increase in teen smoking, the AJC editorialized, was the cartoon figure, Joe Camel, who studies have shown is a highly recognizable character to youngsters.

(So is the Energizer Bunny, but the AJC didn't say how much sales of batteries have increased among kids. So is Snoopy, and nobody believes he is being used to peddle life insurance to kids. But logic is tossed out the window when it comes to the cigarette companies.)

Even though old Joe has been retired, concluded the editorial, "his mission continues through ever more sophisticated tobacco marketing."⁴⁸

I would dearly love to learn more about this "ever more sophisticated tobacco marketing" but the AJC offered no examples. But then, proof is never required in the field of antitobaccoism; allegations alone are sufficient, and the mere stating of them adds to the "mountain of evidence" against smoking and the companies that make the smokes.

Herr Hitler knew that the bigger the lie, the more easily it is swallowed by the public. The antismokers know that the more often a lie is

repeated, the more firmly it becomes established as something “everybody knows is true.” Isn’t it great that the United States has succeeded Nazi Germany as the world’s most aggressively antitobacco country?

The Boston Globe also accepted the CDC’s figures but took a different approach. That is, one of its columnists did.

“Crunch the data any way you like, the massive anti-teen-smoking crusade has been a disaster,” wrote Jeff Jacoby. “Countless millions of dollars have been poured into convincing youngsters not to smoke, yet a larger share of them are smoking every day. It is hard to imagine a more thoroughgoing failure. So will the antitobacco warriors, humbled by such a defeat, call off their jihad? Of course not. They will demand even more restrictions, impose even higher taxes, curse tobacco companies even more loudly. They will insist that the law go even further to deprive smokers of the right to choose. And all, of course, for ‘the kids.’”⁴⁹

Jacoby was wrong only about one thing: the antitobacco warriors *want* the teen smoking rate to stay high, again for the same reason they don’t want to hear that secondhand smoke is harmless—so that they may continue their jihad against the industry.

Interestingly, in a companion article to the CDC report, *The Atlanta Journal-Constitution* interviewed a number of local teenagers and found that, far from being rebellious delinquents with deep psychological problems, those who smoked were good students and otherwise respectful and obedient children. The paper also reported that some parents felt that as long as their kids made good grades and stayed out of trouble, smoking was not the worst thing they could do.⁵⁰

This *is* encouraging. Like psychologist John Rosemond, whom I quoted in this respect at the end of Chapter 10, some people in this country apparently still retain a sense of balance and proportion regarding smoking.

What about raising the price of cigarettes, as a settlement would have required in some unknown but significant amount? That would surely make teenagers think twice about smoking, wouldn’t it?

Sorry, antismokers. Not only do teenagers have much more income at their disposal than many people think, they also have expensive tastes, with high-priced brand names considered to be the “coolest.”

The Advocate in Baton Rouge, Louisiana, reported that during the 1997 Christmas season, one teenager spent \$129 on a pair of shoes.

Another planned to spend \$150 to \$200 on two pairs of pants and a shirt, and a third said she planned to spend \$150 on sweaters. A *Chattanooga Times* story quoted a 15-year-old as saying she had a \$500 Christmas budget and in one hour bought three bottles of nail polish for \$12 apiece and two ribbed sweaters. The *Herald-Sun* in Durham, North Carolina, quoted a 17-year-old as having spent more than \$200 during one summer, including \$70 on football cleats. A senior told the newspaper that he planned to spend \$2,000 on a new wardrobe.⁵¹

“I’ve been smoking since I was 13,” Jeff Adams, 17, told *The Chicago Tribune*, “and even if it costs more I’ll still pay. It’s worth it.”

“Even if they [cigarettes] were \$3.50 a pack, I’d still buy them,” said Marcia Fountain, 16.

“Price alone won’t do it,” said Elk Grove Village, Illinois, deputy police chief Larry Hammar. “These kids are smoking because somehow, some way over these last few years it has become fashionable again, cool, for them to be seen with a cigarette hanging from their mouths. It’s a cultural thing.”⁵²

Why has smoking cigarettes become fashionable again among teens? Propaganda backlash? The lure of the forbidden? I don’t know, but before the end of this chapter I’ll tell why I think smoking will never be stamped out.

For whatever reasons teens smoke, a few dollars more for a pack of cigs is not going to deter them. The only people who will be seriously affected by higher cigarette prices are adults with incomes below \$30,000 a year, who already pay 53 percent of today’s cigarette taxes.⁵³

ALL RIGHT, FORGET for a moment about all those billions and billions and billions of dollars involved in the “global” settlement, which the industry finally walked out on anyway. What I really don’t understand is why “Big Tobacco” played along with the states attorneys general at all rather than fight them, except in Minnesota where the state at first wouldn’t let them settle out of court, apparently because Attorney General Hubert Humphrey III thought his case so strong and the malefactions of the industry so flagrant that truth, justice and the American way demanded a full-scale public trial to expose the wrongdoers.

As noted earlier, in every instance but one in the past 40 years in which a tobacco company entrusted its fate to a jury, the jury found for the company. (This is one reason why the industry agreed to a provision

in the “global” settlement allowing individuals to continue to sue it. Another reason, the best one, was that it can outspend and outlast any private plaintiff.)

Once again, however, in Minnesota the industry decided to switch (to being blackmailed) rather than fight. Granted that Florida passed legislation and a pretrial judge in Minnesota delivered rulings that tied the industry’s hands behind its back by denying it its best defenses; i.e., that nobody forces smokers to smoke, that their killing themselves prematurely saves the states money and that while they’re alive they pay a heck of a lot in taxes that ought to count for something. Surely the industry’s clever and highly paid attorneys could have found a way to get those points across to a jury. Or if not, surely jury members would have had enough common sense to perceive those facts between the lines of the state’s argument.

Even in the highly emotional and highly subjective area of secondhand smoke, even as the Minnesota suit was proceeding toward trial, a jury in Muncie, Indiana, found that the industry was not liable in the cancer death of a nonsmoking nurse who, her husband claimed, “inhaled smoke constantly” during her 17 years as a nurse in the psychiatric ward of a Veterans Administration hospital.⁵⁴

(In the only other secondhand-smoke suit that has been settled to date, this one also involving a VA hospital nurse, it was the Labor Department’s administrative decision, not a jury’s, that awarded damages to the surviving husband. See Chapter 8.)

Consider also that most private suits against the industry have claimed damages in the hundreds of thousands of dollars, or at most the low millions (\$13.3 million in the Indiana nurse’s case). Sought-after damages in class-action suits, which the industry hoped to avoid through the original “global” settlement, are much higher, but even Minnesota claimed only \$1.77 billion (which the generous industry upped some nine-fold in the final deal). Just for the heck of it, put the average state Medicaid claim against the industry at \$10 billion. The industry would have had to lose 37 of them in a row before its losses surpassed the \$368.5 billion it was willing to fork over in the “global” settlement. And if you consider the length of time it takes for a suit even to reach the court, the industry could have strung them out unto eternity, or at least well into the 21st century.

But the oh-so-shrewd attorneys who run the tobacco companies

must have known a lot of things I don't know that persuaded them to settle with Minnesota at the last minute—to the astonishment and dismay of many of the jurors, incidentally. (Speaking of that, did Mr. Humphrey also know something I don't know that persuaded him to abandon his high-minded goal of exposing the evil industry rather than risk putting the suit into the hands of the jury?)

Speculation about the industry's motives is irrelevant, however, because one of the Senate's "improvements" on the original "global" settlement removed a provision giving the industry immunity from class-action suits. Maybe that's why it eventually mustered enough gumption to say to Congress that enough was enough.

AT A NEWS CONFERENCE in Washington on June 20, 1997, some of the 40 states attorneys general assembled to celebrate their victory over the tobacco industry.

The first to take the microphone was their leader, Mississippi AG Mike Moore, who had won fame (or infamy, depending upon your prejudices) as the man chiefly responsible for engineering Big Tobacco's debacle. After congratulating all and sundry for their "courageous" efforts in achieving the historic "global" settlement, this posturing phony told the world what it was all about.

"See, I've got a little boy," he said. "His name is Kyle, and he's 10 years old . . . Also I have a dad. He's about 76 years old, and has been smoking for a real long time. And I worry a whole lot about that. And it's my dad and your dads and your moms and your grandpas and your grandmoms that we did this for."

The next bleeding heart to take the podium was Washington AG Christine Gregoire. After congratulating all and sundry for "making this day possible," she echoed Moore with, "I have been here [at the negotiating sessions] on behalf of an 82-year-old mother who has been smoking since the age of 13. I have been here on behalf of two teen-aged daughters."

Am I the only one who sees the hypocrisy here? Parental example and exhortation and laws against selling to minors can't save Moore's 10-year-old son and Gregoire's teenage daughters from the lure of cigarettes, but the extraction of billions of dollars from the hated tobacco industry—I mean, from smokers—and the transference of much of it to the accounts of law firms representing the states would?

Even famous bank robber Willie Sutton displayed more honesty than these representatives of the forces of good. When asked why he targeted banks, he replied, “Because that’s where the money is.”

As for Moore’s dad and Gregoire’s mother, am I the only one who sees the irony here? His 76-year-old dad has been smoking for “a real long time” and her mother has “been smoking since the age of 13”? Just how had they been harmed by all those years of smoking (69 years in Gregoire’s mother’s case!)? They didn’t say. Just how would the settlement benefit their aged parents? They didn’t say.

Also putting in a few words was Robert Butterworth, attorney general of the notorious state of Florida. After congratulating all and sundry and Moore in particular, he proclaimed: “With the agreement, Joe Camel and the Marlboro Man will move to the same chapter of our nation’s history as asbestos, the Corvair and the Edsel—and you know that’s exactly where they belong.”⁵⁵

Am I the only one who sees the grandstanding here? Asbestos never was a problem until the Environmental Protection Agency started stirring it up in buildings with its ill-advised and eventually discontinued removal program. The Corvair was the hapless victim of scaremongering by a “consumer crusader.” The Edsel was another fine car that simply happened to be the wrong product introduced at the wrong time. It was not the saviors of society who removed it from the scene (it was never charged with any safety deficiencies) but the millions of individual car buyers making their own individual decisions.

Despite the self-congratulation and self-satisfaction of the attorneys general, however, not everyone in the antismoking ranks was pleased with the terms of the settlement. In the public health establishment, only the American Medical Association endorsed it (officially, that is; many of its members demurred). The heart, lung and cancer societies said it was “too easy” on the tobacco industry and a “sweet-heart deal” for the merchants of death. “This settlement would grant legitimacy to an industry and its behavior we all find so reprehensible,” said John R. Garrison, CEO of the American Lung Association.⁵⁶

Among those sharing such opinions were, of course, the two mad doctors, Koop and Kessler, who issued their own “blueprint” for a smoke-free society under the auspices of a panel they formed called “The Advisory Committee on Tobacco Policy and Public Health.” The committee’s members included some two dozen representatives from various medical specialty associations and antismoking groups.

Their report⁵⁷ is a long and repetitious document that takes up 59 pages in my word processor and whose most frequently used phrases are “should be banned” and “should be prohibited.” Most of the actions against the tobacco industry recommended by the committee are—what else?—to be “funded by the tobacco industry.”

A clue as to what these people eventually have in mind for cigarettes are their recommendations for “No limitations or special exceptions on FDA authority to regulate nicotine, other constituents and ingredients” and “Consideration of generic packaging of all cigarettes.” The second one presumably means plain brown wrappers with just the word “Cigarettes” on them, surrounded by warning messages. Whether the manufacturer would be allowed to put his name somewhere, the report doesn’t say.

Where the Koop-Kessler committee talks about a “global” settlement, it *means* global. For example, in case the cigarette companies think they are going to make up their domestic losses by expanding their operations in foreign countries, and in case those supposedly sovereign foreign countries don’t know enough to do the right thing:

- “The U.S. should use the broad range of its international activities and influence to actively promote tobacco control, including the adoption of U.S. domestic tobacco control standards as at least minimum global standards.”

- “The U.S. must insist that public health concerns overrule trade concerns in all trade negotiations and related proceedings.”

- “The U.S. should allocate substantial resources to fund effective international government and non-government institutions engaging in tobacco control activities.”

- “Both the executive and legislative branches of the Federal government can do much, within reason [*sic*], to bring about worldwide adoption of tobacco manufacturing and marketing standards at least as comprehensive and stringent as those enforced within the United States.”

What I found most revealing about this long document, however, was the committee’s concern over what might happen once the anti-smoking movement achieved all its goals.

“It is, of course, uncertain that current levels of media attention on tobacco and tobacco company behavior will continue indefinitely . . .” they wrote. “[A]t some point the media may run out of newsworthy revelations [emphasis added] . . . And at some point, other issues and stories will

gain attention and dominate the news.” This will happen for two reasons, they said:

“1. Passage of such legislation [writing the settlement into law] will convey to most Americans, including journalists, opinion leaders, and policymakers, the impression that the tobacco problem in this country has been ‘solved.’ Not only that, but the tobacco industry will be seen as a willing partner to the solution. This will mean that tobacco, and the past culpability of the tobacco industry, is no longer ‘news’ . . .

“2. Passage of such legislation will deflate the tobacco control movement, enervate tobacco control advocates, and shrink funding for tobacco control advocacy. This is true, even though, given the 46 million smokers remaining, tobacco use will remain our number one public health threat for many years, providing a strong rationale for funding tobacco control efforts.”

Two paragraphs later:

“Unless the settlement legislation provides for adequate funding to sustain the nation’s tobacco control infrastructure, the vital grass roots organizations will be parched for basic resources, and we will have rendered the national tobacco control movement an emaciated watchdog, inadequate to keep pressure on regulators to regulate vigorously, politicians to focus on public health rather than campaign money, and the tobacco lobby from renewing its dirty work.”

In other words, if Koop and Kessler and their accomplices could help it, there would *never ever* be an end to the antismoking crusade, not as long as one smoker *ever* remained alive. And when the tobacco industry had been bled as much as it could be bled, where would “adequate funding” come from? From you, dear nonsmoker, who by that time will also be paying for the next lifestyle crusade that will be aimed at your dangerous, self-destructive dietary choices.

AT THE BEGINNING of the chapter I said that one of the difficulties I labored under in writing this book was that new developments in the antismoking crusade constantly forced me to go back and add to or revise what I’d already written. Even as I attempted to finish this chapter, and the book, came the industry’s announcement that it was withdrawing its support for the “global” settlement because, it said, Congress had gone beyond the original agreement and was trying to punish the companies to the point of bankrupting them.

Had the industry at long last developed some backbone, or was it a tactic to get Congress to soften the terms of the McCain plan? Although there was little chance of the agreement with the state AGs going through in its original form—Congress couldn't back down that far after having raised the ante to the stratosphere—a few concessions to the companies, especially restoring their immunity from class-action suits, might bring them around again.

The immediate response from President Clinton was that he was not trying to put the cigarette companies out of business, just out of the business of selling to children. (It never hurts to repeat a Big Lie.)

“They can be part of it or they can fight it,” he said. “I think they ought to rethink their position because we're going to get this done one way or the other.”⁵⁸

“We” included the Republicans in Congress as well as the Democrats. As Speaker of the House Newt Gingrich had vowed earlier, “I'm not going to let the president get to the left of me on this.”

Congress certainly would have liked to punish the industry, if only because it would be politically popular. But just as certainly it didn't want to kill it outright and deprive itself of all that tax money. Even if it did want to destroy the industry, for all its power Congress still has to operate under the Constitution. Even Congress could not force an agreement down a legal industry's throat—one that would not least of all abrogate its right of commercial free speech (limited though that right is compared to an individual's under the First Amendment)—without that industry's consent. Were it to try, the industry would immediately appeal to the Supreme Court, which I cannot believe would not declare such legislation null and void, despite its being “for the children.”

The professional antismokers wanted the harshest possible settlement that would leave the tobacco industry still alive (barely) because it would give them de facto prohibition of tobacco while enabling them to milk the industry in perpetuity. It was their greed that brought them to an impasse with the tobacco industry over the “global” settlement, and it is their greed that will eventually be their downfall.

The antismokers' zeal has caused them to come a cropper before. It was their demand for warning messages on cigarette packages and in advertising back in the '60s that was to provide the cigarette makers with their winning defense against liability suits brought by private individuals in subsequent decades.

But then came another development, forcing another last-minute revision of this chapter. This was the “miniglobal” settlement between the industry and the remaining 46 states not already bought off, to the tune of \$206 billion.

Gee, what a deal—only \$206 billion instead of \$368.5 billion! I’m so glad those tobacco guys are on my side.

This latest and, one presumes, final settlement included most of the provisions in the old “global” settlement by which the industry agreed to cut its own throat: severe limits on its right to advertise, funding of various antismoking programs, allowing individuals to continue to sue it, agreeing to let the FDA regulate nicotine, and the like.

Coming up with that “only” \$206 billion will still require steep increases in the price of cigarettes which, combined with piggyback increases added by the cigarette makers and jobbers to enhance their bottom lines, will probably persuade more people to quit smoking than the surgeon general’s report did in 1964. And then where will the states get their eagerly awaited windfalls from?

Even while the “global” settlement was still up in the air, cigarette prices started going up sharply—more sharply than even McCain’s \$506-billion scheme would have required. For example, in the spring of 1998 I bought a couple cartons of Doral for \$7.49 at a tobacco discount store in North Carolina, off I-85. When I stopped there again in August, the price was nearly doubled to \$14.79. I didn’t buy any, but instead chose a still reasonably priced but less desirable generic brand. No doubt it too has doubled in price since then.

Will greed also be the tobacco industry’s downfall?

WHY HAVE THE antismokers never been honest about it and demanded the outright prohibition of tobacco? It’s not because of the social lessons of alcohol prohibition, America’s most famous insane crusade, but because it would be difficult to get money out of an industry that was declared illegal. No government has ever been able to “unaddict” itself from its dependence on tobacco taxes, and tobacco bootleggers wouldn’t pay taxes. (I’m sure there are figures somewhere showing how much revenue the states and the federal government lost because of Prohibition, as well as how much it cost them to enforce it.)

Three decades of antismoking efforts have hammered the number of smokers in this country down to a resistant, hard-core percentage of

about 25 percent of the population. To force it down much further will take more and more extreme measures. Still, it's hard to believe that Americans would ever be so foolish as to try another "Noble Experiment," this time with tobacco. However, one law professor and specialist on the history of marijuana prohibition predicts we will.

"Why? Because we love this idea of prohibition. We really do. We love it in this country," law professor Charles Whitebread told a group of California judges a few years ago.

He made another prediction: "If we get together here in the year 2005, I will bet you that it is as likely as not that the possession of marijuana may not be criminal in this state. But the manufacture, sale, and possession of tobacco will be."

Why? Because the use of tobacco is increasingly becoming confined to the lower classes of society while marijuana is the drug of choice of the young "elites" who will be the nation's movers and shakers in the coming years, he said. "And cigarettes are no longer going to be three dollars a pack, they are going to be three dollars apiece. And who's going to sell them to you? Who will always sell them to you? The people who will sell you anything—organized crime . . . [W]e will go through the whole darn thing again because I am telling you this country is hooked on the notion of prohibition."⁵⁹

I don't know about marijuana legalization, but California is doing its best to reduce the number of cigarette smokers to the vanishing point. In November, voters there approved, albeit by a razor-thin margin, a 50-cent hike in the cigarette tax, on top of a 25-cent surcharge in place for several years, with the revenue passed on to antismoking groups.

The new tax is supposed to go for some kind of "child development programs" which ostensibly will benefit all the citizens of the state, yet only smokers will be required to pay for them. This was nothing but political bullying by the nonsmoking majority. (And if a significant number of Californians quit smoking because of the tax, again where will the money come from to finance these lovely programs?)

Whitebread's black market scenario is entirely plausible, however, and it won't require tobacco prohibition to make it come true. The exorbitant taxes that some countries have placed on cigarettes already give us a preview of what could happen. (Sources under Notes 60-63 in the following are from a news release by the Libertarian Party posted by FORCES Canada on its Website.)

In Berlin, the capital of Germany, a country where cigarettes cost \$3.60 a pack thanks to a 90-percent government tax, “the smuggling of cigarettes [caused] a surge in gangland-style executions and turf wars [that] made Berlin streets more dangerous than at any time since World War II,” reported *The Washington Times*. “Authorities fear that cigarette trafficking is leading to crime empires dealing in extortion, prostitution, stolen cars, drugs, and weapons.”

“People are being executed in cold blood in their apartments and in broad daylight on the streets, on subway platforms, in front of hundreds of witnesses,” said Detlef Schade, a police detective in Berlin.⁶⁰

“Turf battles between the Vietnamese gangs that control street-level sales have been blamed for the deaths of 40 Vietnamese, 15 in Berlin alone [in 1996],” reported *USA Today*. These killings are “the latest episode in a bloody gang war over Berlin’s lucrative trade in smuggled cigarettes.”

Why the brutal battles? Because a single truck “loaded with 50,000 cartons can net a smuggler \$550,000” in profits, said *USA Today*.⁶¹

In fact, all across Europe, high taxes are resulting in a bonanza for smugglers, reported syndicated columnist Bruce Bartlett. “One-fourth of the world’s cigarettes are now smuggled across national borders to evade taxes and tariffs,” he wrote. “Governments are already losing \$16 billion per year in tax revenues—a figure likely to rise as organized crime becomes a larger player in the business of smuggling smokes. In Italy alone, organized crime is said to make \$500 million per year smuggling cigarettes.”⁶²

Closer to home, says the release, look at what happened in Canada when the government raised tobacco taxes by 146 percent in 1991.

“The result was an invitation to organized crime. Mohawk Indians from tribes along the U.S.-Canada border, biker gangs, and Asian Triads smuggled cigarettes across the border in boats, airplanes, trucks, legitimate courier companies, and snowmobiles. By the end of 1993, nearly one in three cigarettes was contraband.

“Retailers also [became] victims of a crime wave, as it became more lucrative for thieves to skip the cash register and head straight for the cigarettes.”

Even more surprising, despite the steep tax hike, “youth smoking did not decrease and many officials ironically argued that high taxes made it more difficult to control youth smoking,” reported Erin Schiller of the Pacific Research Institute.

By 1994, shaken by the crime explosion and lost tax revenues, Canadian Prime Minister Jean Chretien said the cigarette tax threatened “the very fabric of Canadian society”—and drastically reduced the tax burden, “which essentially eliminated cigarette smuggling in Canada.” Canadian Health Minister Diane Marleau argued the tax cut was needed to “end the smuggling trade and force children to rely on regular stores for their cigarettes”—where purchases could be better controlled.⁶³

Even closer to home, because of the disparities in taxes among the states, “Cigarette smuggling is a growth industry,” says the *Bergen* (New Jersey) *Record*. “Federal officials report a 300 percent increase nationwide since 1992. But it is expected to explode in New Jersey now that the state’s tobacco tax has doubled.” That state is also directly on the route from low-tax southern states to New England and Canada.

Never fear. As a counterpunch to the burgeoning crime wave, the federal Bureau of Alcohol, Tobacco and Firearms has created a specialized unit aimed at thwarting the bootleggers. “We’re gearing up big-time,” said Joseph Green of the ATF’s New York regional office in Manhattan.⁶⁴

Elliot Ness, where are you when your country needs you?

One way we might attack this problem domestically would be for the federal government to require the states to place uniform taxes on cigarettes. Or better yet, to give Washington even greater say in local affairs, replace state taxes with a high federal tax, the revenues from which the federal bureaucrats could parcel out to the states—or withhold it from those that weren’t doing enough to curb smoking. In either case there would no longer be an incentive to smuggle cigarettes from, say, low-tax Virginia into high-tax New Jersey or elsewhere.

But that would still leave the problem of smuggling cigarettes into Canada (or vice versa if Canadian cigarettes became cheaper than American ones, which they might well) or into the U.S. from Mexico. If we couldn’t stop liquor from crossing the border back in the ’20s, if we can’t stop human beings from crossing the border in the ’90s, we wouldn’t be able to stop cigarettes, no matter how big-time we geared up the revenuers.

But we’re sure gonna try, aren’t we? I’m really starting to regret dropping the “insane” from my original subtitle.

THE SECOND PART of the subtitle of this book is “Why It (the anti-

smoking crusade/scam) Will Fail.” That’s as provocative an assertion as my calling the crusade insane. What makes me think it will fail ?

Well, for one thing, efforts to discourage or prevent smoking on a universal scale have always failed. As mentioned at the beginning of this book, the use of tobacco spread rapidly throughout the world after its discovery by Columbus (its rediscovery; the Indians had always known about it), and even the resort to capital punishment of smokers by some tyrants availed not against it.

For another thing, all crusades eventually run their course. The Crusades (with a capital “C”) to capture the Holy Land for Christendom were pursued by Europe and occupied its energies throughout three centuries, but they are now ancient history. I think doctors Koop and Kessler have reason to worry: Americans will eventually weary of the crusade to reach the Holy Land of a smoke-free America and go on to something else.

But I was only joking, or hope I was joking, when I said that the next crusade would be against our eating habits. That would hit too close to home to too many of us. Still, back when half the population smoked, I never dreamed in my worst nightmares that there would be a crusade, in every sense in which that word is understood, against smoking. What the next crusade will be, I wouldn’t attempt to predict. But there will be one, and it may well be a crusade to save us from our diets. If, as Prof. Whitebread said, we are hooked on the notion of prohibition, we are just as hooked on *causes*—which is only another word for crusades.

The great appeal of causes are the utopian visions of the future they always project. For example:

The effects on our physical health are immediate. The incidence of cancer and heart attack, the nation’s biggest killers, drops precipitously . . . So do many other diseases . . . So do the neurological disorders and birth defects . . .⁶⁵

The writer is not speaking about a smoke-free America but a meat-free America, which would realize these good things, and more, if only we stopped or significantly reduced our consumption of animal proteins and fats.

The grain we save could feed five times the U.S. population and we could alleviate malnutrition and hunger on a worldwide scale, the writer goes on. The great forests of the world we had been decimating

for grazing purposes would begin to grow again. The water crisis would ease as we discovered that ranching and farm factories had been the major drain on our water sources. The change in diet would free over 90 percent of the fossil fuel energy previously used to produce food and our reliance on oil imports would decline, as would the rationale for building nuclear power plants. As expenditures for food and medical care dropped, personal savings would rise. And so on toward utopia.

This may sound like fantasy today, but a growing number of people are turning to vegetarianism, partially or completely. What if they eventually teamed up with animal-rights and environmental groups, which also seem to be growing, both in numbers and in militancy? Numbers plus dedication equals power. And when the time comes to set a crusade for a meat-free America into motion, we can be sure that “studies” will be forthcoming to provide the scientific basis for it. There have already been at least two I’ve heard of, one in Britain and one in Germany.

“Smoking kills 111,000 people every year (in the U.K),” says vegetarian author Peter Cox, citing these studies. “But that falls into second place behind the 134,000 annual deaths which the evidence suggests could be prevented by a vegetarian diet.”⁶⁶

True, the early campaigns against smoking lacked the scientific evidence, valid or invalid, real or trumped-up, that underpins our modern crusade and which has persuaded more people to abandon the habit than any amount of preaching against it ever did or could—although I believe that a moralistic prejudice against tobacco remains the real motive force behind antismoking activism, as it was four centuries ago. Science has merely given antismokers a weapon they never had before.

It is also true that smoking did not become hugely prevalent until after the introduction of the handy cigarette in the 19th century, which ushered in what I call “the golden age of smoking” (and which I will be forever grateful I grew up in).

Even so, how could millions of people over the centuries have embraced such a “nasty, smelly, dirty, disgusting” habit as the smoking of tobacco—or worse, the chewing of it (which, happily, the introduction of the cigarette relegated to a small minority of tobacco users)? Obviously, the noble weed had something going for it, and still does.

There are, first of all, the small peripheral enjoyments attendant to smoking a cigarette or cigar or pipe or preparing to—the sweet aroma of a fresh cigarette or cigar, or the tobacco in a tin or pouch; the tactile

pleasure of the ritual of extracting cigarette or cigar from a pack or humidor and handling them, or the scooping of tobacco from a pouch and tamping it down in a pipe; the application of a flame to the tobacco; the taste and all the other organoleptic (sensory) sensations; the visual pleasure of watching the smoke that curls up from the end of a cigarette or cigar or the smoke one blows into the air from cigarette, cigar or pipe.

But aside from that, it is most of all, with cigarettes, the inhalation of the smoke and the feel of it in the throat and lungs and the mild kick of the nicotine that is the reason people smoke and why most of them smoke cigarettes. It is, when all is said and done, cigarettes and the nicotine-induced pleasure they convey that the antismoking crusade is about (although as I predicted in Chapter 1 that they would, the antismokers are now directing their attention to cigars as well). The crusade is not just against the possible and much-exaggerated health consequences of smoking cigarettes. It is against smoking. Period.

The satisfactions attendant to smoking are always there in those little white cylinders any time you want them, so easy and convenient. All you have to do is light one and smoke it. You can smoke when you're relaxing, to add to the relaxation. You can smoke when you're nervous, to allay the nervousness. It stimulates or calms. Whatever your need at the moment, smoking and the nicotine derived therefrom fills it. No other drug can do that, and unlike most other psychoactive drugs, the body does not demand ever increasing amounts of nicotine.

You can smoke while performing complicated tasks (not so with marijuana or other "recreational drugs"), or while doing nothing at all. You can smoke when you're thinking hard or when your mind is idly wandering. Smoking helps you do both. Nothing can do so many things as smoking to enhance the feeling of simply being alert and alive, yet have no psychological consequences other than the wish to smoke again, which of course is why cigarettes are "addictive," just like anything can be that gives pleasure.

Well, maybe nothing except maybe sex, which also has a number of things going for it. But that's another argument in favor of smoking. Like sex, smoking is a pleasurable activity, and anything that provides pleasure the puritan mind fears and abhors.

As with anything that gives pleasure, of course, a lot of people tend to overdo. (But if that is a problem, it is theirs, not society's.)

Again this is especially true of cigarettes because they are so convenient to use, unlike the necessity of cleaning out the bowl of a pipe and tamping in fresh tobacco or unwrapping a cigar and cutting off its tip. Typing away at the word processor, I've often automatically lit a cigarette, only to realize that one I had lit a minute before was still smoldering in the ashtray half-smoked.

For good or ill, human beings are drug-using creatures and cigarettes *are* a drug-delivery device, no question about it. And what they deliver is the most beneficial and harmless psychoactive drug I know of. Of all the drugs in that class, none is as effective and at the same time more benign than nicotine. Until somebody discovers a better drug, smoking will always be with us—but not just because of the nicotine, otherwise millions would be hooked on nicotine patches or gum, but also because of all those peripheral pleasures I mentioned. In a nutshell, smoking satisfies needs that are inherent in both the human physiology and its psychology.

This is one of two reasons why I say smoking will never be stamped out and the crusade against it will fail. The other, no less important, is that any crusade that depends for its success upon scamming people into believing things that “ain't so” cannot last. You can't fool all the people all the time, forever.

IN THE MEANTIME, however, the antismoking crusade has not yet run its course. When or how it will end, I don't know, but it will end. Maybe it will just kind of fade away, like the original Crusades, with the zealous antis trying to re-energize the crusade by continuing to berate and scare smokers but with ever-diminishing effectiveness as the rest of the population, finally realizing that there really are more important things in the world, turns an increasingly deaf ear.

Smoking will never be considered entirely harmless, but maybe the medical profession will eventually begin to recognize that the evidence against it simply proves too much. To quote again Prof. Finch from Chapter 2, if “smoking kills,” it does so relatively infrequently, as relatively infrequently as all the other dangers and perils, manmade or natural, behavioral or environmental, that we voluntarily assume or involuntarily encounter in daily life.

Or maybe a new, less self-righteous and less easily frightened generation will bring the crusade to an end sometime in the next century.

In their book *Generations*, William Strauss and Neil Howe examined 18 generations of Americans, from the first colonists to the children of the Baby Boomers, and make a convincing case that there is a recurring cycle of four basic types of “peer personalities” identifying each generation—the Idealistic, the Reactive, the Civic and the Adaptive—that repeat themselves within a grand cycle roughly every 81 years.

As the century ends and as the Civic “G.I.” generation dies off, their children, the Idealistic “Baby Boom” generation, are, for better or worse, becoming socially dominant—in terms of political power, not numbers—and will reach their lifetime peak share of national influence around 2005, the authors say (the same year, curiously, Whitebread predicts marijuana could be legalized.) The smaller postwar generation in the middle, the Reactive “Silent” generation to which I belong, has never amounted to much.

Although the Boomers did not initiate the antismoking crusade—the oldest of them were just entering adulthood in 1964—it is they who have caught the torch and are carrying it forward.

Strauss and Howe published their book in 1991, but already, they wrote, “A growing chorus of social critics is noticing a Boom-led . . . ‘New Puritanism’ in circa-1990 America” that is “beginning to police ‘politically correct’ behavior.” They quoted *New York Times* writer Molly O’Neill’s observation that smoking or regular drinking were becoming the “new Scarlet Letters” among the ex-flower children, and one Boomer activist’s comment that “There is no such thing as being too rude to a smoker.”⁶⁷

As the 90s progressed, they predicted, “Boomer-retooled justice will punish aberrant behavior with growing severity and overtones of moral retribution; Boomer-retooled institutions will strictly regulate conduct (from drug use to parenting) formerly regarded as matters of personal choice [parentheses in original] . . . Looking down the age ladder, elder Silent [that’s me!—D.O.] will express dismay at growing signs of tribalism, nativism, social intolerance, and just plain meanness.”⁶⁸ And as the 20th century gives way to the 21st, “Boomers will become increasingly intolerant, uncompromising, snooty, and exacting of others. At the same time they will become more dutiful, principled, and demanding of themselves.”⁶⁹

But an Idealistic generation is always followed by a Reactive one. These are the children of the Boomers, popularly called the “X” gen-

eration but whom Strauss and Howe label “13ers” because theirs is the 13th generation since the United States became a nation. The 13ers actually outnumber the Boomers: 79 million to 69 million in 1991.

Among the 13ers’ characteristics:

Parental divorce has struck 13ers harder than any other American generation . . . No other American generation has grown up in families of such complexity . . . No other child generation has witnessed such a dramatic increase in domestic dissatisfaction (and surge to the workplace) on the part of mothers . . . 13er teenagers face a much lower risk of dying from disease than did Silent teenagers 40 years ago, but this advantage has been almost entirely offset by a much higher risk of dying from accidents, murder and suicide . . . As teenagers, 13ers are committing suicide more frequently than any generation since the “Lost” generation of the 1920s . . . Already 13ers have become the most heavily incarcerated generation in American history.

If that is not dismal enough, “during the 13er childhood, America has substantially shifted the federal fiscal burden from the old to the young. Since 1972, older generations have deferred paying for some \$2 trillion in current consumption through additional U.S. Treasury debt—a policy five times more expensive (in lifetime interest costs) for the average 15-year-old than for the average 65-year-old.”⁷⁰ [Parentheses in original.]

Confronted with these facts of life, 13ers have built a powerful survival instinct, wrapped around an ethos of personal determination, the authors say. “In the early 21st century, 13ers will make their most enduring mark on the national culture . . . Controlling the Boom [generation] may indeed emerge as the 13ers’ most fateful lifestyle mission. This will be the generation best able to deflect any Boomer drift toward apocalyptic visions. In an age of rising social intolerance, the very incorrigibility of midlife 13ers will at times be a national blessing.”⁷¹

Strauss and Howe make no prediction about the antismoking crusade, but I choose to read in the above that it will be the Americans who are today’s teenagers or twenty-somethings who will eventually tell the aging moralistic Boomers to “stuff it.” I may not live to see this, but I am going to die in the confident hope of eternal life—eternal life for the venerable habit of smoking, I mean.

Not that I entertain the delusion that smoking will ever return to the “golden age,” when people smoked just about anywhere and anywhen

they pleased and it was not a serious problem for anyone. The lies about secondhand smoke have so powerfully captured the minds of so many that even their exposure as the lies they are may not be enough to overcome an accompanying conviction the crusade has also instilled in nonsmokers: that tobacco smoke stinks unbearably. I can't think of any habit or behavior that has ever returned to favor once it was deemed socially unacceptable. The most I can foresee is a truce between smokers and nonsmokers that provides for and permits the latter to smoke in peace in areas separated from those who find it so offensive, although those havens could gradually increase in number and acceptance.

Americans have done a number of things in this century out of unreasoning fear and prejudice that they later repented, from the silly—renaming German cabbage “Liberty cabbage” in World War I—to the shameful—interning thousands of loyal citizens of Japanese ancestry in concentration camps in World War II, or conducting witch hunts for Communists sympathizers after both wars and supporting tin-pot dictators in the name of anti-Communism. They may not exactly “repent” the antismoking crusade, but it too will become one of those episodes in history people wonder about and say, “How did they let such foolishness go so far?”

SOME FINAL THOUGHTS:

When I began this book, especially when I began writing about the 1964 surgeon general's report in Chapter 1 (I wrote Chapter 9 first because it was the easiest and most fun), I was still rather in awe of that document because of the sheer bulk of the evidence, or what I assumed must be the evidence, against smoking that it contained, as well as of the credentials of its authors.

Even when I finished Chapter 1, after discovering that the best the SG's advisory panel could do was come up with seven weak studies out of some 7,000 in the scientific literature, I still had a measure of respect for it.

But now, having completed this book, having learned how epidemiology and statistics can be used to serve political or social ends, having become acquainted with the motives and tactics of the professional antismokers, looking back on everything that has happened and is continuing to happen in American society because of that report—the ac-

rimony and division it has caused among Americans but especially the corruption of science and the legal system it has fostered in the cause of a “smoke-free America”—I have come to the conclusion that the 1964 Report of the Advisory Committee to the Surgeon General of the U.S. Public Health Service *is one of the most insidiously harmful documents ever foisted upon a gullible public.*

Let me immediately qualify that: not *intentionally* harmful, and not so much a gullible public as a *trusting* one (though there isn’t always much difference between the two).

It is one of the notable and admirable characteristics of American society that its citizens have always had a basic trust in the overall honesty and dedication to the public welfare of those in positions of power and influence and charged with running their governmental and social institutions. That trust has sometimes been abused or betrayed and it will always be a far from perfect Union, but Americans have always retained the bedrock faith that in the long run the democratic ideals upon which this nation was founded will endure and prevail. One of those ideals, the foremost one, is the concept of human freedom, which if it means anything means the right of individuals to make wise or foolish personal decisions.

One of the reasons Americans decided to embark upon their adventure in freedom and self-government more than two centuries ago was listed in the Declaration of Independence:

“He [King George] has erected a Multitude of new Offices, and sent hither Swarms of Officers to harass our People, and eat out their Substance.”

To bring Pogo up to date, in late 20th-century America we have met King George again, and he is us.

For those who may feel that my statement about the surgeon general’s report is, at best, outrageous or plain stupid or, at worst, pernicious and insidiously harmful itself—if not indeed blasphemous—I am entirely sure that those who wrote it sincerely believed what they wrote and had the best interests of their countrymen at heart. That very sincerity in fact made their report all the more dangerous and socially destructive. They did not foresee that it would be embraced by swarms of antismokers, in and out of government, who would erect a multitude of new laws and regulations to harass a still sizeable minority of the population and attempt to eat out the substance of a still legal

industry they don't have the courage of their own convictions either to outlaw or to face in a fair fight.

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The surgeon general's report was an alert to the public about a personal behavior, cigarette smoking, that its authors believed posed significant health dangers. Upon and around that report militant antismokers contrived a dishonest and immoral crusade.

It will fail.

Notes

1. In "Spotted Owls," a review of *In A Dark Wood: The Fight Over Forests and the Rising Tyranny of Ecology*." *Reason*, June 1996, p. 59. Nelson is a professor in the School of Public Affairs of the University of Maryland and senior fellow of the Competitive Enterprise Institute.

2. *The Atlanta Journal-Constitution*, May 19, 1994, p. A6.

3. Quoted in Gian Turci, "The World Health Organization Attack On Smokers." At www.forces-cdn.com.

4. Timothy Lamer, "Addicted to Tobacco Stories: A One-Sided Portrayal of a Risky Product." Media Research Center Report No. 8, October 7, 1996. At www.townhall.com/mrs/specialreports/tobacco.htm#cont.

5. Ernest Dichter, "Why Do We Smoke Cigarettes?" *The Psychology of Everyday Living* (New York: Barnes & Noble, Inc., 1947), p. 97.

6. "Today there are fifty thousand [specialized science journals] worldwide." — Martin Gardner, "The Internet: A World Brain?" *Skeptical Inquirer*, January/February 1999, p. 12.

7. Robert N. Proctor, "Anti-tobacco campaign of the Nazis: a little known aspect of public health in Germany, 1933-45." *British Medical Journal* No 7070 Volume 313. From <http://194.216.217//archive/7070nd2.htm>.

8. "Freedom's Smoke." *The New Republic*. November 4, 1996, p. 27.

9. Anna Quindlin, "As tobacco firms fib, the FDA should alter the cigarette." *The New York Times*, May 2, 1994. From www.interaccess.com/lumpen/edmc/anna.html#drb.

10. "Tobacco Industry Investigation." FBI Washington Field Office. At www.fbi.gov/majorcases/tobacco/wfo.htm.

11. David Johnston, "Federal Thrust Against Tobacco Gets New Vigor." *The New York Times*, March 18, 1996, p. A.1. Courtesy of the Advocacy Institute.

12. "Rewards for Tobacco Informants." *USA Today*. At www.usatoday.com/life/cyber-tech/ct082.htm.

13. David E. Rosenbaum, "Objecting to Oath, 2 Smoking Foes Cancel Testimony." *The New York Times*, March 5, 1998. From <http://search.nytimes.com/search/daily/bin>.

14. "A Tale of Two Citizens." *The Resistance*, March 1998, p. 3.

15. Robert A. Levy, "Tobacco Medicaid Litigation: Snuffing Out the Rule of Law." Cato Policy Analysis No. 275, June 29, 1997. At www.cato.org/pubs/pas/pa-275.html.

16. Robert A. Levy, "Forget the law; go for the money." *The Des Moines Register*, September 16, 1997. Infoseek News Center at www.infoseek.com/.

17. Editorial, "Good joins greed." *Sarasota Herald-Tribune*, Venice/AM Edition, March 18, 1996, p. A12.

18. Levy, "Tobacco Medicaid Litigation." Also, "Is Florida Inconsistent on Nicotine Addiction?" Action on Smoking and Health, at www.ash.org/june97/7-02-97-2.html.

19. Bob Dart, "Smoke, ire: Some say VA should cover tobacco-linked ills." *The Atlanta Journal-Constitution*, April 4, 1998, p. A7.

20. "Hillary's brother plays tobacco role." *Sarasota Herald-Tribune*, Venice/AM Edition, April 19, 1997, p. 1A.

21. Jim Drinkard, "Blitzed by suits, business turning attack on lawyers." *The Atlanta Journal-Constitution*, December 12, 1997, p. A12. From the Associated Press.

22. "Florida's Medicaid Third-Party Liability Act Should Be Repealed Immediately, Says Associated Industries of Florida." PRNewswire. August 25, 1997. At www.forces-cdn.com/counterp/florida.htm.

23. Jonathan Weisman, "Lobbyists attack DUI bill." *The Atlanta Journal-Constitution*, March 30, 1998, p. A1. From *The Baltimore Sun*.

24. "Smoke-free campaign: Florida has money to burn on program." *The Florida Times-Union*, January 6, 1998. From www.infoseek.com/Content.htm.

25. Isabelle de Pommereau, "Two States Blow Smoke Over How to Spend Tobacco Booty." *The Christian Science Monitor*, September 25, 1997. At www.csmonitor.com/todays_paper/graphical/today/us/us3.html.

26. Lloyd Dunkelberger, "Battle to end child abuse continues." *The Sarasota Herald-Tribune*, Venice/AM Edition, March 22, 1998, p. 1A.

27. Stephanie Arero, "Florida to penalize underage smokers." *The Atlanta Journal-Constitution*, September 28, 1997, p. C6. From the *Palm Beach Post*.

28. "Smoking penalties." *The Atlanta Journal-Constitution*, May 14, 1997, p. A10.

29. "Latest Revealing Tobacco Document Proposes Root Beer Smelling Cigarette." At www.ash.org/august97/8-15-97-3.html.

30. David Shaffer, "Judge Disallows Argument by Tobacco Industry." *The Pioneer Press*, November 20, 1997. At www.pioneerplanet.com/mfc_docs/009556.htm.

31. Cited in Carol Thompson, "Talking Back to the Media." At www.forces-cdn.org.

32. Stanton A. Glantz, PhD, Brion J. Fox, JD, James M. Lightwood, PhD, attributing the figure to the Centers for Disease Control and Prevention and the Health Care Financing Administration in "Tobacco Litigation Issues for Public Health and Public Policy." *Journal of the American Medical Association*, March 5, 1997.

33. Charley Reese, "No Rational or Legal Basis for States to Sue Tobacco Companies." *Orlando Sentinel*, September 5, 1996, p. A10. Cited in Levy, "Tobacco Medicaid Litigation."

34. "Lawyers' tobacco cut: \$8.1 billion." *The Atlanta Journal-Constitution*, December 12, 1998, p. A3. From *The New York Times*.

35. "Health Care Costs of Smoking." Reuters, October 8, 1997, citing *The New England Journal of Medicine* (1997;337(15):1052-1057. From www.yahoo.com/headlines/971008/health/stories/health1.html.

36. "U.S. may face Alzheimer's 'time bomb.'" *The Sarasota Herald-Tribune*, Venice/AM Edition, March 25, 1998, p. 11A. From the Associated Press.

37. Bruce Herschensohn, National Smokers Alliance Advisory Board member, in *The Resistance*, November/December 1998, p. 4.

38. Quoted by Tim White, moderator of a program on secondhand smoke broadcast on National Public Radio, July 11, 1991.

39. "Labor union health-care funds file their own smoking lawsuits." *The Miami Herald*, September 24, 1997. At www.herald.com/florida/digdocs/036843.htm.

40. "The Proposed Tobacco Settlement: Issues From A Federal Perspective." Congressional Budget Office (CBO), April 1998, p.43. At www.cbo.gov.

41. Glantz et al., "Tobacco Litigation Issues for Public Health and Public Policy."

42. CBO report, p. 47.

43. Harry Berkowitz, "New Marketing Scheme for Cigarettes Begins." *Newsday*. From <http://library.newsday.com/search.cig?id>.

44. "Tobacco: Ad Bans Abroad Haven't Snuffed Out Smoking." *The Wall Street Journal*, June 12, 1997. At www.ash.org.

45. M.A.J. McKenna, "Alarming rise in teen smoking defies national effort, CDC says." *The Atlanta Journal-Constitution*, April 3, 1998, p. A1.

46. "CDC Spins Teen Smoking Rates." At www.junkscience.com/news/cdcteen.htm.

47. Quoted in "Teens telling lies? What a smoke screen." *USA Today*. At www.usatoday.com:80/elect/ew/ew171htm.

48. Editorial. "Joe Camel the last straw in marketing." *The Atlanta Journal-Constitution*, April 6, 1998, p. A8.

49. Jeff Jacoby, "Teen smoking campaign flops." *The Boston Globe*, April 7, 1998. At www.boston.com/dailyglobe/globehtml/097/Teen_smoking_campaign_flops.htm.

50. Bette Harrison, "Growing up in smoke." *The Atlanta Journal-Constitution*, April 3, 1998, p. F1.

51. "Teen Spending Power." *The Resistance*, March, 1998, p. 7.

52. Bob Kemper and Karen Cullotta Krause, "Price alone won't keep cigarette smoke out of their eyes, teens insist." *The Chicago Tribune*. Web-posted September 18, 1997 at www.chicago.tribune.com/print/news/9709/18/news/97091902-44.html.

53. Robert J. Samuelson, "Do Smokers Have Rights?" *The Washington Post*, September 24, 1997, p. A21.

54. Ashley Grant, "Jurors reject tobacco liability in nurse's death." *The Atlanta Journal-Constitution*, March 20, 1998, p. C7. From the Associated Press.

55. "Remarks made by key attorneys general on the tobacco deal at a Washington news conference." From www.forces.com.

56. "Lung Association Opposes Any Settlement." At www.ash.org/07.03.3.html.

57. "Final Report of the Advisory Committee on Tobacco Policy and Public Health." July 1997. C. Everett Koop, M.D., ScD. and David A. Kessler, M.D., co-chairs. Published at www.ash.org/.

58. Steve Lash, "Deal is off, cigarette makers say." *The Atlanta Journal-Constitution*, April 9, 1998, p. A1. From *The Houston Chronicle*.

59. Charles Whitebread, "The Sociology of Prohibition or The History of the Non-Medical Use of Drugs in the United States." A Speech to the

California Judges Association 1995 annual conference. From www.pipes.org/Articles/history.html.

60. Erik Kirschbaum, "Vietnamese crime syndicates smoke with German smuggling." *The Washington Times*, February 3, 1996.

61. Paul Geitner, "Smuggling hard to snuff out." *USA Today*, June 13, 1996.

62. Ed Carson, "Tobacco Road." *Reason*, February 1995.

63. Erin Schiller, "Smoking Up North." *The Washington Times*, February 11, 1998.

64. Jerry DeMarco, "Tobacco gains as bootleg choice; State tax hike spurs special ATF unit." *The Bergen Record*, March 23, 1998, p. A01. At www.bergen.com/news/cig199803234.htm.

65. Joanna Macy, in the Foreword to *Diet for A New America* by John Robbins (Walpole, N.H: Stillpoint Publishing, 1987), p. viii.

66. "Meat Kills More Than Smoking." Press release from the Vegan Discussion Group. Posted on the Internet September 14, 1994.

67. William Strauss and Neil Howe, *Generations: The History of America's Future, 1584 to 2069* (New York: William Morrow, 1991), p. 313.

68. *Ibid*, pp. 380, 381.

69. *Ibid*, p. 396.

70. *Ibid*, pp. 324-327.

71. *Ibid*, p. 415, 416.