

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 00/2

9429 HOUSE STATE AFFAIRS

Municipality
of
Anchorage



P.O. Box 190050
Anchorage, Alaska 99519-0050
Telephone: (907) 343-1250

Rick Mystrom, Mayor

DEPARTMENT OF LAW
Office of the Prosecutor
120 E. Street, Suite 100

March 19, 1997

Representative Gail Phillips
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear Representative Gail Phillips;

I am writing on behalf of the Municipal Prosecutors Office, the Municipality of Anchorage and its people, and all the victims of domestic violence. I urge your support for the passage of House Bill 47 and the attendant appropriations bill.

Since the passage of the Domestic Violence Protection/Victim Protection act of 1996, particularly the amendments to AS 12.30.027, Prosecutor and District Attorney offices around the state have been charged with a responsibility we simply cannot meet this in any meaningful manner.


AS 12.30.027(d)(1) provides:

When a person is released from custody under (a) of this section (bail), from a correctional facility, the correctional facility shall notify the prosecuting authority and the prosecuting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release.

As things stand now, there simply are no reasonable efforts we can make to immediately notify the victim if a defendant makes bail at 2:00 or 3:00 in the morning, which is when most of these arrests are made.

An automated and statewide victim notification system is the only meaningful method of complying with AS 12.30.027. If we are to protect the victim's of domestic violence and remain at the forefront of domestic violence prosecution, this system must be implemented.

Sincerely,


John Marston Richard
Chief Municipal Prosecutor

cc: Representative Kubina

John Richards
343-4250 Duch

Municipal Prosecutor
Pal

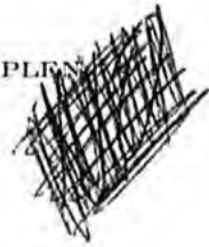
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May 2840

ALASKA STATE LEGISLATURE



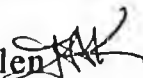
REPRESENTATIVE ALLEN KEMPLER



MEMORANDUM

January 28, 1997

To: Representative Jeanette James, Chair
House State Affairs Committee

From: Representative Allen Kempler 

Re: Hearing Request for House Bill 47 and House Bill 48:
"An Act relating to authorizing the Department of
Corrections to provide an automated victim
notification and prisoner information system; and
An Act making a special appropriation for an automated
victim notification system; and providing for an
effective date.

I respectfully request that you schedule House Bill 47 and House Bill 48 for a hearing at your earliest possible convenience. I have attached sponsor statement and other supporting materials.

Thank you for your consideration.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 47

Revision Date: <u>4/25/97</u>	Dept. Affected: <u>Corrections</u>
Title: <u>Authorizing Department of Corrections to provide</u>	BRU: <u>Administration and Support</u>
<u>Automated Victim Notification & Prisoner Information System</u>	Component: <u>Data and Word Processing</u>
Sponsor: <u>Representative Kemplen</u>	
Requester: <u>H. State Affairs</u>	COMPONENT SERIAL NO. <u>698</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	3.0	3.0	3.0	3.0	3.0	3.0
TRAVEL						
CONTRACTUAL	144.1	90.9	90.9	90.9	90.9	90.9
SUPPLIES						
EQUIPMENT	3.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	150.1	93.9	93.9	93.9	93.9	93.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1005)	0.0	93.9	93.9	93.9	93.9	93.9
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF	150.1					
1005 GF/Program Receipts		93.9	93.9	93.9	93.9	93.9
1037 GF/Mental Health						
Other						
TOTAL	150.1	93.9	93.9	93.9	93.9	93.9

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This information is the Department's best estimate for system and operation costs of an automatic victim notification system for Alaska's prisons, jails, probation offices, and CRC locations. Exact expenditures would not be available until the Department received responses to an RFP for an automated victim notification system.

There would be no charge for notifying victims of changes in prisoner's status. The estimated revenues shown are anticipated through fees charged to members of the public who wish to obtain additional information such as bail costs, charges, visitation, or information on prisoners who have been released.

Prepared by: Bruce Richards
Division: Office of the Commissioner

Approved by: Commissioner Margaret M. Pugh *Margaret M. Pugh*
Agency: Department of Corrections

Phone: 465-3307
Date: 4/25/97
Date: 4/25/97

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HB

50

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 13, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 2/20/97

The STATE AFFAIRS Committee considered:

HB 50

HOUSE BILL NO. 50

ALLOW BROADCASTING OF RAFFLES AND CLASSIC

"An Act relating to the use of broadcasting to promote or conduct certain classics or sweepstakes; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 50 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) Revenue

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Keith Burt</i>			<input checked="" type="checkbox"/>	
<i>K. P. Gos</i>		<input checked="" type="checkbox"/>		
<i>Mark Horgan</i>	<input checked="" type="checkbox"/>			
<i>Frank Dixon</i>			<input checked="" type="checkbox"/>	
<i>Allyson</i>	<input checked="" type="checkbox"/>			
<i>Janet</i>	<input checked="" type="checkbox"/>			
<i>Jannette James</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE Jannette James

Alaska State Legislature



Official Business

State Capitol
Juneau AK
99801-1182

FROM THE OFFICE
OF
REPRESENTATIVE MARK HODGINS

SPONSOR STATEMENT

HB 50 - "An Act relating to the use of broadcasting to promote or conduct certain classics or sweepstakes; and providing an effective date."

This legislation amends AS 05.15.640 by removing the prohibition on broadcast advertising for the following Legislatively identified classics as per statute: The removal of the prohibition shall be limited to only Legislatively identified classics as follows.

Canned salmon classic- Petersburg Chamber of Commerce;
Deep freeze classic- Delta Chamber of Commerce;
Goose Classics- Kenai Chamber of Commerce and Fairbanks Montessori Association or the Friends of Creamer's Field;
Ice Classics- Nenana and Chena Ice Pools, Kuskokwim Ice Classic operated by Bethel Social Services, Inc., Kenai River Ice Classic operated by the Kenai and Soldotna Rotary Clubs, Yukon River Ice Classic operated by the City of Fort Yukon, Alaska-Soviet Ice Classic operated by CAMAI, inc., and the City of Diomedea, Big Lake Ice Classic operated by the Houston Junior-Senior High School Booster Club and the Big Lake Chamber of Commerce, and the McGrath Ice Classic operated by the Kuskokwim Public Broadcasting Company;
King salmon classic- Greater Juneau Chamber of Commerce;
Mercury classics- Greater Fairbanks Chamber of Commerce and the Fairbanks Convention and Visitors' Bureau;
Mushing sweepstakes- Iditarod Trail Committee;
Salmon classic- United Fisherman of Alaska.

At present the only classics that are allowed to use broadcasting for promotion are fishing derbies. By providing these advertising vehicles we will assist these organizations by increasing public awareness of each event.

Passed
#1

0-LS0288\A.1
Luckhaupt
2/19/97

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 50

BY REPRESENTATIVE IVAN

1 Page 1, lines 6 - 8:

2 Delete "canned salmon classics, deep freeze classics, goose classics, ice classics,
3 king salmon classics, mercurv classics, mushing sweepstakes, and salmon classics
4 permitted under this chapter"

5 Insert "a charitable gaming activity permitted under this chapter other than
6 bingo, pull-tab games, raffles and lotteries, and contests of skill"

7 Page 2, line 1:

8 Delete "any other charitable gaming activity under this chapter"

9 Insert "bingo, pull-tab games, raffles and lotteries, or contests of skill
10 [CHARITABLE GAMING ACTIVITY UNDER THIS CHAPTER]"

11 Page 2, lines 17 - 29:

12 Delete all material.

13 Renumber the following bill section accordingly.

14 Page 2, line 30:

15 Delete "Except as provided in sec. 3 of this Act, this"

16 Insert "This"

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Juneau, Alaska 99801-2105

MEMORANDUM

February 19, 1997

SUBJECT: Sectional Summary of HB 50. (Work Order No. 20-LS0288\A)

TO: Representative Mark Hodgins
Attn: Pat Carter

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 05.15.640(a) to allow a charitable gaming permittee to use broadcasting to promote or conduct certain classics and sweepstakes. The classics and sweepstakes listed are those classics and sweepstakes which the legislature has limited - no one can conduct one of these classics and sweepstakes listed without legislative approval. This bill section amends subsection (b) by removing the reference to fishing derbies and continuing the limited authority noncommercial broadcasting stations have to broadcast certain charitable gaming activities.

Section 2 of the bill amends AS 05.15.640(a), amended in sec. 1 of the bill. to remove the reference to "mushing sweepstakes" which are sunsetted effective December 31, 1999 by ch.13, SLA 1995.

Section 3 of the bill provides an effective date for sec. 2 of the bill.

Section 4 of the bill provides an immediate effective date for the rest of the bill.

GPL:glc
97-105.glc

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
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

December 23, 1996

SUBJECT: Charitable Gaming Broadcasting (Work Order No. 20-LS0288\A)

TO: Repre^{Luckhaupt}  Mark Hodgins

FROM: Gerald P. Luckhaupt 
Legislative Counsel

Enclosed is the bill draft you requested. As with any legislation that selects certain limited entities to perform an activity or to receive some benefit there is a potential that this bill draft violates Art. II, § 19 of the Alaska Constitution prohibiting local and special legislation. The test employed by the Alaska Supreme Court under Art. II, § 19 is substantially the same as that applied to equal protection analysis. Upon examining the legislative goals and the means used to advance them, the court determines whether the legislation bears a fair and substantial relationship to a legitimate state purpose. State v. Lewis, 559 P.2d 630, 643 (Alaska 1977), cert. denied, 432 U.S. 901 (1977). To satisfy the fair and substantial relationship standard, the classification established by the legislation must be tailored to the purpose of the legislation. The classification must be neither overinclusive nor underinclusive. Isakson v. Rickey, 550 P.2d 350, 362 (Alaska 1976). If the "fair and substantial relationship" standard is met, the bill will not be invalidated because of incidental local or private advantages. Lewis, 559 P.2d at 643. In Lewis, the court agreed that an Act of statewide significance need not have an effect in all parts of the state; legislation does not become "local" merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. The Lewis case involved the Cook Inlet land exchange and the court accepted the premise that the application, while only affecting land in Southcentral Alaska, required legislation to be accomplished and was of statewide significance. The court relied heavily on the record developed by the legislature in support of the need for the land exchange and the decision to resolve serious issues surrounding Native land selections under the Alaska Native Claim Settlement Act through legislation authorizing the Cook Inlet land exchange.

In a case where a violation of § 19 was found, the court said that legislation establishing the Eagle River Borough was special and peculiar to the locality where the borough was established. Since there was nothing in the nature of the Eagle River-Chugiak area that justified a departure from the general law scheme for the establishment of boroughs, the Act violated § 19. Abrams v. State, 534 P.2d 91 (Alaska 1975). It has consistently been my opinion that the limitation by the legislature of who can undertake charitable gaming classics

to a single identified group or a couple of identified groups probably is local and special legislation violative of the constitution; the legislature, though, has been limiting who can perform certain charitable gaming activities in this matter for many years now. This bill draft, by limiting who can utilize broadcasting to promote charitable gaming to those groups the legislature has previously singled out, also appears to implicate Art. II, § 19. If this limited authorization was challenged a court would have to accept the justification advanced by Senator Torgerson during our conference call the other day. Failing that, this authorization could be found to be unconstitutional. But in any event I do not consider this bill draft any more violative than those previous enactments limiting the operation of certain classics to particular groups that have not as of yet been challenged by anyone as being unconstitutional.

Also, per your further request, this memorandum lists all of the charitable gaming events that have been specifically identified in statute and a concise explanation of what the bill draft does.

1. Legislatively identified classics.

Canned salmon classic - Petersburg Chamber of Commerce;

Deep freeze classic - Delta Chamber of Commerce;

Goose classic - Kenai Chamber of Commerce and Fairbanks Montessori Association or the Friends of Creamer's Field;

Ice classic - Nenana and Chena Ice Pools, Kuskokwim Ice Classic operated by Bethel Social Services, Inc., Kenai River Ice Classic operated by the Kenai and Soldotna Rotary Clubs, Yukon River Ice Classic operated by the City of Fort Yukon, Alaska-Soviet Ice Classic operated by CAMAI, Inc., and the City of Diomedea. Big Lake Ice Classic operated by the Houston Junior-Senior High School Booster Club and the Big Lake Chamber of Commerce, and the McGrath Ice Classic operated by the Kuskokwim Public Broadcasting Company;

King salmon classic - Greater Juneau Chamber of Commerce;

Mercury classic - Greater Fairbanks Chamber of Commerce and the Fairbanks Convention and Visitors' Bureau;

Mushing sweepstakes - Iditarod Trail Committee;

Salmon classic - United Fishermen of Alaska.

2. Section 1 of the bill amends As 05.15.640 by identifying certain charitable gaming events that may avail themselves of broadcasting to promote the charitable gaming activity.

Section 2 of the bill deals with the repeal of mushing sweepstakes which is scheduled to occur on January 1, 2000. See ch. 13, SLA 1995. Sections 1 and 2 allow mushing sweepstakes to utilize broadcasting until their repeal.

Section 3 provides that Section 2 takes effect January 1, 2000.

SECTION 4 - ALL OTHERS SECTIONS
IMMEDIATE DATE

Representative-Elect Mark Hodgins

December 23, 1996

Page 3

Section 4 provides an immediate effective date for all parts of the bill except for Section 2.

GPL:glc

96-562.glc

Enclosure

Alaska State Legislature



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From the Office of
Representative Mark Hodgins
District 9

TO: Representative Jeannette James, Chair
House State Affairs Committee

FROM: Representative Mark Hodgins

RE: HB 50 - Allow Broadcasting of Raffles and Classics

DATE: January 27, 1997

I respectfully request that you schedule a hearing on HB 50.

As you know, the intent is to enable the legislatively identified classics to continue to operate in a financially positive manner. By allowing them to broadcast advertising would assist them in this endeavor.

I will deliver the supporting materials to your office soon.

Thank you for your consideration and I'm looking forward to working with you on the committee.

Revision Date: _____ Dept. Affected: Revenue
 Title: Allow Broadcasting of Raffles and Classics BRU: Revenue Operations
 Component: Charitable Gaming Division
 Sponsor: Rep. Hodgins
 Requestor: (H) STA COMPONENT SERIAL NO. 1883

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

House Bill 50 removes the restriction on the use of broadcasting to promote or conduct classics and musing sweepstakes.

The Department of Revenue, Charitable Gaming Division does not anticipate any changes in program receipts as a result of this bill.

Prepared by: Dennis R. Poshard, Director
 Division: Charitable Gaming Division
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-2279
 Date: February 14, 1997
 Date: _____

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HB

52

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
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North Pole, Alaska 99705
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FAX (907) 488-4271

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House Of Representatives

House District 34

SPONSOR STATEMENT

HB 52, Increase Tobacco Tax

The first part of House Bill 52 would increase the tax on cigarettes by \$1.00 per pack and a comparable amount on other tobacco products. It would also make an additional \$.24 increase in three years and another \$.24 in six years.

The second part of the bill determines that money from the tax would go in the SCHOOL FUND established previous to statehood. Five cents of the current tobacco tax is already going into that fund. Use of the SCHOOL FUND is restricted to K-12 school construction or rehabilitation.

Alaska has a severe problem, which is increasing acutely. As we continue to downsize and reduce government spending, the capitol budget for school construction has not been enough to meet the demand. Alaska's school children are entitled to school buildings that provide a safe and healthy environment. Increasing the SCHOOL FUND via the tobacco tax would be the solution. Historically, this fund has been used to repay bonded indebtedness for school construction, which would allow for maximizing these moneys as needs dictate.

In sponsoring this bill, I have not changed my opposition to increasing the tobacco tax, but I am willing to compromise because such a large number of Alaskans have said they support an increase in the tobacco tax and I believe I am here to represent all of Alaska's people. By putting the money into the SCHOOL FUND, we can all be winners.

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MEMORANDUM

January 16, 1997

SUBJECT: House Bill 52, increasing taxes on cigarettes and tobacco products -- sectional analysis. (Work Order No. 20-LS0127E)

TO: Representative Jeannette James
ATTN: Barbara Cotting

FROM: Jack Chenoweth
Legislative Counsel



House Bill 52 proposes increases to state-imposed taxes on cigarettes and tobacco products.

Bill section 1: The bill section sequentially increases the tax on cigarettes and, because the changes are made to the rate of a tax that is dedicated, would have the effect of providing for the deposit of the increase into the "School Fund," AS 43.50.140. The increases are as follows:

Between the bill's effective date and June 30, 2000, the per cigarette tax would be set at 52 1/2 mills, a 50 mill rate increase, or an increase of \$1.00 per pack (50 mills x 20 cigarettes per pack = 1000 mills or \$1.00) from the current cigarette tax levy;

Between July 1, 2000, and June 30, 2003, the per cigarette tax would be set at 64 1/2 mills, an additional 12 mill increase, or an additional increase of 24 cents per pack;

Between July 1, 2003, and June 30, 2006, the per cigarette tax would be set at 76 1/2 mills, an additional 12 mill increase, or a further increase of 24 cents per pack; and

Thereafter, at three-year intervals, the per cigarette tax periodically increases at a rate of 12 mills (24 cents per pack).

Bill section 2: Whether the rate imposed in a dedicated tax may be changed without destroying the dedication is debatable. In the event the courts are asked to decide the question and determine that the dedication is destroyed, this bill section is included to restore the current rate of tax for the component that is dedicated for inclusion in the School Fund.

Representative Jeannette James

January 16, 1997

Page 2

Bill section 3: The bill section directs the Department of Revenue to give public notice of the cigarette tax rate changes and specific notice of the changes being made under AS 43.50.090(a) to all cigarette tax licensees at appropriate times.

Bill section 4: This is a contingent amendment. In the event the changes set out in bill section 1 are found to destroy the dedication, the tax rate changes are made to current AS 43.50.190(a), a provision that imposes a further tax on cigarettes and that, because the proceeds are not dedicated, adds the increased revenue to the state general fund.

Bill section 5: This is a contingent provision. The bill section directs the Department of Revenue to give public notice of the cigarette tax rate changes and specific notice of the changes being made under AS 43.50.190(a) to all cigarette tax licensees at appropriate times.

Bill section 6: The amendment proposed would increase the excise tax on tobacco products other than cigarettes from its current 25 percent of the product's wholesale price to 100 percent of the wholesale price.

Bill sections 7 and 8: The bill section authorizes the Department of Revenue to further change the rate of the excise tax on tobacco products other than cigarettes in line with inflation, at two-year intervals, spelling out how the change is to be calculated, and requiring the giving of public notice and specific notice of the change to all tobacco tax licensees at appropriate times.

Bill sections 9 and 10: These bill sections spell out the contingency under which certain of the earlier bill sections are to take effect. They are to be given effect only if a court determines that changing the rate of taxation on cigarettes destroys the dedication of tax revenue derived from the cigarette tax.

Bill sections 11 and 12 are effective date provisions. Key tax change provisions are to take effect October 1, 1997; other provisions take effect on the date that contingency identified in bill section 10 occurs.

*

If the bill presents questions, please contact me.

JBC:jdr
97-010.jdr

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STATE OF ALASKA

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Juneau, Alaska 99801-2105

MEMORANDUM

April 26, 1996

SUBJECT: Draft CSHB 431 ()(Work Order No. 9-LS1518\F)

TO: Representative Jeannette James, Chair
House State Affairs Committee

FROM: Jack Chenoweth
Legislative Counsel

This is drafted in the alternative.

Until a few weeks ago, based on a very old Opinion of the Attorney General, I would have advised as a matter of course that this proposal to dedicate the tax increment constituted a violation of the dedicated fund prohibition of article IX, section 7. Now, as a result of further research explained in Legislative Counsel Mike Ford's April 3 memorandum, I believe that conclusion is not so certain.

The drafting of the amendment reflects the possibility that the dedication might not be found unconstitutional for the reason given in that memo.

To repeat advice already provided to you:

Under AS 43.50.140, the proceeds derived from the original tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitors Bureau, 818 P.2d 1153, at 1158 (Alaska 1991).

A question was raised as to whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the

tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Barrie M. White. The following discussion with Delegate White and other delegates illustrates the intent of the framers of the Alaska Constitution:

R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS: If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

(Emphasis added). This discussion indicates a clear intent on the part of the delegates to allow a change to the rate of taxation without affecting the status of a dedication of the proceeds of the tax. While the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitution rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Hagglund, 374 P.2d 316, 319 (Alaska 1962), the court stated that

Representative Jeannette James

April 26, 1996

Page 4

opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the intent of the enacting body.

(Emphasis added.) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

Please contact me if you have further questions.

JBC:pl:glc:lmb

96-091.lmb

<p><i>MOE</i> 425 U.S. 463 (1976)</p>	<p><i>COLVILLE</i> 447 U.S. 134 (1980)</p>	<p><i>POTAWATOMI</i> 498 U.S. 505 (1991)</p>	<p><i>ATTEA</i> 114 S.Ct. 2028 (1994)</p>
<p>Montana tribe sued to enjoin state from collecting cigarette taxes from non-members of tribe. U.S. Supreme Court held:</p>	<p>Washington tribe sued challenging the state's attempts to collect cigarette taxes on sales to non-tribal members. U.S. Supreme Court held:</p>	<p>Indian smokeshop located off-reservation but on trust land sold cigarettes free from state tax. Oklahoma assessed for back taxes; tribe sued. U.S. Supreme Court held:</p>	<p>New York imposed regulatory limitation on amount of tax-free cigarettes may be shipped to tribe based on "probable demand." Indian trader/wholesaler sued. U.S. Supreme Court held:</p>
<p>Indian members of a tribe may purchase cigarettes on the reservation free from state taxes</p>	<p>Federal Indian law does not authorize tribes to market an exemption to state taxes to persons not entitled to exemption (i.e., non-members of the tribe, Indian or non-Indian)</p>	<p>Doctrine of sovereign immunity does not excuse tribe from all obligations to assist in collection of valid state taxes</p>	<p>Indian traders are not immune from state regulations reasonably necessary to assessment or collection of valid state taxes</p>
<p>Indian retailer can be required to collect valid state tax on cigarettes sold to non-Indians on reservation</p>	<p>Record-keeping requirements imposed by the State with respect to cigarette sales and taxes are valid</p>	<p>State may collect valid taxes on sales of cigarettes to non-members of Indian tribe sold on "reservation" (land set aside for Indian use)</p>	<p>State may impose a "probable demand" mechanism to allow only reasonable percentage of cigarettes that can be sold exempt from state tax to be delivered to tribe</p>
<p>State may require Indian retailer to add tax to sale price when selling to non-Indians</p>	<p>State seizure of unstamped cigarettes bound for reservation valid if tribe does not cooperate in collecting taxes</p>		<p>State can require Indian retailers to obtain state tax exemption certificates in order to sell cigarettes on reservation free from state tax</p>
	<p>Incidence of tax falls on the first event which may constitutionally be subjected to it - hence, where sale is to non-Indian, tax falls on first use, consumption, or possession by non-Indian purchaser</p>		

LEGAL SERVICES

**DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 3, 1996

SUBJECT: Tobacco Tax - (Work Order No. 9-LS1832)

TO: Representative Jeannette James

FROM: Michael F. Ford
Legislative Counsel

You have asked for an explanation of the effects of an increase of the tobacco tax (AS 43.50.090) on the dedicated fund provision contained in AS 43.50.140. As explained in this memo, it appears that the legislature may be able to increase the tax without affecting the dedicated status of the state school fund.

Under AS 43.50.140, the proceeds derived from the tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitor Bur., 818 P.2d 1153, at 1158 (Alaska 1991).

The precise question you have raised is whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Mr. Barrie M. White. The following discussion with Mr. White and other delegates illustrates the intent of the framers of the Alaska Constitution:

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R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year

Representative Jeannette James

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and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS. If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

We believe that this discussion indicates a clear intent to allow a change to the rate of taxation, without affecting the status of a dedication of the proceeds of the tax. To this extent, we disagree with the 1959 opinion No. 7 issued by the Attorney General, that the framers of the constitution intended that a change to the rate of taxation would destroy the dedicated status of the fund.

It is important to note that while the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitution rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Haggund, 374 P.2d 316, 319 (Alaska 1962), the court stated that "opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the

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intent of the enacting body." (Emphasis added) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

You have also asked if the rate of taxation is changed, does the additional revenue go into the school fund or the general fund? We believe that any increase in the tax imposed under AS 43.50.090 will not, by itself, affect the disposition of the proceeds of the tax. The increased revenues will still flow into the school fund as required under AS 43.50.140. It is also important to note that to maintain the status of the school fund as an exception to the dedicated fund rule, that disposition of the proceeds of the tobacco tax cannot be changed. To change the disposition of the proceeds of the tax as required under AS 43.50.140 would destroy the dedicated fund exemption granted to the school fund under Article IX, sec. 7, of the Alaska Constitution.

Please contact me if you have further questions.

MFF:klb
96-252.klb

Tobacco Tax Bill Analysis

**Presentation to the
20th Alaska Legislature**

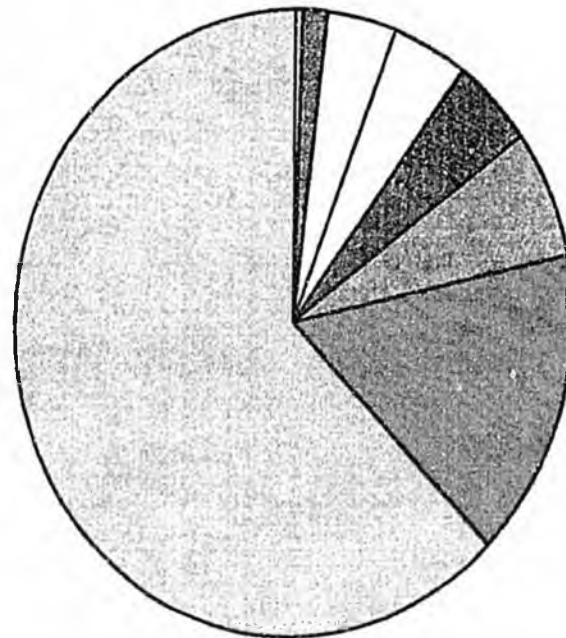
Tobacco Usage

- Tobacco usage is the number one cause of preventable death and disease in the US, accounting for more than **419,000 deaths each year.**
- **23% of deaths of Alaskans 35 years of age or older in 1991 were attributable to smoking.**

Health Impact of Smoking

Number of Deaths in USA

Cigarette
Smoking 418,690

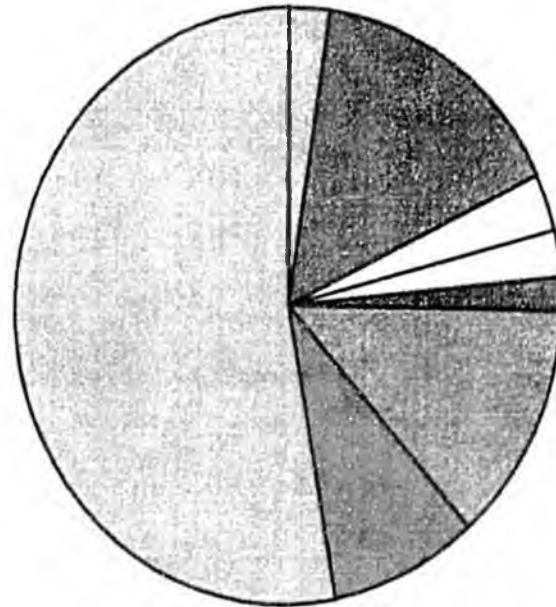


- Fires
- Illegal Drugs
- Homicides
- AIDS
- Suicides
- Mot. Veh. Accidents
- Alcohol
- Cigarette Smoking

Health Impact of Smoking

Number of Deaths in Alaska

Cigarette
Smoking 1,416



- Fires
- Firearms
- Aircraft crashes
- AIDS
- Falls
- Mot. Veh. Accidents
- Alcohol
- Cigarette Smoking

Youth Tobacco Usage

- **83%** of adult smokers report that they started smoking before the age of 20.
- **21%** of Alaskan high school students reported they regularly smoked in the last month.
- **25%** of Alaskan middle school students reported smoking at least one cigarette in the last month.

Youth Tobacco Vendors Survey

- 64% of Alaska tobacco merchants complied with tobacco restriction laws in 1996.
- The federal government mandates an **80% compliance rate** by the year 2000 under the Synar Amendment.
- Tobacco vendors refused to sell to 14-15 year olds **71%** of the time, while 16-17 year olds were refused **58%** of the time.

Alaska Native Tobacco Use

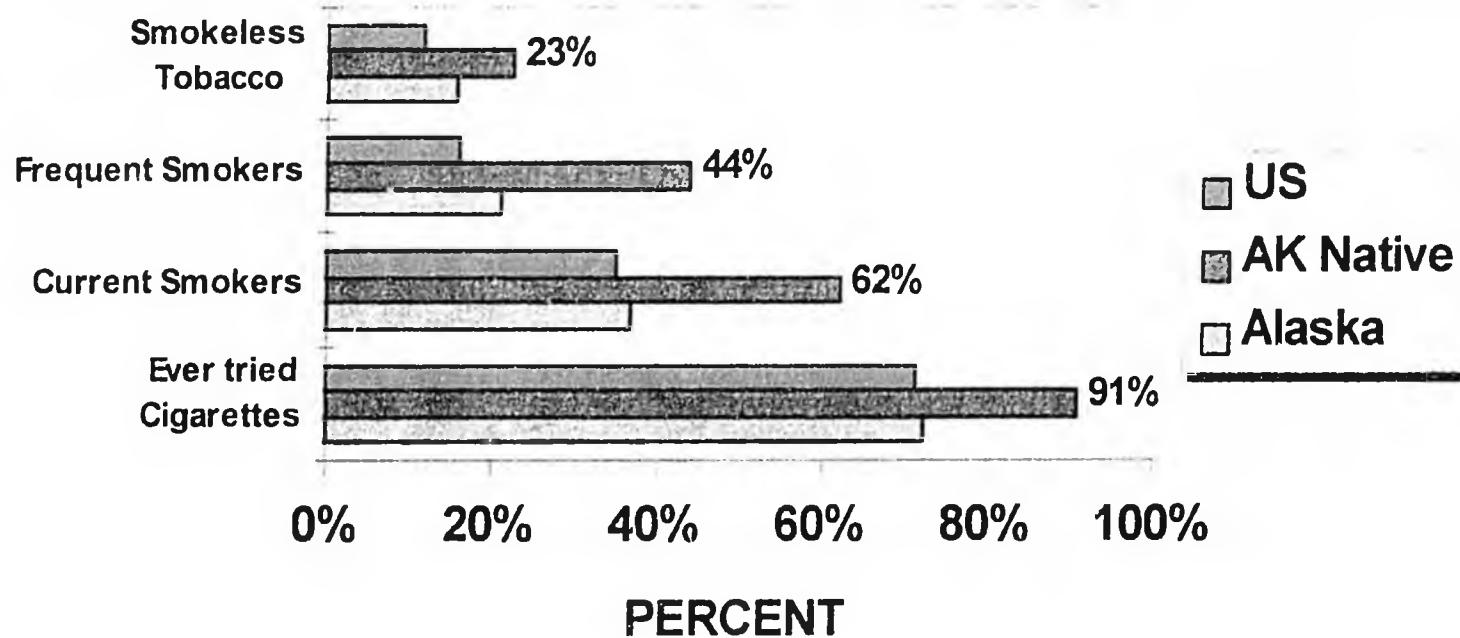
- Today Alaska Natives have some of the highest rates of tobacco use in the world, **47% for men and 39% for women.**
- Alaska Natives account for **23% of smoking related deaths** while they account for **17% of the state's population.**

Alaska Native Tobacco Use

- Alaska Natives have the **highest cancer mortality rate** of any Indian Health Service Area.
- The lung cancer death rate among AK Native women is **three times** the national average.
- Tobacco use among Alaska native youth is higher than non-native youth.

Alaska Native Tobacco Use

Tobacco Use Among High School Students
Alaska and US
1995



Alaska Native Tobacco Use

- 41% of Alaska Native boys and 32% of Alaska Native girls were using smokeless tobacco weekly.
- Among the boys, 45% started using tobacco before the age of 8.

Health Related Costs of Smoking, A Drain on the Economy

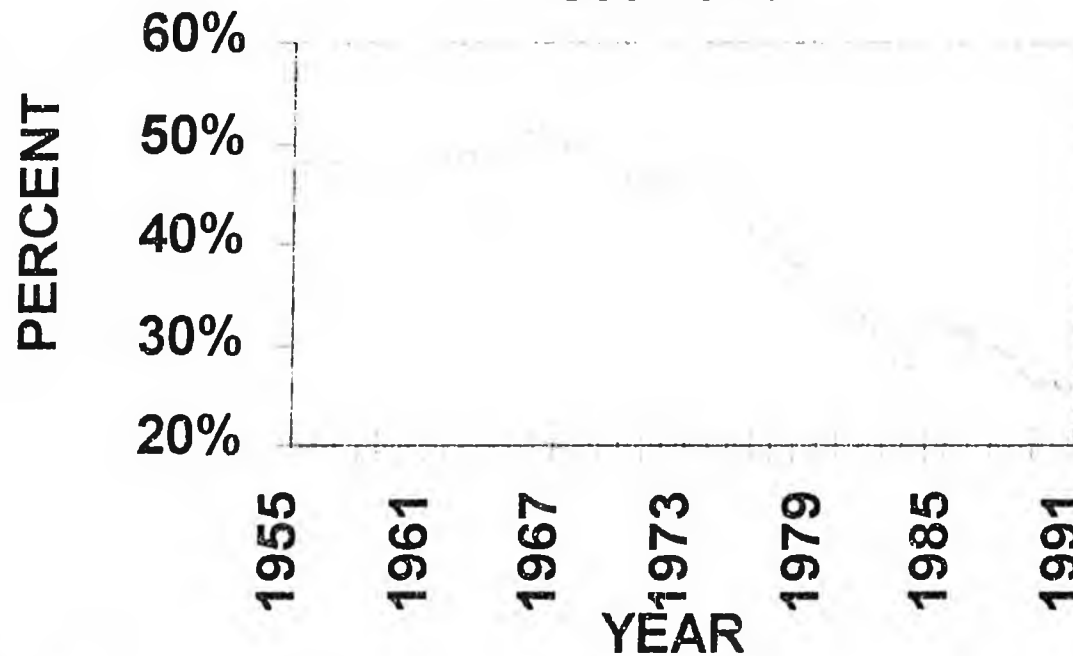
- Total direct medical costs for smoking related illnesses for Alaskans aged 35 years or older in 1993 was **\$96.5 million**.
- **\$23 million** of the direct medical care costs for smoking related illness was paid by **Medicaid** in Alaska.
- Meanwhile, the state collected only **\$15.6 million** in cigarette tax revenues in 1993 (excludes taxes on smokeless tobacco).

Alaska Tobacco Tax History

- The state of Alaska has taxed tobacco since territorial days, when a 5 cents per pack tax was levied on cigarettes to help fund school construction.
- The current tax level of 29 cents per pack has been in place since 1989.
- In 1989 Alaska ranked 17th among the 50 states and District of Columbia on the amount of tobacco tax levied.
- Currently Alaska is ranked 28th among the states on tobacco taxes levied.

Tobacco Taxes in the US

Tobacco Taxation in the US
Average Cigarette Tax as a Percentage
of Retail Price
1955-1991



Impact of Tobacco Taxes

- For every 10% increase in tobacco prices, youth tobacco consumption will fall by at least 10%.
- For every 10% increase in tobacco prices, general consumption will fall by 4%.
- **At current teen smoking rates**, approximately 18,000 of Alaskans currently under the age of 18 will die prematurely of a tobacco related illness.

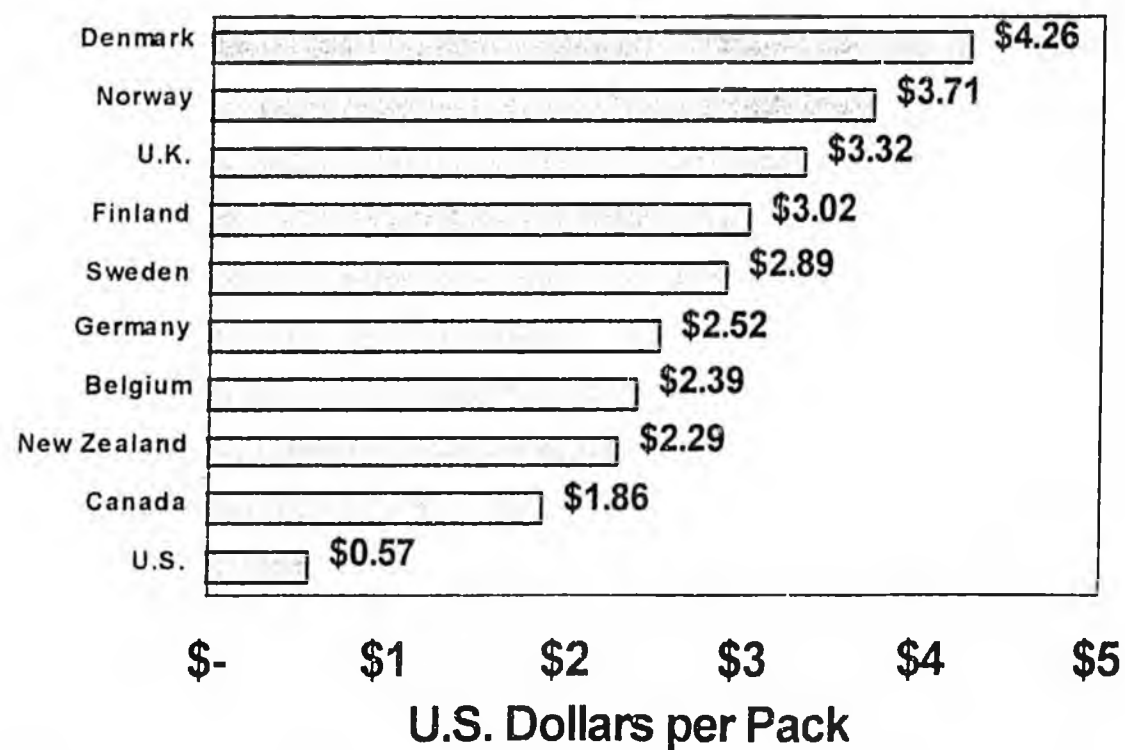
Impact of Tobacco Taxes

- A \$1.00 per pack tax increase would reduce youth smoking in Alaska by an estimated 32%.
- The tobacco tax would prevent 5,700 premature deaths among Alaskans currently under the age of 18.

Tobacco Tax Rate Comparison

Taxes on Cigarettes
in Major Industrialized Nations
March 22, 1995

Country



The Time is Right

- The groundwork is in place.
- There is broad public support. 75% of Alaskans surveyed support the \$1.00 per pack tax.
- This included: 75% of “conservatives”, 75% of “moderates”, 73% of “liberals” and 55% of smokers.

Community Support

- The tax is also supported by: C. Everett Koop, MD., former Surgeon General, 280 individuals and over 50 organizations that make up the **Alaska Tobacco Control Alliance** including: the Alaska Native Health Board, the American Cancer Society, and the American Heart Association.

Additional Letters and POMs
Opposed to
Increasing Tobacco Tax

Please add to HB 52 packet.

1/29/97

Mr. Treal Foutch 479-3495
PO Box 73011

Fairbanks AK 99707 Distribution Affiliation Reg Voter
60 Y
Date POM Sent Constituency Bill Number Response Subject
01/21/97 N None TOBACCO

I AM ASKING YOU TO VOTE AGAINST THE TOBACCO INCREASE. THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF ALASKA WERE NOT SET UP TO MAKE A CERTAIN SMALL GROUP OF CONSTITUENTS ABLE TO BUILD AND MAINTAIN SCHOOLS

OR FUNDING THE STATE GOVERNMENT! I BELIEVE YOUR OATHS TO OFFICE PRECLUDE YOU FROM VOTING FOR THIS INCREASE - UNLESS YOUR WORD IS NOT ANY GOOD, AND THAT OATH DOES NOT MEAN ANYTHING TO YOU.

Mr. Glenn DeSpain 000-0000
PO Box CZN

Tok AK 99780 Distribution Affiliation Reg Voter
60 Y
Date POM Sent Constituency Bill Number Response Subject
01/21/97 N None TOBACCO

I STRONGLY OPPOSE ANY ADDITIONAL TAX ON CIGARETTES. IT HAS NOTHING TO DO WITH CHILDREN SMOKING. IT IS JUST A REVENUE MEASURE. I HAVE NEVER SMOKED CIGARETTES. AS A REPUBLICAN, I AM ASHAMED OF THE REPUBLICANS BUYING

THE DEMOCRATS LINE TO ENHANCE REVENUE. MENTION CHILDREN, THEY CAN SELL ANY TAX.

Non Constituent

BILL#: SB 210 INCREASE TOBACCO TAXES

SUBJECT: Opposes

MESSAGE: SB 234, HB 431 & HB 442: VOTE NO ON TAX. IT IS SAD YOU USE THE CHILDREN AS AN EXCUSE TO RAISE TAXES. I HONESTLY DO NOT BELIEVE THIS IS GOING TO STOP CHILDREN FROM SMOKING.

DISTRIBUTION: 60

Mr. Ryan Lance
12955 Lindsey Dr

Anchorage AK, 99516 263-4419

Non Constituent

BILL#: SB 210 INCREASE TOBACCO TAXES

SUBJECT: Opposes

MESSAGE: IT'S CRITICAL THAT WE REACH AGREEMENT ON THE PROPOSED BUDGET CUTS BEFORE CONTEMPLATING ANY NEW TAXES INCLUDING THE TOBACCO TAX.

DISTRIBUTION: 60

Mr. Daniel E Stone
PO Box 111414

Anchorage AK, 99511 345-5783

Non Constituent

BILL#: HB 431 INCREASE TOBACCO TAXES

SUBJECT: Opposes

MESSAGE: AND SB 210: URGE YOU TO NOT SUPPORT THE CIGARETTE TAX.
IT IS A THINLY CONCOCTED SHAM TO RAISE REVENUE AND WILL NOT
DETER TEENAGE SMOKERS.

DISTRIBUTION: 60

Ms. Beverly McKay
10111 Marmot Ct

Anchorage AK, 99515 344-4759

Non Constituent

BILL#: HB 431 INCREASE TOBACCO TAXES

SUBJECT: Opposes

MESSAGE: I DON'T BELIEVE IT'S FAIR TO RAISE FUNDS OF CERTAIN
GROUPS AND DEPENDING UPON THAT MONEY FOR FUTURE REVENUES.
THERE'S OTHER WAYS FOR MINORS TO QUIT SMOKING. I DON'T BELIEVE A
SIN TAX IS SOMETHING YOU OUGHT TO ENACT.

DISTRIBUTION: 60

Ms. Sherry A. Ingham
PO Box 122

Dillingham AK, 99576 842-9306

Non Constituent

BILL#: HB 431 INCREASE TOBACCO TAXES

SUBJECT: Opposes

MESSAGE: DO NOT SUPPORT HB 431. WE NEED TO ENFORCE CURRENT
LAWS. BUSINESSES SELLING TOBACCO PRODUCTS SHOULD BE FINED FOR
SELLING TO UNDER AGE PEOPLE. FAMILIES WILL LOSE, BECAUSE ADULTS
WHO ALREADY SMOKE WILL CONTINUE, NO MATTER WHAT THE COST.
THEIR CHILDREN WILL LOSE MORE OF WHAT LITTLE THEY HAVE.

DISTRIBUTION: 60

Mr. Mike Nickols
Box 706

Talkeetna AK, 99676 733-2163

Non Constituent

BILL#:

SUBJECT: BUDGET None

MESSAGE: CUT SPENDING AND HOLD THE BUDGET DOWN. NO TOBACCO TAXES.

DISTRIBUTION: 47

Ms. Pam Nickols
Box 706

Talkeetna AK, 99676 733-2163

Non Constituent

BILL#:

SUBJECT: BUDGET None

MESSAGE: CUT SPENDING AND HOLD THE BUDGET DOWN. NO TOBACCO TAXES.

DISTRIBUTION: 47

Mr. Richard Johnson
PO Box 520696

Big Lake AK, 99652 000-0000

Non Constituent

BILL#: SB 210 INCREASE TOBACCO TAXES

SUBJECT: Opposes

MESSAGE: SB 234, HB 431 & HB 442: NO ON TOBACCO TAX BOSTON TEA PARTY.

DISTRIBUTION: 60

Ms. Beverly McKay
10111 Marmot Ct

Anchorage AK, 99515 344-4759

Non Constituent

BILL#: SB 210 INCREASE TOBACCO TAXES

SUBJECT: Opposes

MESSAGE: TOBACCO TAX IS DISCRIMINATING. IF YOU NEED FUNDS FOR THE BUDGET THEY BETTER ENFORCE A TAX THAT EVERYBODY PAYS. I WOULD SUPPORT A STATE TAX. I DO NOT SUPPORT A TOBACCO TAX.

DISTRIBUTION: 60

Ms. Charlene L Montague
PO Box 877372

Wasilla AK, 99687 373-2935

Non Constituent

BILL#:

SUBJECT: TOBACCO None

MESSAGE: I DO NOT THINK YOU SHOULD IMPOSE A CIGARETTE TAX. ANY NEW TAXES SHOULD BE PUT TO THE VOTE BY THE PEOPLE.

DISTRIBUTION: 38

Re: Cigarette Tax
Twentieth Legislature
January 28th, 1997

David L. Williams
420 W. 12th St.
Juneau, Ak 99801

Dear Representative James,

"What has always made the state a hell on earth has been precisely that man has tried to make it his heaven."—F. Hoelderlin.

I believe that using taxation powers as a tool of government to accomplish ends that are essentially moral in origin is a mistake. If we continue to use government as a substitute for the moral teachings of parents, churches, and schools, how can we realistically expect that our Republican philosophy, that seeks to reduce government intervention in our lives, be possible? It isn't, of course. What do you suppose would be the result of the failure of Republicans to live up to their publicly stated philosophy?

The evidence is clearly understood by many civil libertarians and becoming more understood by the general public that decades of incremental administrative control of the population is causing a significant breakdown of respect for our government and consequently, for our country. The crafting of a tax on the misguided prospect of protecting youth against self-imposed harm is legislative intrusion into an area that rightfully belongs to the individuals of this country.

Some would have you believe that because we use taxes and laws to protect society against criminal transgressions, that we have the right to protect the individual from transgressions against himself. Of course we do not.

"Democracy extends the sphere of individual freedom, socialism restricts it. Democracy attaches all possible value to each man; socialism makes each man a mere agent, a mere number. Democracy and socialism have nothing in common but one word: equality. But notice the difference: while democracy seeks equality in liberty, socialism seeks equality in restraint and servitude." Alexis De Tocqueville.

This tax will hurt many hundreds more adults than ever will discourage some few tens of our youth. The elderly, many of whom live on bare fixed incomes, are among the largest smoking group. What of them?

What significant cost increase will this tax bring to the normal smokers of our state? How will this cost lead to better lives for them? It will not. Hurting the many (the states smokers) to benefit the few (a handful of children) is bad policy.

If we have a serious smoking problem in our communities, we must look to our parents, teachers, and churches to provide the necessary guidance to our youth. Even as the current laws make purchase of cigarettes illegal, some youth continue to get them. The increasing use of government to attempt to replace personal responsibility, parental responsibility, and community social standards is the single greatest cause of the breakdown of respect for our government.

For every popular cause that seeks to rent government there is an unhappy balancing constituency that has no voice in the circus of political movements. But it is exactly this constituency of no voice that each elected official must think first.

I realize that it is tempting for elected officials to latch on to popular issues that are strongly pushed by interest groups that purport to have the best interests of our society as their principle. Particularly when many community groups join in, unconcerned with philosophical questions, and encourage our elected officials to push the "Agenda of the Moment".

Have we reached that point that elected officials now overlook personal principles and our founding fathers constitutional intent, to manage every small moral decision of our lives? Freedom demands that personal health decisions remain principally in the hands of the individual.

I make this plea that you do what you can to stop this tax, as I truly believe that it is symptomatic of the worst in our law-making process, i.e., taxation for moral reasons .

The vast quantity of scientific information collected on smoking is done primarily by private institutions and organizations that may not always have the best interests of the American people at heart, or would overlook these interests in favor of greater funding opportunities.

This use of science to accomplish political ends is corrupting our mighty scientific institutions and organizations and for governments to accept these suspect results should be cause for alarm by most thinking people.

I am not suggesting that smoking is harmless, for indeed it is harmful to some degree. But so are many things. Far more people die from overeating and drinking than ever die from smoking. Are we going to tax fat?

What next to tax for "the good of the people"? Shall we tax our donations to churches? It has been proposed, in Colorado last year. What kind of pattern do you wish to develop for future legislatures and is it consistent with our noble Republican roots?

"What our generation is in danger of forgetting is not only that morals are of necessity a phenomenon of individual conduct but also that they can exist only in the sphere in which the individual is free to decide for himself and is called upon voluntarily to sacrifice personal advantage to the observance of a moral rule."

The Road to Serfdom, F.A. Hayek

The state cannot be the guiding moral power over the people for democracy will corrupt this presumption eventually. It is for our moral teachers, principally religion, to form our moral dimensions. And it is for individuals acting in their own self-interest to maintain these moral dimensions. The state cannot, should not, do this.

The legislature , particularly a Republican led legislature, it would seem to me, has a duty to uphold the founding principles of our democracy, that of a limited government doing for the people that which the people cannot do for themselves and nothing more. Please do not use the tax system for social policy.

Respectfully,

David L. Williams
(non-smoker)

The Anchorage Times

Publisher: BILL J. ALLEN

"Believing in Alaska, putting Alaska first"

Editors: DENNIS TRADLEY, PAUL JENKINS, WILLIAM J. TORIN

The Anchorage Times Commentary in this segment of the Anchorage Daily News does not represent the views of the Daily News. It is written and published under an agreement with former owners of The Times, in the interests of preserving a diversity of viewpoints in the community.

Tobacco dilemma

NOW THAT Indian country in Alaska is considered the "law of the land" — at least by Secretary of Interior Bruce Babbitt — it would be prudent for Alaska to get serious about understanding the likely consequences in store for us.

Take the proposed \$1 per pack tax increase pending before the Legislature. State leaders should pay close attention to what's been happening in the state of Washington and elsewhere, where tobacco taxes were increased, but things didn't work out as planned.

Washington currently has the highest state cigarette tax in the nation, at \$8.25 per carton. The objective is similar to Alaska's proposal — to discourage people, especially kids, from smoking and to return to the state a portion of the public cost of tobacco-related illnesses and drug enforcement.

But the additional revenue the state anticipated hasn't materialized in the amounts forecast. Neither has there been a significant drop in tobacco use. According to figures from the Washington Department of Revenue, the state lost \$88.6 million dollars in fiscal 1996 from the illegal or black market sales of cigarettes.

A comprehensive study by Washington State University late last year showed the state's 26 Indian reservations are the major source of the tax revenue losses.

The U.S. Supreme Court has ruled that states cannot impose a tobacco sales tax on products sold on reservations to tribal members. Only on cigarette sales to non-members can the tax be required. However, the high court also has ruled that states do not have the legal right to file suits against tribes for enforcement of tax laws because tribes enjoy sovereign immunity. In other words, the state is almost powerless to enforce its tax requirements.

With Indian country recognition in Alaska, up to 226 tribes here will have similar rights.

The result for Washington, according to the university analysis, has been the emergence of a new industry for the tribes. "The cigarette trade generates a substantial amount of income for the tribal governments, and in addition provides employment for tribal members," it said. "It is an unfortunate circumstance that because of economic necessity Native American tribes must rely on a business selling products that are now generally considered a health hazard."

Because of the illegal profits to be made in selling untaxed cigarettes, organized crime may get involved, the report warns. One policy choice adopted by states such as Michigan and in Canada "has been to substantially decrease the tax rate." That's the only way to remove the incentive for smuggling, the study concludes.

Rep. Jeannette James, R-North Pole, has planned hearings on this subject this week. They should be interesting.

As a parent of three children I salute your efforts to restrict the access to tobacco products from teenagers and school children. Underage smoking and tobacco use in Alaska is an issue nearly tantamount to underage drinking.

Nationally, Alaska currently ranks number 27th in the taxation of cigarettes based on a per carton state excise tax. The proposed legislation of \$1.00 per pack would give Alaska the distinction of being the state with the highest state excise tax in the country. And not by just a little bit. Alaska's state excise tax on cigarettes would be 58.28% higher than the next highest state. Alaska's state excise tax would be 403% higher than the national average.

Raising Alaska's excise tax from \$2.90 per carton to \$12.90 per carton is a 344% increase. To be truthful a 344% tax hike even on a nefarious product like cigarettes does not sound reasonable. The rationale for the tax increase is to raise the price of tobacco products. The theory is that higher tobacco prices would discourage adult consumption and make it more difficult for youths to purchase cigarettes. While holding down consumption the excise tax would increase state revenues from tobacco and create a win win situation for the state. The theory sounds good, but it doesn't work.

An excise tax increase of 344% is going to encourage black market trading of tobacco products. The state will not collect any revenue on illegally traded cigarettes and the black market trade will hurt legitimate businesses who are licensed to sell tobacco products in Alaska.

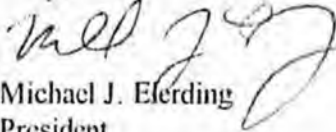
Our company has a staff of 82 full time employees in Southeast Alaska from Ketchikan to Juneau. 34% of our revenue is directly related to tobacco sales. We are a responsible employer and provide year round good paying jobs to people who are involved in the community. The proposed excise tax with a 344% increase would hurt our business. We are not opposed to a reasonable tax increase, but to raise taxes to a level that is going to promote black market competition is not good for anyone.

45% of all cigarettes imported into the state are tax exempt because they are sold on military bases and through tax exempt "Indian Country" smoke shops. Availability of a price disparity between taxed and untaxed cigarettes creates a flash point at which illegal smuggling activity is triggered. When California and Michigan raised taxes they found that military sales jumped dramatically. I would suggest that Alaska already has a high tax exempt consumption of cigarettes. The revenue raised by this tax won't accomplish the lofty goals of the bill sponsors.

If you want to stop underage smoking get parents to spend more quality time with their children. To control adolescent behavior by taxation and legislation is naive and ill-conceived.

Attached to my testimony I have included a petition with over 246 signatures opposed to this legislation.

Respectfully submitted


Michael J. Elerding
President

Juneau Branch
P.O. Box 1707
Juneau, Alaska 99802
(907) 586-3945
Fax: 463-4931

Ketchikan Branch
P.O. Box 8112
Ketchikan, Alaska 99901
(907) 225-5040
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Sitka Branch
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Fax: 747-4794

Seattle Branch
7044 South 220th St.
Kent, Washington 98032
(206) 872-5269
Fax: 872-5270

D.O.C.

Dr. Bruce L. Sahakian
Dentist On Call
9500 Independence Dr. Suite 200
Anchorage, AK 99507

fax

To: Jeanette James

From: Dr. Bruce Sahakian

Date: Jan 29, 1997
Number of Pages: 1
Phone: (907) 349-4343
Fax: (907) 344-4963

Remarks:

This fax is meant to inform you of my opinion with regard to House Bill 1 and House Bill 52 which ask for an increase in the "Tobacco Tax".

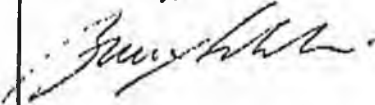
The message is: DO NOT pass the "Tobacco Tax".

'Citizens To Protect Kids From Tobacco' group is advocating that taxation be used to influence and control behavior. Parental responsibility should not be usurped by governmental regulation via taxation. In my opinion that sort of taxation would be an abuse of power.

Furthermore, if passed, some group may then, under the guise of 'public welfare' or whatever, convince the government (you) to use taxation to, for example, discourage gasoline consumption by increasing the "Gas Tax" or to increase the "Beef Tax" to discourage meat consumption. Just where do you intend to stop it all, or would you?

Please make this part of the Legislative Record.

Sincerely,



Forward

This book had its genesis in some reading and research that I did, a couple of years ago, relating to the causes of the disease, AIDS. Most people think that AIDS is caused by a virus, the HIV virus. There are, however, a substantial number of dissident scientists, who question whether the HIV virus is the true cause of AIDS. Some even question whether the virus, itself, has been isolated. An excellent book, dealing with this controversy is Re-Thinking AIDS, by Robert Root-Bernstein, ISBN 0-02-926905-9, The Free Press, 1993.

Now, I never did decide whether the so-called "HIV virus" causes AIDS, or not. There are excellent arguments on both sides. Some, like Professor Duesberg, argue that the virus exists, but is harmless. He points out that AIDS, supposedly, does not develop until many years after exposure to the virus. That requires the hypothesis that there is something like a "lenticular" (delayed reaction) virus at work. But no such "lenticular virus" has been found to cause any other disease, in humans. According to Duesberg and others in his camp, the HIV virus is just a pussycat; infection might bring on some mild flu-like symptoms, but there should be no long term effects. The tests for the AIDS virus don't really test for the presence of the virus at all. Rather, they test whether a person has developed antibodies against the virus. But with other viruses, the development of antibodies generally means that the individual has developed successful defenses against the disease. Why, Duesberg argues, should the AIDS virus be different?

Robert Gallo, the government scientist who claims to have discovered the HIV virus, obviously takes a different point of view. He asserts that the virus and nothing but the virus is the cause of AIDS. So, indeed, does every scientist and researcher employed by the government or any private organization receiving research money from the government. Dissenting views are not permitted and, indeed, Duesberg has been unable to obtain funds for his own research, and learned scientific journals have refused to publish his papers, lest they incur the ire of the "health establishment".

While I never did decide whether AIDS is caused by a virus or by something else, I began to see, rather clearly, that there is a "health establishment", composed of officials in such agencies as the Public Health Service, the Centers for Disease Control, the National Institutes of Health, etc., and researchers and scientists in the private center who depend upon government funds for research grants. It also became very evident to me that the health establishment is very powerful; and that it enforces conventional and rigid dogma and brooks no dissent.

Moreover, it soon became apparent that the health establishment regularly "cooks the books"; that statistics and other data are regularly folded, stapled and mutilated to "prove" that the official dogma is true. The CDC, for example, has changed the definition of AIDS three times. Moreover, there is a trend to the changes. Each time the definition was changed, it included more and more women (under the latest definition, any woman with cervical cancer who tests positive under the official HIV tests is considered to have AIDS). Furthermore, each change in the definition broadened the number of people considered to have AIDS so that, while using the original definition, the AIDS epidemic appeared to be winding down, the new definitions made it appear that the epidemic was exploding.

I recalled that Matilda Krim, a private AIDS researcher who receives government funds, had appeared on television some 7 or 8 years ago, to state that there were 2,000,000 HIV infected people in the U.S., and that, supposedly, we'd soon see 2,000,000 cases of AIDS (it didn't happen).

I asked myself, why were these people cooking the books? The answer came through, loud and clear: MONEY. The government folks wanted to expand and enlarge their agencies and promote their careers; and the folks outside government wanted more and more money for their private research projects.

Up to that time, I'd pretty much accepted the establishment view of smoking, i.e., that it's bad for you and may lead to lung cancer. But when I saw what the health establishment was doing in the field of AIDS, I began ask myself some questions. Could it be that the government figures on smoking, like those on AIDS, were cooked to produce a desired result? I began a two year research project, which resulted in this book.

As a result of that project, I learned many things. Most important, I'm afraid, I learned that government statistics on smoking, like those on AIDS, cannot be trusted. Important figures, like the 400,000 "smoking related deaths every year", are made up out of whole cloth. Studies which appear to refute the "dangers" of smoking, e.g., animal

In Defense of Smokers!

Chapter 1 The Hysteria

I am a 64 year old male and I have been smoking cigars and pipes since I was 18. Recently, however, like other smokers, I have found myself hounded, bullied and repressed by a government-sponsored campaign against smoking and smokers. In fact, I've been thrown out of some of the best restaurants in the country, because of my smoking habits!

What particularly galls me is the prejudice against cigar and pipe smokers! The original Surgeon General's Report, released in 1964, showed no ill effects from pipe smoking, or moderate cigar smoking. Indeed, studies relied upon by the SG actually showed that pipe smokers lived longer than non-smokers. The only exception was pipe smokers who quit smoking. They died somewhat sooner than the non-smokers or the active pipe smokers. The SG speculated that the pipe smokers who quit might have done so because they were ill.

In this book, I will show that the case against smoking based on bogus statistics and downright lies. I will show that the case for a link between smoking and disease has not been proven and that, indeed, the international statistics suggest that there's no link at all. Furthermore, I will show that the government estimates of "smoking-related deaths" are simply fraudulent and that the recent EPA report, purporting to show a risk to non-smokers from second hand smoke was predicated on manufactured "evidence" which some of the EPA's own scientists found appalling.

First, however, it may be helpful to recite a little history. From Winston's Cumulative Encyclopedia, published in 1911:

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Extensively used, perhaps, but never non-controversial. On his 70th birthday in 1905, Mark Twain said:

"I have achieved my seventy years in the usual way: by sticking strictly to a scheme of life which would kill anybody else. It sounds like an exaggeration, but that is really the common rule for attaining old age. When we examine the program of any of these garrulous old people we always find that the habits which have preserved them would have decayed us...I will offer here a sound maxim...that we can't reach old age by another man's road..."

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So, even in the "Golden Age" of smoking, there were those who thought it a sin, or worse, including Mark Twain's father. In recent years, however, there has never been such an assault on Smokers as the one being waged, at the present time, by the United States Government. A special agency has been set up, within the Surgeon General's office, to issue or perhaps manufacture statistics showing the dangers of smoking. It is called the Council on

CORRECTION

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HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

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studies or some of the second hand smoke studies, are either ignored or subjected to manipulation and distortion to make them fit the official line.

I wrote this book to refute the wild, irresponsible and untruthful anti-smoking propaganda which obscures the truth. I do not expect it will ever make any money, nor do I want it to make any money. Copies of the book were sent to numerous publishers, but even the subsidy publishers, who print and promote books for money, were unwilling to take it. All of which proves that in this country, "If you want a free press, you'd better own a press".

Numerous people assisted me in the project. My wife, Kristine, while a non-smoker, never-the-less encouraged me in the effort and I dedicate this book to her. Peter Petrakis, a former Washington, D.C., health writer now living in Washington State, provided much of the early material, including the Mark Twain quotes and the autopsy studies. I drew ideas from writings posted on the Internet alt.smokers newsgroup by such persons as Joe Dawson, Robert Wagner, and Ed Dambik. Jennifer Kraljevich did the cover design.

A disclaimer should not be necessary, but I furnish one, anyway. I am not an employee of any tobacco company. I own no tobacco stocks. I have never worked for any tobacco company as a lawyer or in other capacity. Neither am I a tobacco grower, nor do I participate in any business of any kind in which I profit from the growing, sale, or distribution of any tobacco product.

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In Defense of Smokers!

Chapter 1 The Hysteria

I am a 64 year old male and I have been smoking cigars and pipes since I was 18. Recently, however, like other smokers, I have found myself hounded, bullied and repressed by a government-sponsored campaign against smoking and smokers. In fact, I've been thrown out of some of the best restaurants in the country, because of my smoking habits!

What particularly galls me is the prejudice against cigar and pipe smokers! The original Surgeon General's Report, released in 1964, showed no ill effects from pipe smoking, or moderate cigar smoking. Indeed, studies relied upon by the SG actually showed that pipe smokers lived longer than non-smokers. The only exception was pipe smokers who quit smoking. They died somewhat sooner than the non-smokers or the active pipe smokers. The SG speculated that the pipe smokers who quit might have done so because they were ill.

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So, even in the "Golden Age" of smoking, there were those who thought it a sin, or worse, including Mark Twain's father. In recent years, however, there has never been such an assault on smokers as the one being waged, at the present time, by the United States Government. A special agency has been set up, within the Surgeon General's office, to issue or perhaps manufacture statistics showing the dangers of smoking. It is called the Council on

Smoking and Health but I have also seen it referred to by anti-smoking activists as the "Council on Smoking or Health".

In Congress, Representative Henry Waxman called the executives of the Tobacco companies to appear before his Sub-committee. He bullied them, shouted them down when they tried to speak, and demanded "yes" or "no" answers to loaded questions that could not be answered "yes" or "no". It reminded me of the tactics used by Senator Joe McCarthy, when he was persecuting alleged "communists". Waxman even had his own "Roy Cohn", whispering conspiratorially in his ear!

In Maryland, California, and Washington State, statewide bans have been enacted on smoking. New York City has enacted a ban. No matter that almost everywhere that such bans have been enacted, there have been drastic reductions in the businesses of bars, restaurants, bowling alleys, etc., that cater to smokers! Nothing will assuage the zeal of the tobacco prohibitionists except an eventual ban on all tobacco use.

But is all this justified? The Europeans don't seem to think so. In Italy, they still have ash-trays on elevators. In England, people still keep cigars and cigarettes in their homes, and politely offer them to their guests. A prominent British medical researcher, a non-smoker, who spent his life attempting to develop a unified theory of cancer, has written proliferously, questioning the alleged association of smoking with disease. I'll have more about that later.

Beginning in 1981, on annual trips to Martinique and Guadeloupe, islands in the Caribbean which are departments of France, my wife and I personally witnessed the relaxed European attitude towards smoking. At the hotels where we stayed, everybody smoked! Some smoked cigarettes, while other smoked pipes or cigars. Every day, at breakfast, lunch and dinner, I puffed away on my cigars and pipes, and nobody complained until the last day of one trip. On that day, a group of Americans sat down next to us at breakfast, and, sure enough, a young American girl began complaining, loudly, about my smoking.

One day, during our trip, we took a day cruise on a glass bottomed boat. There were a bunch of French people on board. We were up on the second deck, and I was smoking my usual cigar, when my wife decided to go downstairs and get a Coke. No sooner had she left than I spotted a young French girl walking towards me, rather aggressively. She was dressed in short shorts and a brief halter top (I'm old, but not blind). When she got about three feet away, she suddenly stopped. I thought "Oh-Oh!, she's going to demand that I throw away my cigar". But I was wrong! She simply held out a cigarette. I gather she wanted me to light it from my cigar, but I figured my wife might not appreciate such an intimate gesture, so I fished a pack of matches out of my pockets and handed them to her.

Chapter 2 The Burden of Proof

I am lawyer and, in particular, a trial lawyer. In the law, there is something called the burden of proof. The anti-smoking crowd insists that smokers prove to them that smoking is not harmful. That's a trap. Nobody can prove a negative, i.e., that something is not so.

Recently, a client wanted to know whether a particular document was filed with a government agency. I told him my records did not show that it was filed and that I presumed that it wasn't. That didn't satisfy him. He demanded a "yes" or "no": was it filed or wasn't it? I explained to him that I could send a researcher to the agency, and if the researcher found a copy of the document in the agency's files, that would prove, positively, that it had been filed. If, however, the researcher found nothing, it would prove nothing. There would always be the possibility that the document was mislaid or that the researcher overlooked it.

Tobacco companies know a lot about "burden of proof". That's why tobacco executives don't deny there's a risk in smoking. In fact they even boast that there's a risk. One of their own employees testified to the Waxman panel that he wouldn't want his daughter to smoke. You see, the tobacco companies have frequently been sued by people suffering from lung cancer who claim that they got the disease from smoking cigarettes. The conventional wisdom says that smoking does, in fact, cause lung cancer, but the conventional wisdom is often wrong and, in this instance there is plenty of evidence that it is wrong. The tobacco companies, however, don't need to buck the conventional wisdom in order to defend lawsuits. The tobacco companies have found it easier to defend lawsuits by saying to the plaintiff "Didn't you read the warnings on the cigarette packages? Didn't you listen to all the warnings from prominent physicians and public officials? You went ahead and assumed the risk!"

Back in 1890, the conventional wisdom said that masturbation caused blindness. Suppose some doctor dared to challenge the conventional wisdom, and advised a patient that the practice is harmless. The patient takes the advice, goes ahead and masturbates and goes blind. He sues the doctor and I'm hired to represent the doctor in court. Believe me, if I'm a good lawyer, I'm not going to challenge the conventional wisdom and say the blindness had nothing to do with the plaintiff taking my client's advice! A much better defense is to cross examine the plaintiff: "Haven't you read books written by prominent authorities about the dangers of Onanism? Haven't you heard the preacher warn about it, in church? Haven't you heard the lectures by prominent temperance authorities about this dangerous vice? You proceeded at your own risk!"

Where smoking is concerned, it's obvious that if everybody who smoked developed lung cancer, we could say, conclusively, that smoking "causes" lung cancer. But we all know that not everybody who smokes develops lung cancer, and we also all know of many people who don't smoke a day in their lives, but none-the-less develop lung cancer at an early age and die from the disease. Hal Roach, the producer of the "Little Rascals" movies, was a heavy, 3 or 4 pack-per-day cigarette smoker for his entire life, but died recently, at the age of 101, apparently from simple old age¹. A former governor of Virginia died recently of lung cancer; he was in his 50's and had never smoked. Just the other day, CNN showed a picture of a Lebanese gentleman, who claims to be 134 years old. He was vigorously puffing on a cigarette, burned down almost all the way to his lips. His formula for a long life: smoking and drinking every day, along with the consumption of fresh vegetables. The world's oldest woman, a 125 year old resident of France, smoked until she was 123.

In my own family, my aunt died recently in Florida, at the age of 78, from lung cancer. She'd been a smoker in her youth, but gave it up about 25 years ago. A family friend, also a female, died in New York at about the same time as my aunt died. The family friend was in her late 70's or early 80's, and had never smoked a day in her life. Thus, these little old ladies became statistics. Or did they? Actually, it may surprise the reader to learn that death certificates never contain any information concerning the life-styles of the decedents. Therefore, while the Public

¹ ROACH'S SMOKING HABITS WERE DESCRIBED IN AN ARTICLE ENTITLED "100 YEARS OF HAL ROACH", WHICH APPEARED IN THE WASHINGTON POST ON JANUARY 24, 1992. HIS DEATH WAS REPORTED IN THE DECEMBER 13, 1992, EDITION OF THE POST. NO DATE OR CAUSE OF DEATH WAS GIVEN.

Health Service keeps certain records showing the cause of death from various diseases, nobody, but nobody keeps any records to show whether the decedents were or were not smokers!

There is an Internet News Group devoted to smoking (alt.smokers). Recently, a participant called the Office of Smoking or Health, in an effort to find out how the government arrives at its estimate of 450,000 annual smoking related deaths. After repeated calls to different individuals within the government, it turned out that nobody really knew how the figures are compiled. Some bureaucrat said he thought the calculations might come from a book, "Foundations of Modern Epidemiology", by David Lilienfeld. They don't. I'll discuss this and other interesting statistical manipulations, later.

Before leaving this subject, however, a recent (04/19/95) letter to the editor of the San Jose, Ca., Mercury News sheds some light on the methods used by the anti-smoking lobby to generate false reports of "smoking related" deaths. The author of the letter, Mary Ellen Haley, reported that a loved one died of adenocarcinoma. Only 17 days elapsed from the deceased's first visit to the doctor to the day of his death. The letter writer was provided with the information for the death certificate, which she took to the attending physician for completion.

On the death certificate there was a line for the doctor to insert the immediate cause of death, and then three lines for "due to". The doctor inserted "cigarette smoking" under "due to". The letter writer questioned the doctor: was he sure the tumor was caused by cigarette smoking? The doctor said he wasn't sure about that, but there were guidelines issued by the American Cancer Society, and that when a person dies of certain conditions and has smoked, the doctor is instructed to list the "due to" as "smoking". In this instance, Ms. Haley persuaded the doctor to omit the usual "due to cigarette smoking", but obviously, this was a rare occurrence. The willingness of the medical profession to blindly observe "guidelines", issued by the Cancer Society generates a continuous stream of death certificates, validating the official line that cigarette smoking causes everything from heart disease to uterine cancer; yet, there is no shred of scientific evidence to validate any of the certificates; they are based on nothing more than official instructions to put down smoking as the cause of death!

Chapter 3 The World Scene

As I indicated in the last chapter, neither I nor anybody else can prove a negative. Therefore, I'm not going to try to prove that smoking does not cause hangnails, or heart disease or anything else. The burden of proof rests on those who assert that there is, in fact, a smoking/disease connection. The connection most often alleged is the connection to lung cancer. I will concentrate on that connection, in the following pages.

The Oxford Atlas of the World, ISBN 0-19-520955-9, published in 1992, gives figures for cigarette consumption in different countries during the time period 1986-1988. The figures are in annual consumption of cigarettes per capita. I have taken them from a graph and have attempted to interpolate between dividers; however, the interpolation errors should be negligible. Here are the figures:

Country	Consumption
Hungary	2515
Japan	2510
USA	2020
South Africa	1950
U.K.	1700
France	1690
USSR	1650
Brazil	1200
Phillipines	1150
Venezuela	950
Zaire	150
India	100

To draw any conclusions concerning the influence of smoking upon lung cancer in these countries, we need figures on lung cancer death rates (LCDR's). Fortunately, the World Bank puts out a book which gives statistics for a number of countries which give disease statistics in a form known as "45Q15". The "45Q15" number represents the percentage risk of someone who is 15 years old dying from a particular disease by the time he or she is 60. Figures are not available for all countries; such important ones as the former USSR and India either don't report at all or don't break down deaths from cancer into different types of cancer. Never-the-less, we do have Lcdr's for some of the countries for which we have smoking consumption figures. All of the following statistics are in 45Q15 format, which means they are risk figures in percentages.

In the United States, the male Lcdr is 1.4%, the female risk is 0.7%. Hungary, with the highest rate of cigarette consumption of any country, has a male Lcdr of 2.4; female 0.5%. Hungary shares the highest rates with its neighbor, Czechoslovakia, where the male rate is 2.4% and the female rate is 0.3%. Prima facie, these figures indicate that a high smoking rate is associated with a high Lcdr. Or do they?

Let's look at Japan. As we have seen, Japan is practically tied with Hungary for the highest rate of cigarette consumption in the world. It turns out, however, that the male Lcdr in Japan is 0.5%. That's approximately one-fifth the rate in Hungary; approximately one-third the U.S. rate. The Lcdr for females in Japan is also astonishingly low, 0.2%.

Furthermore, although they have the highest smoking rate of any major nation, the Japanese are remarkably healthy! At birth, a Japanese male has a whopping life expectancy of 75 years (as opposed to 72 in the U.S.A.). Japanese girls, at birth, have a life expectancy of 80 years. Those are the highest life expectancies in the entire world.

Another heavy smoking nation is China. The authors of the World Bank book tell us so, and a recent PBS special concentrated on the "alarming" rate of smoking in China. In fact, in China, the government grows tobacco and receives much of its revenue from cigarette sales. In China, however, the Lcdr is about the same as in Japan: 0.56% for men; 0.39% for women, in 1988, the last year for which we have World Bank information.

Interestingly, some nations in the tropical and sub-tropical belts have very low LCDR's, notwithstanding evidence suggesting that smoking is widespread in these countries. In Mauritius, an island in the Indian Ocean where tobacco is an important crop, the LCDR for males is only 0.4; for females it is 0.1. In Barbados, the male LCDR is 0.5; the female rate is zero. In the Seychelles, an island paradise in the Indian Ocean, the male LCDR is 0.4; the female LCDR is 1.0, making that nation the only one in the entire world, where the female rate exceeds the male rate.

At least one researcher has suggested that the low LCDR's in the tropical and sub-tropical countries are attributable to the exposure of the residents to sunshine, which raises vitamin D levels. That theory, however, fails to explain the very low LCDR's in China and Japan which are not tropical or sub-tropical countries.

One possible explanation may relate to the diagnosis of lung cancer. Sri Lanka (formerly Ceylon) has the lowest male LCDR of any country in the world (0.1%), and a female rate of zero. So, if you're worried about lung cancer, you should catch the next plane to Sri Lanka. Before you do, however, you should be aware there is a disease category called "Senile and ill defined". The male death rate from "ill defined" illness in Sri Lanka is 3.4%; the female rate is 2.2%. These figures are many times greater than those for another country (for example, the male rate in the U.S. is 0.3%; in Hungary, it is zero). Clearly, the doctors in Sri Lanka are not doing a very good job of diagnosing causes of death. By comparison, in Hungary (which has the largest number of doctors per capita of any country in the world), every death is accounted for, positively. There are no deaths attributed to "ill defined" causes.

Diagnosis, alone, however, cannot be the whole answer. Japan has an excellent medical system, and cases of lung cancer are surely and accurately diagnosed. The death rate from "ill defined" illnesses in Japan is only 0.1% for males; zero per cent for females. In China, also, there is a rigorous effort to pin-point causes of death; the rates of death for males and females from "ill defined" causes are less than 0.1%. Yet, as we have seen, the LCDR's in China and Japan are very low, despite very high rates of smoking. Moreover, the LCDR figures cannot be dismissed as resulting from poor diagnosis, since the low rate of "ill defined" illness in each country proves that a vigorous effort is being made to accurately pin point exact causes of death.

Possibly, genetic factors are at work. Hungary and Czechoslovakia, each with high LCDR's, are contiguous countries, inhabited largely by fair skinned, blue eyed people. Japan and China, which have very low LCDR's, are separated only by the narrow Sea of Japan, and populated by people with relatively similar racial characteristics. Few figures are available on LCDR's in the developing nations in the tropical and sub-tropical zones, but the available figures suggest that lung cancer rates are small in these countries, which are largely inhabited by Blacks². Can it be that certain races of the world are genetically more susceptible to lung cancer than others?

I don't know. I can, however, say with certainty that smoking doesn't cause lung cancer in Japan and China. If it did, the LCDR's in these countries, which are populated by heavy smokers, could not possibly be so low!

² THE SEYCHELLES, WHICH I MENTIONED EARLIER, ARE INHABITED 99% BY BLACKS, AND HAVE AN EXTREMELY LOW RATE OF MALE LUNG CANCER. ODDLY, HOWEVER, AFRICAN AMERICANS, LIVING IN THE U.S., ARE SAID TO HAVE A 50% GREATER LCDR THAN CAUCASIANS, DESPITE THE FACT THAT AFRICAN AMERICANS SMOKE LESS THAN THEIR CAUCASIAN COUNTERPARTS. SEE, PROGRESS AGAINST CANCER, BY JOHN CARPI, AMERICAN HEALTH, V13, ISSUE 8 (OCT., 1994).

Chapter 4 The U.S.: A Smoking Laboratory

Many people believe that the current concern over smoking and health began with the publication of the first Surgeon General's Report, in 1964. Not so!

As early as 1952, the American Cancer Society, frustrated by the inability of medical science to find a cure for cancer (or even find the root causes of the disease), began pointing an accusing finger at smoking. In that year, the ACS began a study of a group of volunteers allegedly to find out whether smoking was related to lung cancer but actually, to prove that it was. They had the support of the Surgeon General at that time, Dr. Leroy E. Burney, who, in an article in the Journal of the American Medical Association, opined that cigarette smoking causes lung cancer and that cigarette smoking is 7 times worse than cigar smoking and 3 times worse than pipe smoking.

In the following pages, I will be discussing the relationship (if any) between smoking and lung cancer. Before doing so, however, it needs to be pointed out that, despite the claims of the anti-smoking movement, there is no "pandemic" of lung cancer in the United States. In the United States, there are about 2,140,000 deaths from all causes, each year. Of these deaths, less than 120,000 are from lung cancer.¹ Thus, despite what you may have read or heard, lung cancer is not a common illness.

According to the Surgeon General's Report, released in 1964, cigarette consumption in the United States was 50 cigarettes per capita per annum in 1900; 138 in 1910; 1965 in 1930; 1828 in 1940 and 3322 in 1950. In 1961, according to the Report, cigarette consumption reached a "peak" at 3986. In that year, according to the Report, 68% of all males in the United States over the age of 18 were smokers.⁴

The interesting word in the "Report" is the word "peak". By 1964, when the Report was issued, the ACS campaign against smoking was already taking hold, and consumption was already declining. By the time period 1986-88, according to the figures published in the Oxford Atlas of the World, which I've previously cited, it was down to 2020 cigarettes per capita per year, or just slightly over half the peak rate achieved in 1961. A Surgeon General's Report, issued in 1980, reported that in 1965, 51.1% of adult men smoked and 33.3% of women. According to the same source, the figures in 1979 were 36.9% for men; 28.2% for women.⁵ According to the CDC (Centers for Disease Control), 26.5% of all Americans were smokers in 1992. Of these, 22.1% were regular smokers, while 4.4% were occasional smokers.

There are approximately 180 million Americans over the age of 18. Assuming that the average smoker smokes a pack a day (20 cigarettes), we can calculate annual per capita cigarette consumption by taking 26% of 180 million to get the number of smokers (which equals 51 million), multiplying by 365 days to get the annual consumption of all 51 million smokers and dividing by 180 million to get the per capita annual consumption. This gives a result of 2069 cigarettes per annum per capita, which is very close to the number supplied in the Atlas.⁶

¹ THE AMERICAN CANCER SOCIETY ESTIMATES THAT IN 1993, THERE WERE 153,000 DEATHS FROM "LUNG CANCER". SEE WORLD ALMANAC AND BOOK OF FACTS, 1994 EDITION. THIS FIGURE IS COMPARABLE WITH THE FIGURE IN THE STATISTICAL ABSTRACT OF THE UNITED STATES, FOR DEATHS FROM LUNG CANCER, INCLUDING DEATHS FROM CANCER OF OTHER "INTRATHORACIC ORGANS", E.G., THE ESOPHAGUS AND THE THROAT. I BELIEVE, THEREFORE, THAT THE CANCER SOCIETY ESTIMATES, LIKE THE FIGURES GIVEN IN THE STATISTICAL ABSTRACT, TEND TO EXAGGERATE THE NUMBER OF LUNG CANCER DEATHS, BECAUSE THEY INCLUDE CANCERS OF "OTHER INTRATHORACIC ORGANS".

⁴ 1964 REPORT, P. 14.

⁵ 1980 REPORT, P. 23.

⁶ IT IS NOT CLOSE TO THE CONSUMPTION FIGURES GIVEN IN INTERNATIONAL SMOKING STATISTICS (ISS), A BOOK PUBLISHED UNDER THE AUSPICES OF THE WOLFSON INSTITUTE OF PREVENTIVE

The United States, therefore, has been turned into a giant laboratory for the evaluation of a cigarette/lung cancer link. If, in fact, cigarettes do, in fact, "cause" lung cancer, we should see a decrease in the LCDR's over the time period between 1961 and the present, corresponding to the approximately 50% decline in cigarette consumption, and the comparable decline in smoking. The problem is, we don't!

The Statistical Abstract of the United States, published by the Commerce Department, 1993 Edition, gives statistics for cancer death rates in men and women during the time period from 1970 to 1990. Unlike the international statistics, reported in the previous chapter, the figures in the Statistical Abstract are not percentages. Rather, they represent the number of deaths per 100,000 of population. Where the figures refer to a particular age group, they refer to the number of deaths per 100,000 population in that particular age group. Thus, the figures are automatically "age adjusted".⁷

It turns out that in every important age grouping, LCDR's have increased, steadily, between 1970 and 1990, notwithstanding the decline in smoking! Here are the figures from the Statistical Abstract:

MEDICINE, WHICH I WILL USE AS A SOURCE, LATER ON. ACCORDING TO ISS, ANNUAL PER CAPITA CONSUMPTION OF CIGARETTES IN THE U.S. HAS CHANGED RELATIVELY LITTLE BETWEEN 1961, WHEN IT WAS 10.9 PER ADULT PER DAY, AND 1985, WHEN IT WAS, ALLEGEDLY, 8.8 PER DAY, A DECLINE OF ONLY 19.2% (ISS, AT P. 453). THERE IS SOMETHING WRONG WITH THE ISS CIGARETTE NUMBERS. THE SAME PUBLICATION SHOWS THAT ANNUAL CONSUMPTION OF ALL TOBACCO PRODUCTS IN THE U.S. HAS DECLINED FROM A PEAK OF 13.8 GRAMS PER DAY IN 1963 TO 8.4 GRAMS IN 1985 ISS, P. 453). THAT'S A DECLINE OF ALMOST 40%. SINCE THE OVERWHELMING BULK OF TOBACCO GOES INTO CIGARETTES AND, ACCORDING TO THE SAME SOURCE, THE PERCENTAGE GOING INTO CIGARETTES CHANGED VERY LITTLE BETWEEN 1965 AND 1985, THERE IS NO WAY THAT A 40% DROP IN TOBACCO CONSUMPTION COULD TRANSLATE INTO A DROP IN CIGARETTE CONSUMPTION OF ONLY 20%. I SUSPECT, BUT CANNOT PROVE, THAT THE ISS FIGURES DO NOT PROPERLY EXCLUDE CIGARETTES MADE FOR EXPORT. THEY DO NOT, FOR EXAMPLE, TAKE INTO ACCOUNT THE LARGE NUMBER OF CIGARETTES MADE FOR THE U.S. DOMESTIC MARKET, WHICH ARE SMUGGLED INTO CANADA TO EVADE HIGH CANADIAN TAXES.

⁷ TO MAKE ANY SENSE, CANCER RATES MUST ALWAYS BE AGE ADJUSTED, TO TAKE INTO ACCOUNT THE AGING OF THE POPULATION. IF A POPULATION CONTAINS A LARGE PERCENTAGE OF OLD PEOPLE, IT IS LIKELY TO HAVE A HIGH INCIDENCE OF CANCER, BECAUSE CANCER IS A DISEASE OF OLD AGE. CONVERSELY, IF A POPULATION CONTAINS A HIGH PERCENTAGE OF YOUNG PEOPLE, IT WILL HAVE A LOW INCIDENCE OF CANCER BECAUSE YOUNG PEOPLE GENERALLY DON'T DEVELOP THE DISEASE. OVER TIME, THE PERCENTAGE OF YOUNG OR OLD PEOPLE IN A COUNTRY MAY CHANGE. AGE ADJUSTMENT CORRECTS FOR THESE CHANGES SO THAT STATISTICS FOR ANY PARTICULAR YEAR MAY BE COMPARED WITH THOSE FOR ANOTHER YEAR, WITHOUT THE DISTORTIONS WHICH WOULD OTHERWISE RESULT FROM CHANGES IN THE AGING OF THE POPULATION.

Age Group	1970	1980	1990
For Men:			
35-44	17.0	12.6	9.1
45-54	72.1	79.8	63.0
55-64	202.3	223.8	232.6
65-74	340.7	422.0	447.3
75-84	354.2	511.5	594.4
85 +	215.3	386.3	538.0
For Women:			
35-44	6.5	6.8	5.4
45-54	22.2	34.8	35.3
55-64	38.9	74.5	107.6
65-74	45.6	106.1	181.7
75-84	56.5	98.0	194.5
85 +	56.5	96.3	142.8

Particularly interesting are the figures for women. They show dramatic increases in LCDR's, in the key age groups where lung cancer is most prevalent, notwithstanding a steady decline in smoking rates.

The most obvious interpretation to be given to these figures is simply that the decline in smoking has not produced any decrease in LCDR's and that, in fact, in most age categories, the LCDR's have gone up. The anti-smoking people have an answer to everything, however, and, to combat the obvious implications of the statistics, they have developed a new theory: the "incubation period" theory. According to that theory, lung cancer is caused by smoking, and there is an "incubation period", variously given as 20 years, thirty years, or some other number, during which cancer develops in the lungs of smokers. According to this theory, the dramatic increase in LCDR's in women simply confirms that smoking causes lung cancer, because women began to smoke more recently than men, and the effects are just starting to show up in the figures.

There are a number of problems with the "incubation period" theory. The first is simply that, contrary to the assumptions advanced by the proponents of the theory, women are not newcomers to smoking, in America. A Gallup poll, taken in 1944, revealed that 36% of the women in the U.S. over the age of 17, smoked⁸. In 1959, the Department of Agriculture estimated that 47% of the overall population of the U.S., over the age of 14, smoked, and that men smoked an average of 24 cigarettes per day while women smoked 19⁹. I have found no reliable statistics for female smoking earlier than 1944¹⁰, but would remind the reader that in films, books, etc., the female "flapper" of the 1920's was usually depicted with a cigarette in her mouth, often in a long white holder. Anyway, various surveys, taken between 1955 and 1985 and cited in International Smoking Statistics show female smoking rates as low as 27% and as high as 37%, with the latest surveys (1985) at 25% or 28% (according to which survey you believe). The notion that women were shy abstainers from tobacco use until recent years simply is not supportable.

A second, even more serious problem for the "incubation period" theory is that the statistics for LCDR's in women just don't add up when compared with the overall cancer death rate in women, i.e., the rate of death from cancers of all kinds, combined. According to the Statistical Abstract, that overall cancer death rate, age adjusted, has remained practically constant over the years. In 1970, it was 108.8; in 1990, it was 112.7. But how is this possible, given the dramatic rise in LCDR's in women?

To answer that apparent paradox, we must remember that we're talking death rates, not rates of incidence of disease. The death rate in females from heart disease has declined significantly in recent years. Here are the rates, by age groups, for ischemic heart disease (the major killer in that category):

Age Group	1970	1980	1990
45-54	84.0	52.2	33.6
55-64	299.1	164.5	135.4
65-74	978.0	430.1	415.2
75-84	2866.3	1842.7	1287.6
85 +	6951.5	5280.6	4257.8 ¹¹

⁸ INTERNATIONAL SMOKING STATISTICS, OXFORD UNIVERSITY PRESS, ISBN 0 19 262485 7 (1993), AT PPS. 457 AND 471.

⁹ FROM "FACTS ON FILE", FOR 04/29/59.

¹⁰ IN INTERNATIONAL SMOKING STATISTICS, WHICH I'VE PREVIOUSLY CITED, THERE IS MENTION OF A FORTUNE MAGAZINE POLL, TAKEN IN 1935, WHICH SHOWED THAT 26% OF THE WOMEN IN THE U.S. FROM AGE 20 THROUGH AGE 39 SMOKED, AND 9% OF THOSE OVER THAT AGE. THE AUTHORS, HOWEVER, STATE THAT THE "AGE RANGE AND PRODUCT ARE UNCERTAIN". PAGE 472.

¹¹ SOURCE: STATISTICAL ABSTRACT OF THE U.S., 1993.

Furthermore, medical science has made considerable progress in curing some of the kinds of cancer which afflict women. Thanks to pap smears and mammography, cancers of the genital organs and breast can now be detected early and often successfully treated. Thus, more women are living to the ripe old age where lung cancer usually strikes. Progress has also been made in prolonging the lives of lung cancer victims through chemotherapy, which may well account for the slight reduction in lung cancer rates in younger women (and men). The anti-smoking crowd, however, refuses to even consider these factors. They are committed to the belief that if smoking were just prohibited, disease, of all sorts, would be practically eliminated. When the statistics fail to show that the drastic decline in smoking has brought about a corresponding decline in LCDR's, the anti-smokers simply postulate longer, and longer "incubation" rates for lung cancer (forgetting, by the way, that on that theory, there also has to be an "incubation period" for the disease in the thousands of non-smokers who develop lung cancer!).

Chapter 5 Some Studies that Went Wrong!

In February, 1991, a paper was published in the Journal, Cancer, entitled "Comparative Epidemiology of Cancer Between the United States and Japan". The authors, Ernst L. Wynder, M.D., et al, started out with the assumption that smoking causes lung cancer. In fact, Dr. Wynder has been crusading against smoking since the 1950's and the authors' report was paid for by the anti-smoking National Cancer Institute. As we will see, the authors took some liberties with the figures presented in their report, so as to try to make the data fit their preconception that smoking causes lung cancer, but eventually had to admit that the data did not support that assumption.

The highlight of the Wynder Report is a graph, which purports to show per capita cigarette consumption in the United States and Japan for the time period 1920 to 1985. The graph relies upon data, plotted at five year intervals. It purports to show a sharp dip in consumption during World War II, to less than 1/3 the pre-war rate. Also, amazingly, it purports to show that for the entire time period between 1920 and 1985, per capita cigarette consumption in Japan was always less than in the U.S.

As we will shortly see, the authors of the Wynder Report presented data which they themselves acknowledged to be in contradiction with their own graph. Before discussing that matter, however, it will be helpful to consider a basic problem in epidemiology, i.e., the difficulty of comparing data for two differing populations.

Suppose we postulate that people who eat jellybeans are prone to develop more carbuncles than people who don't. To test the theory, we decide to study jellybean consumption in two different countries: country A and country B. Both countries have populations of 1,000,000 divided equally between men and women. Jellybean consumption in both countries is 1,000,000 beans per day, yielding a per capita consumption figure of one jellybean per person per day.

There is, however, a difference. In Country A, only men eat jellybeans, while in Country B, both men and women eat jellybeans. Obviously, in Country A, the jellybean consumption for men is 2 per day, while in Country B it is one. In Country A, the daily jellybean consumption for women is zero, while in country B it is one. Any comparison of the two countries must take this into account.

Dr. Wynder and his colleagues presented data on relative smoking rates for men and women in Japan and the United States. The rates, expressed in terms of the percentage of each sex who smoke, are as follows:

Year:	1955	1965	1976	1980	1985
U.S. Males	52.6	52.1	41.6	37.9	33.2
U.S. Female	24.5	34.2	32.5	29.8	27.9
Japanese M	81.4	82.3	75.1	70.2	64.6
Japanese F	12.8	17.7	15.4	14.4	13.7

Likewise, the authors presented statistics for 1970, 1980, and 1986, showing that Japanese males smoke more cigarettes per day than U.S. males, while Japanese females smoke fewer cigarettes per day than their counterparts in the U.S. Clearly, the total consumption figures given in the graph, accompanying the report, need to be adjusted to take into account the differing rates of smoking among males and females in Japan and the US. Otherwise, the authors are comparing apples and oranges. No adjustment was made but, if one had been made, so as to compare only Japanese males with US males, the graph would most assuredly have shown much higher per capita consumption in Japan than in the U.S. This is so because, in Japan, where few women smoke, the large number of non-smoking women "waters down" or dilutes the per capita consumption figures for the population, taken as a whole.

Other data presented in the report compared the lung cancer death rates in Japan and the U.S. For some reason, the authors elected to give figures only for white U.S. males and females, excluding African Americans and American Indians (probably, the inclusion of that data would have interfered with some pre-conceived notions). Whatever the case, the male lung cancer death rates, age adjusted, for 100,000 of population were presented as follows:

Year	1955	1965	1975	1985
U.S.	90	130	160	165
Japan	15	35	45	50

At the time of the release of the report, there were interviews on TV with Japanese doctors, who sought to explain the high rate of smoking in Japan and the low rate of lung cancer by declaring that in Japan, cigarettes were hard to get, during World War II. The graph, prepared by Dr. Wynder and his colleagues, seems to support that claim, showing as it does a big dip in cigarette consumption during the War.

The graph is, however, tricky. The data is plotted at five year intervals, and 1945, the last year of the war, is one of the years used. Simple interpolation was used to indicate the data between 1940 and 1945, and between 1945 and 1950; in other words, the authors drew two straight lines, one between 1940 and 1945, and another between 1945 and 1950.

Actually, data is available for annual cigarette consumption in Japan for every year from 1920 to 1990, based upon sales. Those figures come from a book, "International Smoking Statistics", published by the Oxford University Press in 1993. The figures show that in Japan, as in the U.S., there was a switch from machine made cigarettes to hand rolled cigarettes during World War II. Taking that into account (which the Wynder authors apparently did not), the Japanese consumed 71,158 million cigarettes (of both kinds) in the last year before the War, 1941. Consumption continued unabated until 1944, when 64,280 million cigarettes were consumed. In 1945, consumption dropped to 31,021 million cigarettes. It then rose steadily until 1950, when 75,138 million cigarettes were consumed. So there was a dip, but it lasted only 5 years, and was not nearly as pronounced or as lengthy as the Wynder chart would make it seem.

The bottom line, however, was the concession of Dr. Wynder that the data did not support smoking as a cause of lung cancer in Japan. That concession did not come without a few confusing gyrations. In discussing cancer of the larynx, the authors say that "The age adjusted mortality rates for laryngeal cancer during 1955 are higher in U.S. Whites than in the Japanese. These differences can be partially explained by the higher levels of cigarette consumption and alcohol consumption in the U.S.". The authors discuss cancer of the esophagus, saying that "In spite of the higher tobacco and alcohol consumption in the U.S., Japanese males have higher esophageal cancer mortality rates, which suggests that other risk factors are of importance". Thus, in their discussions of these two types of cancer, the authors assert that smoking and alcohol use are greater in the U.S. than in Japan, using that "fact" in one instance to justify their preconceived belief as to the cause of laryngeal cancer, and dismissing the

"fact" as irrelevant when it comes to the other cancer (esophagus), where the figures just don't bear out the preconception.

When it comes to lung cancer, however, the authors state that during 1955 to 1985, lung cancer death rates are "higher in US White men than in Japanese men which is discrepant with the higher prevalence of cigarette smoking among Japanese males for the same period of time". Exactly! According to the authors' own figures, the lung cancer rate among Japanese males is less than one third the rate among US White males, and as early as 1955, 81.4% of Japanese men were smokers (compared to 52.6% in the U.S.). That is, indeed, a big discrepancy. The Wynder authors must have had to write that word "discrepant" through gritted teeth, but at least they had the honesty to do it.

On January 13, 1995, the Wall Street Journal reported another study, this one involving animals and funded, in part, by the U.S. National Institutes of Health. According to the report, the study was inspired when a researcher in Buffalo, John Pauly, was studying some tissue from a smoker and lung cancer victim and found a tiny particle of cellulose acetate, the material used to make cigarette filters. He apparently decided that pieces of cigarette filters, imbedded in the lungs, are the cause of lung cancer and decided to do an experiment with mice.

He implanted pieces of filters, coated with cigarette tar, in the lungs of six mice and found that they remained intact in the lungs for six months. This finding was hailed as a great break-through, demonstrating that pieces of cigarette filters may lodge in the lungs and cause cancer. What this ignores, however, is a simple fact: no cancers were found in the mice! What the study really proves, therefore, is merely that implanting pieces of cigarette filters, drenched with tar, in the lungs of mice does the mice no apparent harm!

Before leaving this subject, i.e., studies which don't bear out the smoking/lung cancer connection, it's worth mentioning a couple of studies that involve Native Americans. Some of the heaviest smokers (and drinkers) in America are to be found among the Native Americans. In fact, a 1992 study by the CDC showed that 39.5% of American Indians smoked, as opposed to 25.6% of the general population. Knowing this, I have been looking for some statistics on lung cancer among Native Americans.

Turns out there have been at least two such studies. The first was conducted by J.M. Samet, et al, of the University of New Mexico School of Medicine and published at Am J Public Health Sept., 1988, 79(9) 1182-86. The study dealt with both Hispanics and Native Americans. The authors concluded that in the study period (1958-82), "[in whites] age adjusted mortality rates from lung cancer and from chronic obstructive pulmonary disease increased progressively in males and females. Mortality rates for both diseases increased in Hispanics during the study period, but the most recent rates for Hispanics were well below those for Other Whites....in Native Americans, rates for both diseases were low throughout the study period, and did not show consistent temporal trends."

The second study was conducted by M.C. Mahoney, et al., of the New York State Department of Health, using data from Native Americans in upstate New York, during the time period 1980-86. It is published in the Int J Epidemiology, June, 1989, 18 (2) 403-412. The authors came to the same conclusion as Samet, et al. They stated that the principal causes of death among the Native Americans were TB, diabetes, pneumonia and cirrhosis. However, "fewer than expected malignant deaths occurred among both Native males and females [and]... A deficit of deaths was observed for colon and lung cancer deaths among Native males and for colon and breast cancer deaths among Native Females..."

In short, Native Americans smoke more than the general population but suffer from less cancer and, in particular, less lung cancer.

Chapter 6. The Propaganda Machine

Beginning in the early 1950's, the American Cancer Society started to wage war against smoking. Later, the government took up the cudgel and, today, there is a government agency, the Office of Smoking and Health, dedicated to stamping out smoking. Unfortunately, the government propaganda is often predicated upon assertions which are simply untrue. In many instances, these are examples of the "LaLonde effect".

Marc LaLonde was formerly the Canadian Minister of National Health and Welfare. He argued that health messages should be vigorously disseminated, and should be "loud, clear and unequivocal" even if unsupported by scientific evidence. If a particular study showed that smoking might be related to a particular disease, it made no difference to LaLonde whether the study was seriously flawed, or not. He felt that releasing the study was always justified, if it would convince people to stop smoking, since everybody knew that smoking was bad for people.

The LaLonde effect is by no means new. As early as 1955, J. Neyman wrote an article in Science Magazine, entitled "Statistics - servant of all sciences". In the article, he commented upon a statistical study of smoking and cancer and concluded that the study was possibly flawed. None-the-less, he felt obliged to remark, in a footnote, that "A referee warns me that in spite of the fictitiousness of the figures in Table I and in spite of the emphasis on the methodological character of my remarks, the 'tobacco people' may pick up the argument and use it for publicity purposes".¹²

Every year, the government releases figures on the number of "smoking related deaths" in the United States. The most recent figure is 470,000, although Congressman Waxman recently said 500,000. Most people assume that there is some scientific basis to that figure. Not so! The government "scientists" simply take a flat percentage of the number of people who die from a particular disease, and assume that to be the number whose death was caused by smoking. There are no autopsies, no studies on actual human beings.

Dr. Bernard M. Wagner, the editor of Modern Pathology, recently wrote, "Are there 450,000 smoking-related deaths per year in America? Maybe...but no human beings are ever studied to find out". Wagner went on to say the biggest obstacle to knowing what is actually going on is the low autopsy rate in this country, about 10%.

Perhaps the best (or maybe the worst) example of the LaLonde effect is the recent report of the Environmental Protection Agency on the "dangers" of second-hand smoke (ETS).

In an article published in the Winter 93-94 issue of Bostonia, a magazine published by Boston University, the EPA Report was vigorously attacked by Dr. John C. Luik, a non-smoker, and a senior associate of the Niagara Institute, Ontario, Canada. As Luik showed, the EPA study was based on some 30 studies from several different countries. These studies dealt, essentially, with the effect of smoking by a smoking husband or wife on a non-smoking spouse. Of the thirty studies, 24 showed no statistically significant connection between ETS (environmental tobacco smoke) and lung cancer. However, while the EPA saw fit to discuss and refer to all 30 studies, it made a statistical analysis of only 11 U.S. studies. EPA conceded that ten of these studies also showed no statistically significant increase in lung cancer risk. One study alone showed such a risk, but to show such a risk, the EPA was obliged to reduce the statistical "confidence factor" which it normally uses in such analyses from 95% to 90%!

The EPA then went on to merge all of the eleven studies together (a statistically invalid procedure since the studies were not all structured the same way), and to reanalyze the results, using the newly reduced "confidence factor". By folding, mutilating and stapling the data, the EPA decided that the spouses of smokers had a risk of developing 119 lung cancers, as opposed to a risk of 100 such cancers in the spouses of non-smokers. Without the reduction in the "confidence factor", no statistically significant risk could have been shown. None-the-less, the EPA branded ETS a "carcinogen".

¹² CITED IN BROWHLEE, "A REVIEW OF 'SMOKING AND HEALTH'", 60 JOURNAL OF THE AMERICAN STAT. ASSN., 722 (1965).

Writing in Toxicological Pathology, Alvan Feinstein, a Yale University epidemiologist quotes another prominent epidemiologist as saying this about the EPA report: "Yes, it's rotten science, but it's in a worthy cause. It will help us to get rid of cigarettes and become a smoke-free society". The "LaLonde Effect" is alive and well!

Meanwhile, the propaganda machine continues to spew out all kinds of spurious information and distortions. On July 13, 1994, an obituary in the Washington Post reported the death, at age 60, of Richard Joshua Reynolds, III, an heir to the founder of the R. J. Reynolds Tobacco Company. The headline, and an accompanying photograph showed the deceased holding a lighted cigarette, implying that Reynolds died from emphysema, caused by smoking. Reading the body of the obituary, however, it turned out that he had quit smoking eight years before his death; that there was a family history of emphysema and the deceased's own father had died from the disease at the age of 58; and that his doctor was unable to state the "immediate cause" of his death!¹³

Recently, also, the Post Office released a postage stamp, honoring a deceased jazz musician. The likeness of the musician is on the stamp, and is based on a photograph, taken while he was alive. The original photograph showed the musician with a cigarette dangling from his lips. But the cigarette has been airbrushed out in the postage stamp!

Recently, on Maryland Public TV, an official of the Maryland Cancer Society made the statement that the smoking/lung cancer connection had been established in "laboratory experiments". Of course, it has not, but nobody challenged him.

Similarly, in a recent CNN television program about smoking, a lady was presented who had lost her larynx to cancer and had to use an artificial voice box. In the course of the program, it came out that the lady was a life long non-smoker. The moderator, however, proceeded to explain that the cancer had been caused by second hand smoke!

Whenever anybody challenges the view that "tobacco kills", they are immediately confronted with the argument that they are tools of the giant tobacco companies. Supposedly, these companies spend millions to spread lies and disinformation concerning smoking.

The truth is that the anti-smoking lobby has successfully demonized the tobacco companies to such an extent that few public officials would dare accept contributions from tobacco companies, lest they be charged at election time with accepting "tobacco money". The truth is, moreover, that there is a lot of money to be made in the anti-smoking movement, and lots of people are benefitting, financially, from that movement.

In 1994, the Labor Commissioner for the State of Maryland proposed a state-wide smoking ban. It was far reaching indeed, and, in its original form, would have prohibited people from smoking, even in their own hotel rooms, on the theory that the maid might come in to clean up, sniff some second-hand smoke and suffer lasting injury.

At the time the ban was originally proposed, a stream of U.S. government officials poured into Maryland, conducting seminars and public meetings to whip up support for the ban. These officials, from such agencies as the Office on Smoking or [sic] Health, EPA, FDA, etc., make a good living, "educating" the public in the dangers of tobacco. Furthermore, the months leading up to the ban were filled with television spots, featuring animated skeletons, demonstrating the "dangers" of smoking. These spots were paid for with taxpayer monies. A similar television spot campaign runs in California, also paid for with taxpayer dollars.

At the time the Maryland ban was first proposed, William Donald Schaefer was Governor. In November, 1994, an election was held for a new governor, and the smoking ban became a campaign issue. The Maryland "hospitality industry", consisting of owners of restaurants, bars, convention promoters, etc., was terrified that the ban would

¹³ RECENT MEDICAL ADVANCES IN THE FIELD OF EMPHYSEMA LEAVE LITTLE DOUBT THAT REYNOLDS' CASE WAS GENETIC. IN AN ARTICLE IN GROLIER'S ENCYCLOPEDIA, HOWARD BUECHNER, M.D., EXPLAINS THAT A SIGNIFICANT NUMBER OF PEOPLE WITH THE DISEASE LACK A GENE THAT CONTROLS THE LIVER'S PRODUCTION OF A PROTEIN CALLED ALPHA-1 ANTITRYPSIN (AAT). THIS PROTEIN DEGRADES OR CONTROLS AN ENZYME CALLED NEUTROPHIL ELASTASE, PRODUCED BY THE WHITE BLOOD CELLS. WHEN THE ENZYME IS LEFT UNCHECKED, IT DESTROYS ALVEOLAR (LUNG) TISSUE.

drive business out of the state to such nearby jurisdictions as the District of Columbia, Virginia, Delaware, West Virginia and Pennsylvania. Ellen Saurbrey, the Republican, promised to do away with the ban. Her Democratic opponent, Parris Glendening, promised to provide exemptions for small businesses, taverns, restaurants, etc.

Glendening won the election by a whisker-thin margin, amidst charges of voter fraud. Upon assuming the governor's office, he forgot all about his campaign promises, and set about to impose what amounted to an all-encompassing ban. At a meeting of anti-smoking forces in the state capital, the governor appeared with Victor Crawford, a self-styled former lobbyist for the tobacco industry, who now has throat cancer and attributes it to his former smoking habit. At the same rally, the Governor declared that 3,000 Marylanders die every year from second-hand smoke (a figure which is a fabrication, pure and simple: remember, even in its highly flawed report on second hand smoke, the EPA claimed no more than 3,000 deaths, annually, in the entire nation). The governor went on to claim that Maryland has the highest rate of cancer in the nation. On the basis of death certificate records, that's technically true; however, the Governor neglected to mention that Maryland has many large cancer treatment centers, e.g., NIH, Bethesda Naval Hospital, and John Hopkins University Hospital, and that when people die from cancer in these institutions, their death certificates are issued in Maryland, even though the deceased may have come here from Iowa!

Ultimately, the state legislature passed legislation, exempting some bars and restaurants from the ban, and the governor compromised, declaring, however, that he would come back later and remove the exemptions. Meanwhile, however, Victor Crawford had a field day with the press. He was featured in editorials and in a "60 Minutes" television interview with Leslie Stahl. In the interview, Crawford asserted that he had served the tobacco companies by "turning out the troops" for pro-smoking rallies; (b) presented false laboratory reports; and © presenting false information on poll results, affecting smoking.

The Tobacco Institute has denied that Crawford did any significant amount of work for them. Moreover, in the 22 years that I've lived in Maryland, I never heard about any pro-smoking rallies, or any polls dealing with smoking, or any "laboratory reports". So, I searched the archives of the Baltimore Sun. There were five references to Crawford: three dealing with his present claims that he lied on behalf of the tobacco companies, one dealing with a property dispute, and another, which identified him as a prominent criminal lawyer, who had been involved in 33 capital cases. There were no references to any pro-smoking rallies, or polls dealing with smoking, or lab studies dealing favorably with smoking. So, if Crawford organized rallies, they must have been kept very quiet and, if he distributed information about polls or lab studies, that information must have been kept very quiet.

Crawford, of course, is a confessed liar. In fact, on "60 Minutes", he bragged about the lies he supposedly told. The question I have is whether a confessed liar can be believed, when he says that he's now telling the truth. Is it possible that he was paid for his appearances with the Governor?

Crawford's name surfaced again in the September 23, 1995 edition of the Washington Post. There, a story appeared about a prostitute who said she had sex with a Montgomery County judge and that her own attorney offered her \$10,000, if she would leave Maryland after the investigation began. The attorney? None other than Victor Crawford. Crawford denied the allegation of course, but his denial shows that he still has tobacco on his mind. In a telephone interview from Denver, Crawford said, "Somebody's got their facts awfully screwed up if they think I'm involved with this...Ten thousand dollars? Somebody has really been smoking some funny cigarettes on this one...".

The story goes on to say that Crawford gained national attention this summer when he was profiled by the CBS News program, "60 minutes" for abandoning his life as an Annapolis lobbyist for the tobacco industry. Apparently, the Post forgot that, in their March 4 Edition, Crawford admitted that he really never had a "life" as a tobacco lobbyist in Annapolis or any place else. In an interview, he disclosed that he lives in the posh Washington, D.C., suburb of North Chevy Chase (some 60 miles from Annapolis), and that his career as a tobacco lobbyist consisted solely of working on contract for the Tobacco Institute for 6 years in the late 1980's. In the same interview, he claimed that he received "about \$20,000" for his services, at a rate of "up to" \$200.00 per hour. That meant that, if he can be believed, he devoted approximately 17 hours per year to tobacco lobbying.

Many anti-smoking "experts" are paid, and paid very well. There are grants available from the cancer societies and from governments, for anti-smoking research and "education", and many people benefit from these grants. In California, Proposition 99, passed in 1988, has turned out to be a mother lode for the anti-smoking lobby. Under its

provisions, there is so much to dole out that practically anyone with a harebrained scheme can profit, so long as their ideas can be viewed in some way as furthering the anti-smoking cause. Thus, camping trips are funded and the hikers clothed with tee-shirts bearing anti-smoking messages. One group built a race car with anti-smoking slogans on it and now tour the racing circuit at smokers' expense. Swimming pools are built for schools on the condition that smoking be banned throughout the property, including in teachers' cars on the parking lot.

If Crawford is the "Poster Boy" for the anti-smoking movement, Stanton Glantz is the movement's high priest. Glantz is a professor at UCSF, in California. In addition to his salary, Glantz gets generous government research grants as well as speaking fees from numerous groups such as the American Heart Association. Glantz recently came up with a figure of 53,000 deaths per annum in the U.S. from second hand smoke. In truth, Glantz did not support his estimate with any scientific data; he didn't have to. His adoring audiences will believe anything he says, and he gets paid to say it, so long as he tells the audiences what they want to hear.

Before leaving this subject of propoganda, mention should be made of the oft-repeated canard that smoking imposes costs upon society, which must be paid by non-smokers. The State of Florida, among others, is suing the tobacco companies for the medical costs which it claims to have incurred as a result of the smoking habits of its residents.

Now, I do not happen to think that smoking causes any disease. Assuming, however, solely arguendo, that smokers do, in fact, die prematurely from smoking-related diseases, there is a considerable saving to society because these dead smokers do not collect their full social security and/or pension benefits. Moreover, smokers pay cigarette and tobacco taxes, both to the states and the federal government, which non-smokers do not pay.

In 1991, Willard G. Manning, et al., published a landmark study on the costs to society of alcohol and tobacco.¹⁴ Manning and his colleagues were no friends of tobacco. They assumed that smoking causes premature death, extra sick leave, and fires. Never-the-less, when all of the costs attributed to smoking by Manning are added up and offset against the benefits, it is clear that smokers pay more to society than they take from society. In the following table, a minus sign denotes a cost to society, while a positive sign denotes a saving or benefit. All of the figures are expressed in cents per pack of cigarettes smoked:

Additional medical expenses from smoking	-26
Sick leave costs	-01
Group life insurance costs	-05
Fires caused by smoking	-02
Lost tax revenues due to premature death	-09
Reduced use of retirement pensions	+24
Reduced use of nursing homes	+03
Federal cigarette tax	+24
State and local taxes	+26 ¹⁵
Net Benefit to Society:	+34

This is, perhaps, a convenient place to mention another benefit to society which formerly accrued from smoking, but no longer exists, because of the ban on smoking in commercial airplanes. In these aircraft, devices known as "packs" are used to filter the air in the passenger cabins. When smoking was allowed, the airlines used up to six packs to filter the air in first class; a fewer number in economy class. Packs, however, cost the airlines money, because they decrease fuel economy. The smoking ban enabled the airlines to reduce the number of packs they used, and they did so, enthusiastically, since, without the odor of smoke, passengers could not tell whether the air was being efficiently filtered, or not. As a result, the air in commercial airliners is likely to be filthy, and laden with viruses, bacteria, and other unpleasant things. It's no coincidence, therefore, that stories have started cropping up in

¹⁴ **THE COSTS OF POOR HEALTH HABITS. A RAND STUDY, CAMBRIDGE, MA.; HARVARD UNIVERSITY PRESS, 1991.**

¹⁵ **AVERAGE STATE AND LOCAL TAXES. SOURCE: CIGARETTE TAXES TO FUND HEALTH CARE REFORM. CONGRESSIONAL RESEARCH SERVICE REPORT NO. 94-214E.**

the newspapers about stewardesses who transmitted tuberculosis to passengers and other crew members.¹⁶ The odor of tobacco smoke formerly served the same function as the odor that gas companies add to natural gas. It warned of insufficient ventilation.

¹⁶ "FLYER COMPLAINTS OF ILLNESS ARE SUBJECT OF STUDIES ON PLANE CABIN AIR QUALITY", BY CARL QUINTANILLA, THE WALL STREET JOURNAL, JULY 29, 1993.