

economic greatness, for the job of restoring American's competitive edge truly begins at home. I have offered a program to build the most well-educated and well-trained workforce in the world, and put our national budget to work on programs that make America richer, not more indebted. The private sector must maintain the initiative, but government has an indispensable role.

I have mentioned a civilian advanced research projects agency to work closely with the private sector, so that its priorities are not set by the government alone. We have hundreds of national laboratories with extraordinary talent that have put the United States at the forefront of military technology. We need to reorient their mission, working with private companies and universities, to advance technologies that will make our lives better and create tomorrow's jobs.

Now we must understand as never before that our national security is largely economic. The success of our engagement in the world depends not on the headlines it brings to Washington politicians, but on the benefits it brings to working middle-class Americans. Our "foreign" policies are not really foreign at all. We can no longer define national security in the narrow military terms of the Cold War, or afford to have foreign and domestic policies isolated from each other. We must devise and pursue national policies that serve the needs of our people by uniting us at home and restoring America's greatness in the world. To lead abroad, a President of the United States must first lead at home.

Half a century ago, this country emerged victorious from an all-consuming war into a new era of great challenge. It was a time of change, a time for new thinking, a time for working together to build a free and prosperous world, a time for putting that war behind us. In the aftermath of that war, President Harry Truman and his successors forged a bipartisan

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consensus in America that brought security and prosperity for 20 years. That is the spirit we need as we move into this new era. As President Lincoln told Congress in another time of new challenge, in 1862:

The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves and then we shall save our country. Fellow citizens, we cannot escape history.

Governor Clinton is currently seeking the Democratic Nomination in the 1992 Presidential campaign.

Second-Hand Smoke and Public Policy: It's Not Just Hot Air

By Eli Schulman

As long ago as 1890, the Supreme Court of Louisiana upheld an ordinance prohibiting smoking on streetcars, recognizing the "material annoyance, the inconvenience, and the discomfort" that smoking causes the majority of passengers, and further recognized that, "there is not only discomfort, but possible danger to health from the contaminated air." [*State v. Hedenhain*, 7 SD 621 (1890)] Over 100 years later, an ever-growing body of scientific evidence continues to document the severity of health hazards posed by second-hand smoke, known in scientific circles as environmental tobacco smoke (ETS), inhaled by non-smokers, "involuntary smokers." While the scientific community has evaluated ETS, public policy has, to this point, lagged hopelessly behind. Public policy must accept the challenge of environmental tobacco smoke head-on, and work toward a ban on smoking in enclosed public areas. To best understand how public policy should evaluate ETS, it will be helpful to consider the dangers posed by environmental tobacco smoke, the paths through which public policy might seek to respond to these dangers, and the obstacles which policy efforts might encounter in confronting the problem.

The Dangers of Environmental Tobacco Smoke

A burning cigarette emits over 4,000 chemicals, including 43 known carcinogens. The impact of these toxins is severe; carbon monoxide and other gases interfere with the blood's ability to carry oxygen. Tar particles can accumulate in the lungs and may cause lung cancer. Although smokers face the greatest risk of disease, non-smokers inhale the same harmful substances in lesser quantities through environmental smoke. Sidestream smoke emitted from the end of a burning cigarette and the exhalations of a smoker constitute environmental tobacco smoke. Engineers confess that ventilation does not adequately remove tobacco smoke from indoor environments. In fact, many buildings' ventilation systems recirculate air in an effort to conserve energy, resulting in the further spread of carcinogens throughout the building.

Many non-smokers experience the effects of these carcinogens immediately. The World Health Organization, which monitors global health concerns and publishes reports on health issues like smoking, has identified many harmful effects of ETS. These respiratory symptoms include chronic coughing, reduced levels of lung functions, and the aggravation of asthma, as well as the simple irritation of the eyes, the nose, and the throat

A 1986 Surgeon General's report remains the



preeminent study on the effects of environmental tobacco smoke. Its findings lead to three major conclusions:

- "[I]nvoluntary smoking is a cause of disease, including lung cancer, in healthy non-smokers."
- The children of parents who smoke exhibit greater respiratory problems than the children of non-smokers do.
- Separating smokers and non-smokers within the same air space does not eliminate non-smokers' exposure to ETS.

Since 1986, an increasing number of studies have traced the deleterious effects of second-hand smoke, supporting the Surgeon General's conclusions. A study sponsored by the Environmental Protection Agency (EPA) estimates that ETS is responsible for the deaths of approximately 53,000 Americans annually, making passive cigarette smoke the third leading preventable cause of death in the United States.

Both private and public sectors have begun to take notice of the threat posed by ETS. Forty-two states have restricted tobacco smoke pollution in public places, and the US government has restricted it in all government buildings. Many private domains also restrict smoking, and over one third of American businesses are completely smoke-free. Public transportation is becoming increasingly regulated: the Interstate Commerce Commission prohibits smoking on all regularly scheduled buses, and Congress has outlawed smoking on all domestic flights under six hours. Starting 1 January 1992, all accredited US hospitals became smoke-free. These actions, however, while positive steps in the right direction,

are neither widespread enough nor sufficiently restrictive. They fall considerably short of a comprehensive public policy banning smoking from all indoor public spaces.

The Response of Public Policy

Public policy must respond to ETS in an equitable, but comprehensive manner, utilizing regulatory, legislative, and judicial instruments of change. The regulatory sphere offers realistic prospects for future improvements. Under its congressional charter, the Occupational Safety and Health Administration (OSHA) has legal authority to prohibit smoking in the workplace. This past summer, the National Institute for Occupational Safety and Health, an advisory body to OSHA, submitted a report urging OSHA to classify ETS as a "potential occupational carcinogen" that should be eliminated from all workplaces.

The workplace is perhaps the best target for progressive action. The danger of sustained exposure to ETS in enclosed areas is, as demonstrated earlier, well-documented. The regulatory mechanism with which this action could be achieved (OSHA) is already in place and has been advised to take action. In addition, the passage of a regulatory measure stands to be executed without as much of the long-winded political entanglement that a legislative action would involve.

Once OSHA establishes regulations, it will be possible to build on its momentum with greater local, state, and federal legislation aimed at eventually banning smoking in all indoor public places. A comprehensive national legislative package would, of course, be ideal, but in light of political realities, such as the significant strength of the tobacco lobby, it is not likely. To date, the more noteworthy regulations aimed at protecting the public from the dangers of tobacco smoke have come on the state and local levels.

One example of the progression of smoking control legislation in the country is the Clean Indoor Air Acts of New York City and New York State. The acts prohibit smoking in waiting areas, hallways, conference rooms, restrooms, and other common areas of all workplaces. Smoking is permitted in single occupancy offices with the doors shut, or in specially designated enclosed rooms. Employee eating areas and lounges must be at least 50 percent smoke-free. These acts also restrict smoking in a number of public areas, such as business establishments, retail stores, and indoor theaters, arenas, and stadiums. Restaurants must designate at least 50 percent of all

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seats as a contiguous smoke-free section. Smoking is also restricted on mass transportation vehicles, in restrooms, and in elevators. Most of these regulations include provisions allowing for separate, enclosed smoking areas.

Columbia University's smoking regulations have been established in accordance with the guidelines set forth by

the Clean Indoor Air Acts. According to the acts, smoking is prohibited in all public areas of primary and secondary schools. In schools of higher education, smoking is permitted only in separate, enclosed lounges making up no more than 50 percent of the total lounge area. Smoking is also permitted in a specially designated section of a cafeteria, provided that it is contiguous and does not exceed 50 percent of the seats. If student demand exists, the smoke-free section must be enlarged to encompass 70 percent of the seating area. University compliance with these regulations has been favorable, but, there remains a noticeable paucity of "smoking permitted"

One of the most promising areas for the potential judicial success of ETS! legislation is in § the working environment* §

signs around campus. According to the compliance requirements of the acts, signs must be posted indicating both where smoking is prohibited and permitted. Smoking permitted signs must state: "Warning: Smoking and Breathing Second-hand Smoke Is Dangerous To Health." The absence of such signs should be reported to building officials.

Litigation

The judicial arena has proven to be a forum for ETS claims. In a 1989 child custody case, *Satalino v. Satalino*, 544 NY St. 2d 154 (1989), the father argued that his smoke-free home would provide a healthier environment for his child, since the mother was a smoker. A doctor testified on the father's behalf, emphasizing the special risks which the carcinogens in tobacco smoke pose to a young child's developing tissues. While the New York Supreme Court did not award the father custody due to other considerations, the court made a strong statement by affirming that parental smoking should be a relevant factor in determining "the suitability of a household environment in which a child is to be placed." The same claim has been asserted in cases pending in California and Michigan, and the impact of ETS on children, in particular, continues to gain increasing attention.

The effects of ETS have recently been applied to a broader scope of the law. In *McKinney v. Anderson*, 924 F.2d. 1500 (9th Cir. 1991), the Ninth Circuit Appeals Court ruled that forcing a non-smoking prisoner to share a prison cell with a person who smokes five packs a day may, in fact, constitute a violation of the Eighth Amendment's prohibition against "cruel and unusual" punishment.

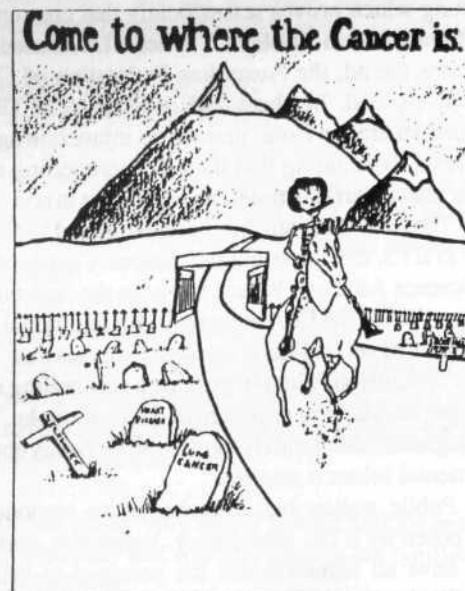
One of the most promising areas for the potential judicial success of ETS legislation is in the working environment. In October 1991, two attorneys filed a landmark class action suit against the tobacco companies. The suit consists of a claim on behalf of 60,000 non-smoking flight attendants who allege that they suffered serious health problems as a result of their exposure to ETS while working on airplanes. One of the plaintiffs, Norma Broin, never lived with smokers or smoked herself, but nevertheless, two years ago, at the age

of 32, she was diagnosed with lung cancer and had one of her lungs removed. She noted that many of her colleagues, who were also non-smokers, were often advised by their doctors to quit smoking. The suit involves claims of liability on the part of the tobacco companies for breach of warranty, fraud, and misrepresentation of tobacco products' dangers, and seeks compensatory and punitive damages. As a result of this case, smoking was banned from most domestic flights in 1990, but it is still permitted on international flights.

The most famous tobacco-related court case, *Cipollone v. Liggett Group, Inc.*, 93 F.2d 541 (3rd Cir. 1990), indirectly affects the ETS issue. It involves a failure to warn claim set forth by the family of the late Rose CipoUone against the cigarette companies whose cigarettes she smoked. The case has been in court since 1983. It focuses on the question of whether Congress intended to preempt state tort claims by requiring the tobacco industry to place a warning label on cigarette packages. Since cigarette manufacturers have not reimbursed plaintiffs in a liability suit, a decision in favor of the CipoUone family would help break the industry's image of invulnerability that has prevented additional plaintiffs from bringing suits.

Judicial support for confronting the dangers of ETS will pressure both OSHA and Congress to act more expediently, and will ultimately set the groundwork for litigation to function as an enforcement mechanism in the future. A prudent public policy, however, would be substantially more efficient, as it would entirely preempt the need for such litigation.

Finally, the government and the private sector must accept the responsibility for educating the public about the dangers of ETS. Parents must be informed about the dangers



ETS presents to children. If education solidly underlies the entire public policy effort, fewer restrictions will have to be imposed, because many will be voluntarily chosen.

Obstacles and Prospects for Success

It would be naive to assume that smoking will be banned from all enclosed public places without challenge, and obstacles must be addressed. On a theoretical level, many believe that a ban on smoking constitutes an infringement of smokers' rights. Smoking regulation does not ignore the rights of smokers; rather, it weighs them against the neglected rights of non-smokers. Given the danger of ETS to non-smokers, smoking is not merely a personal risk, but an unreasonable invasion of the right of non-smokers to breathe clean air.

Those wary of imposing constraints on American business may also be apprehensive about increased regulation. ETS policy, like the 1965 Federal Cigarette Labeling and Advertising Act, does not disregard corporate concerns, but seeks to establish a balance between the interests of the public health and of the national economy. This policy will actually help businesses throughout the country by increasing

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productivity and reducing the number of days missed from work. These measures will also, cut maintenance bills and significantly diminish companies liability.

Fundamentally, some people claim that ETS is not harmful at all. International precedent in this area provides valuable support. In 1986, the Tobacco Institute of Australia (TIA) printed an advertisement declaring "there is little evidence and nothing which proves scientifically that cigarette smoke causes disease in non-smokers." When TIA refused requests to withdraw the ad, the Australian Federation of Consumer Organizations sued. In a landmark decision, 6.2S TPLR 2.77 (1991), the Australian Court granted an injunction against the use of the ad, concluding that there is "compelling scientific evidence" that cigarette smoke causes disease in non-smokers.

The EPA study attributing an estimated 53,000 deaths per year to ETS, despite being unanimously approved by the EPA's Science Advisory Board, has been the target of similar challenges. While the EPA report calls for additional research on the effects of second-hand smoke, it advises that "existing scientific conclusions already provide a compelling rationale for reducing involuntary exposure to tobacco smoke." A need exists to legislate additional changes in public policy concerning environmental tobacco smoke.

Public policy has only begun to respond to the dangers posed by ETS. Regulatory, legislative, and judicial avenues have all demonstrated the potential to bring forth meaningful changes, but if public policy is to reflect anything close to current scientific evidence, then the status quo can be seen as a paucity beginning. Serious efforts must be made to demonstrate the need for progressive ETS policies encouraging people to heed this call better than they have heeded the Surgeon General's warning on cigarette packages. Perhaps

we will then be able to look ahead to a smoke-free America.

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