EDITORIAL

Achieving a smokefree society

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THE HEALTH COMMUNITY has been concerned about the health effects of smoking on smokers for over two decades. With recent reports by the Surgeon General\(^1\) and the National Academy of Sciences,\(^2\) a consensus has emerged that smoking also endangers nonsmokers who breathe secondhand smoke (table 1). Although there are always more details to learn, these reports effectively close the scientific case against secondhand smoke and will most certainly speed the spread of legislation protecting nonsmokers from the toxic chemicals in secondhand smoke. The history of such legislation dates back to the Minnesota Clean Indoor Air Act passed in 1975. As the health establishment, with its considerable resources, joins existing activist groups that have been working in this area for the last 10 years, there is no question that the rate of progress toward clean indoor air will substantially increase.

The early years

Before discussing how to pursue clean indoor air legislation, we should consider why the health establishment waited so long to take up the nonsmokers’ rights cause. First, the major voluntary health agencies have long been concerned with the effect of smoking on the smoker, and there is no doubt that primary smoking is more dangerous than involuntary smoking. Many people viewed the nonsmokers’ rights movement as a sideshow compared with the more important business of attacking smoking directly. Second, the health community viewed the problem of smoking in a medical rather than a social and environmental context, in which the focus should be on the smoker (the patient) rather than on the environment, which moves into politics. Moreover, people considered forays into the political arena intrinsically controversial and worried that taking a position on smoking as a social act could offend potential contributors and other allies. Third, since the health community considered the tobacco industry politically invincible, efforts directed at passing nonsmokers’ rights legislation were viewed as a quixotic waste of limited resources. Finally, the tobacco industry’s systematic campaign to obfuscate the scientific evidence linking involuntary smoking with disease in nonsmokers led people in leadership positions to worry that efforts to protect nonsmokers were on shaky scientific ground.

Happily, this situation has changed. Heartened by the string of victories in California, Colorado, Arizona, Michigan, and elsewhere, the major health agencies have come to recognize that the tobacco industry is not politically invincible and that supporting nonsmokers’ rights legislation is not only good public health policy but also good public relations.

Ironically, the tobacco companies recognized the nonsmokers’ rights movement as a serious threat to their efforts to sell cigarettes soon after the Minnesota Clean Indoor Air Act was passed. One of the industry’s observers in Stockholm at the Fourth World Conference on Smoking and Health in 1979 concluded, “The social acceptability issue will be the central battleground on which our cause in the long run will be lost or won.”\(^3\) In fact, by the time of the Fourth World Conference, the Tobacco Institute had already conducted a detailed national survey on the impact of the then-infant nonsmokers’ rights movement on the tobacco industry, which concluded, “While the overwhelming majority of the public has been convinced by the anti-smoking forces that smoking is dangerous to the smoker’s health, this has not persuaded very many smokers to give up smoking. What the smoker does to himself may be his business, but what the smoker does to the nonsmoker may be quite a different matter. This we see as the most dangerous development to the viability of the tobacco industry that has yet occurred.”\(^4\) [Emphasis added.]

Why is the nonsmokers’ rights movement such a threat to the tobacco industry?

Although the nonsmokers’ rights movement concentrates on protecting the nonsmoker rather than on urging the smoker to quit for his or her own benefit,
TABLE 1
Principal findings of NAS/NRC and Surgeon General’s reports on involuntary smoking

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<tr>
<th>Surgeon General</th>
<th>NAS/NRC</th>
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<td>“Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.”</td>
<td>“Considering the evidence as a whole, exposure to ETS [environmental tobacco smoke] increases the incidence of lung cancer in nonsmokers.”</td>
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<td>“The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lungs mature.”</td>
<td>“. . . the exposure of small children to smoking in the home appears to put them at risk of respiratory illness. . . . In children with one or more parents who smoke, lung function increase, which is a normal growth phenomenon, shows a small decrease in the rate of growth. . . . it is prudent to eliminate ETS exposure from the environment of small children.”</td>
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<td>“The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.”</td>
<td>“ETS is the dominant contributor to indoor levels of RSP [respiratory suspended particulates]. . . . Both air monitoring and modelling clearly indicate that elevated over background levels in indoor spaces when even low smoking rates occur.”</td>
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The main difference between the two reports is that the Surgeon General’s report includes a discussion of the policy implications of the scientific data on involuntary smoking, whereas the NAS/NRC specifically eschewed such a discussion because it was beyond the NAS/NRC Committee in Passive Smoking’s charge. A second difference is that the NAS/NRC report contains a detailed discussion of the open scientific questions (because the Committee was charged to do so). The fact that the Committee discussed open questions does not mean that it failed to draw any conclusions or that it exonerated secondhand smoke, which is what the Tobacco Institute is claiming.

Clean indoor air legislation reduces smoking because it undercuts the social support network for smoking by implicitly defining smoking as an antisocial act. Moreover, since the nonsmokers’ rights movement speaks to the nonsmoking majority, it is dealing with an audience that is willing to hear — and act on — the message that secondhand smoke is dangerous.

With the exception of Minnesota, the tobacco industry maintained an impressive record of political invincibility in stopping proposed nonsmoker protection legislation for many years. In particular, small independent groups in Florida and California sponsored initiative measures at the polls to enact clean indoor air legislation modeled after the Minnesota statute during the late 1970s, but the tobacco industry defeated every effort through multimillion dollar advertising campaigns. Although these campaigns succeeded in getting the proposed legislation defeated, they had the undesirable (from the industry’s point of view) side effect of increasing public awareness about the nonsmokers’ rights issue in general and validating the public perception that breathing secondhand smoke was a bad thing. The end result of this process was a strong public consensus that something should be done to protect nonsmokers from the toxic chemicals in secondhand smoke.

A new strategy

After the tobacco companies defeated the second attempt to enact clean indoor air legislation in California via the initiative process in 1980, the people who had supported the initiative decided to shift the campaign from statewide elections to local grassroots politics and formed Californians (now Americans) for Nonsmokers’ Rights. The essential idea was that nonsmoker protections enjoyed strong public support that could be mobilized at the local level to counter the lobbyists and other financial resources the tobacco companies could bring to bear. Since the tobacco companies were one-issue outsiders in virtually all California communities, the Californians supposed that local politicians would react favorably to well-organized local constituents rather than back-room pressure from the tobacco companies and their hired guns.

This strategy has worked remarkably well. In 1981, Ukiah, a small community north of San Francisco, essentially passed the nonsmokers’ rights law that the tobacco companies had defeated as an initiative statewide the year before. The following year several other California communities, most notably San Diego, enacted similar legislation.

The San Francisco Proposition P campaign

The campaign for clean indoor air reached another milestone in 1983, when the San Francisco Board of Supervisors (the city council) passed a strong ordinance protecting nonsmokers in the office workplace. While neither the first nor the strongest piece of legislation on the books, the San Francisco law attracted considerable media attention across the country and around the world. Indeed, many people think that the San Francisco ordinance was the first piece of nonsmokers’ rights legislation ever passed.

The tobacco industry tacitly recognized the importance of the San Francisco ordinance by counterattacking and organizing an effort to get it repealed by a referendum vote, known as Proposition P, the fol-
ollowing fall. Essentially the industry sought to move the field of play away from local city councils and back to the ballot box, where its superior financial resources and advertising skills were expected to prevail, just as they had in all previous elections on the issue.

The San Francisco campaign was different, however, because the tobacco companies — as opposed to the nonsmokers’ rights forces — were clearly trying to upset the status quo. Moreover, the leadership of the previous state campaigns, based in San Francisco, was available to use the knowledge gained in those campaigns to fight the industry. Finally, San Francisco is a small enough media market for the nonsmokers’ rights forces to have raised enough money to adequately inform the electorate of the issues behind the campaign despite the flood of tobacco industry money.

As in the past, the industry conducted a massive advertising campaign claiming that the law was unnecessary government intrusion into private affairs. But, thanks to the $10 million the industry had spent during the two earlier state elections, the public no longer needed to be convinced that passive smoking was a bad thing. The supporters of the law, led by Americans for Nonsmokers’ Rights and the California Division of the American Cancer Society, argued that the health issue had been settled by the Board of Supervisors in passing the law in the first place and that the real issue was whether or not San Franciscans would allow themselves to be bamboozled by the cigarette companies. The slogan for the people supporting the legislation was “Tell the Cigarette Companies to Butt Out!”

Despite a $1.3 million advertising campaign by the cigarette companies (compared with $130,000 by the nonsmokers’ rights forces), the public upheld the law by 1200 votes. This campaign represented the first such political defeat for the tobacco companies and opened up a chink in their armor of political invincibility.

After their defeat in the polls in San Francisco, the cigarette companies sought a place they could win a referendum campaign to bolster their claim that the San Francisco election was an aberration. The industry made a concerted effort to repeal a strong ordinance passed in Ft. Collins, Colorado, a year later. As in San Francisco, a coalition of activists and local voluntary health agencies mounted a vigorous defense of the law. Drawing on the experience of the people who ran the San Francisco campaign, the Ft. Collins citizens group supporting the law won by two to one at the polls.

Some lessons

As already recounted, the current pattern of victories rests on a foundation built over several years of defeats. Some of these defeats grew from the fact that a strong consensus in support of clean indoor air had to be built. As already discussed, the tobacco companies inadvertently helped build this consensus through their campaigns to defeat early nonsmokers’ rights legislation.

But, equally important, the forces supporting clean indoor air legislation made several strategic errors in organizing for the earlier battles.

The first error was not to assess carefully where the strengths and weaknesses lay on both sides. The tobacco companies’ strength comes from the tremendous financial resources they command and the level of political sophistication they can apply behind closed doors. The nonsmokers’ rights activists’ strength comes from the fact that the public knows that involuntary smoking is dangerous and is willing to pressure elected officials to do something about it. Given these facts, it is clear in retrospect that early efforts centered on the state legislature and state ballot propositions was misplaced, in that the fight was taking place in an arena where the industry was strongest and nonsmokers’ rights activists were relatively weakest. Once the field of play moved to the local city councils — where money is relatively less important and constituents are more important — the nonsmokers’ rights forces began to win.

Raymond Pritchard, Chairman of the Board of Brown and Williamson Tobacco, explicitly recognized this fact; he said:

Our record in defeating state smoking restrictions has been reasonably good. Unfortunately, our record with respect to local measures — that is, in cities and counties across the country — has been somewhat less encouraging. San Francisco provides a stark example of what this industry and its customers can face at the local level. We must somehow do better job than we have in the past in getting our side of the story told to city councils and county commissions. Over time we can lose the battle over smoking restrictions as decisively in bits and pieces — at the local level — as with state or federal measures.5 [Emphasis added.]

That is not to say that one ought never work for clean indoor air legislation at the state level, but before beginning such an effort one should carefully assess the level of support in the legislature and with the governor, as well as determine that the agencies supporting the legislation are willing to commit the substantial resources necessary to fight the tobacco lobby in the back rooms of the state capitol. Without this strong commitment, experience to date indicates that it is more cost effective in the long run to work at the local level and achieve state-wide coverage jurisdiction by jurisdiction.

The second issue is whether or not to pursue comprehensive or limited legislation. A comprehensive bill
covering workplaces, public places, and restaurants is the most desirable but also the most difficult to pass. One ought to carefully assess the level of interest and support for the various possible provisions.

The most important place to secure nonsmoker protection is the workplace. People spend most of their time at work and, according to data collected at the Environmental Protection Agency, receive most of their exposure to secondhand smoke at work. As more and more businesses come to recognize that nonsmoking has become the norm and that smoking is costing them money, they are dropping their opposition to legislation or putting up only a pro forma opposition based on the principle of nonintervention by government. The fact that many businesses are already covered by legislation requiring the imposition of policies protecting nonsmokers and that many businesses have adopted to protect nonsmokers on their own is very helpful because members of the business community can talk to friends and colleagues in other parts of the country about how well things have been working.

Despite the fact that, in terms of exposure to the toxic chemicals in secondhand smoke, the most important place to control smoking is the workplace, the place that people seem most concerned about is restaurants. Restaurants are unique and important in the fight for nonsmokers’ rights because they are so visible, and the creation of nonsmoking sections in restaurants seems to have social import well beyond the objective measures of exposure to secondhand smoke that people receive there.

Nonsmoker protections work well in restaurants. The experience in jurisdictions where nonsmoking areas are required in restaurants, dating back to passage of the Minnesota Clean Indoor Air Act, shows that provision of nonsmoking areas is good business for restaurants. Nevertheless, restaurant associations generally strongly oppose nonsmoker protections. Needless to say, fears about adverse business impact are carefully exaggerated by the Tobacco Institute, which often uses the local restaurant association as a front group. As a result, restaurants are often the most difficult area to cover.

The general advice with regard to restaurants should be to work hard to keep a strong restaurant provision in the proposed legislation, but if it looks like such a provision would lead to significant watering down or defeat of a good workplace ordinance it is worth trading away to get a strong workplace provision. Very often, after a successful workplace ordinance has been in place for a year or so, it is relatively easy to amend the original legislation to add restaurants and public places.

A good limited law is better than a weak broad one. Once a good law is on the books and has been shown to work, it is relatively easy to go back and amend it to strengthen it. In contrast, once a bad broad law is on books, it is very hard to get it changed because when you return to the legislative body they will take the position that the subject has already been resolved.

Writing the law

Given these general guiding principles concerning the political realities, how should one go about writing a law?

There are three important aspects of a good clean indoor air law: (1) It must include a clear statement of findings and intent. (2) There must be clear provisions regarding posting of “no smoking” signs and notification of employees or patrons of the nonsmoking policy. (3) There must be meaningful mechanisms for ensuring compliance with the law.

The findings and intent provisions should spell out that it has been scientifically established that secondhand tobacco smoke is filled with toxic chemicals and is dangerous to the nonsmoker and that it is the intent of the city council (or other legislative body) to protect people from involuntary exposure to the poisons in secondhand smoke. It may recognize that some people choose to smoke, but it should avoid recognizing or establishing a “right” to smoke or state that the rights of smokers and nonsmokers are being balanced. There should be a clear statement of priority for the nonsmoking norm.

Second, and most critically, there should be a clear, strong provision requiring the posting of “no smoking” signs in the nonsmoking areas. There is already a strong public consensus, including smokers, on behalf of protecting nonsmokers. The key to successful implementation of nonsmokers’ rights legislation is certifying this consensus so that nonsmokers will feel empowered to speak out when someone smokes around them. When a nonsmoker encounters someone smoking a cigarette without a “no smoking” sign, he or she is faced with the unpleasant task of confronting the smoker and asking him or her not to smoke or to put the cigarette out. This situation, what the Tobacco Institute euphemistically calls “common courtesy,” is in fact a recipe for individual confrontation. Since few people wish to confront others, most nonsmokers will quietly suffer breathing secondhand smoke. In contrast, when a “no smoking” sign is present the nonsmoker no longer has to have a one-on-one confrontation with the smoker but simply points out that it is a nonsmoking area.

Given that the signing provisions are so important,
the tobacco industry will often adopt a fallback position when legislation is inevitable in which it agrees to have areas designated as nonsmoking as long as there is no requirement for proper signing. The most extreme case of this situation is the seductive legislation that declares that all areas are nonsmoking unless otherwise posted, thereby eliminating all signing requirements. It is, of course, perfectly acceptable to have signs at the entrances to buildings stating that it is a nonsmoking building, or that smoking is permitted only in designated areas, but it is still important to have the smoking or nonsmoking areas clearly designated inside the building.

Related to the issue of signing is the importance of notification. This is most important in the workplace, where people share the same social environment over an extended period of time. All employers should be required to notify employees of the nonsmoking policy, including implementation and enforcement provisions, and the policy should be posted where it is easily accessible to any employee with a question about it. (This posting requirement is similar to that commonly required in other kinds of health safety and compensation issues.)

Third and finally, it is important that there be a clear intent to enforce the law. If people perceive that the law is being treated in a pro forma manner, either by the governmental authorities charged with enforcing it or by the owners of the space in question, smokers will flout it, ensuring that compliance will become difficult if not impossible. Successful implementation requires a period of notification on education of owners of the spaces in question followed by a clear message that if they do not come into compliance with the law, they will be subjected to administrative proceedings or other sanctions. After this brief period of education and initial activities to bring people into compliance with the law, it becomes virtually self-enforcing and requires little additional commitment of government resources because the nonsmokers will see that the new nonsmoking status quo sticks. For the reasons discussed above, the widespread presence of "no smoking" signs is a key element to making this work.

Strategy

Having settled on the appropriate type of legislation, what should the key elements of the strategy be?

The key to victory, especially at the local level, is organized constituent pressure. This pressure can become manifest through letter writing networks and telephoning campaigns, as well as by visits to local legislators by community leaders. You should use the resources of the groups working toward passage of the legislation to set up letter writing networks and telephone trees to ensure that, before any vote, the city council is deluged with community pressure on behalf of the ordinance. Likewise, you should be sure that any public hearings are well attended by people who support the legislation.

Through this, activists should state that they are not “anti-smoker” but rather environmentalists concerned with clean indoor air for everyone. The issue should be framed in the rhetoric of the environment, toxic chemicals, and public health rather than the rhetoric of saving smokers from themselves or the cigarette companies. To this end, a move beyond the traditional voluntary health agencies must be made, involving environmental, good government, and community-based groups such as the PTA and associations of the elderly.

Perhaps the most important tactical issue is how to deal with the tobacco industry. The only significant organized opposition to legislation protecting nonsmokers that has ever appeared is sponsored by the tobacco industry. (The only possible exception to this is opposition by the restaurant associations, but that opposition is whipped up and often financed by the tobacco industry.) Since the tobacco industry knows it has very low public credibility, it will do everything it can to stay out of the public eye and to work in the political back room. The question of why anyone is listening to the tobacco industry on anything relating to public health should be raised constantly. The primary goal should be to isolate the tobacco companies as the only real opposition and to persuade legislators that if they oppose clean air measures their constituents will perceive them as dupes of the tobacco companies.

Ironically, as long ago as 1978, Tobacco Institute polls indicated it was bad politics to side with the tobacco industry; the poll found that “more people say they would vote for than against a political candidate who takes a position favoring a ban on smoking in public places.”4 In other words, the industry knows from its own public opinion polling that politicians will gain political points with their constituents by supporting nonsmokers’ protection, yet it is urging them to vote against it. This cynical activity of the industry should be pointed out to politicians to demonstrate that the tobacco companies are indifferent not only about the health of their victims but also about the political futures of the legislators whose votes they seek.

The media can be a strong ally in an effort to support nonsmokers’ rights legislation. In general, the higher the media visibility a campaign achieves, the more
likely it is to succeed. The reasons for this is simple. The tobacco industry’s power comes from quiet back room pressure and offers of deals. To the extent that the issue becomes a highly visible public one, politicians will feel under high constituent and media pressure to vote in favor of nonsmoker protections.

When dealing with the media, the political aspects of the campaign should be stressed. The tobacco industry has done a good job of skirting the health issue, and discussing health will only confuse matters and play into the industry’s efforts to ‘create a controversy’ surrounding the question whether or not smoking and involuntary smoking are dangerous.7 In light of recent findings by the Surgeon General1 and National Academy of Sciences,2 the health issue is a closed case. The reporters who cover the story will probably be city hall or state legislative political reporters, and they are used to thinking in terms of political campaigns in which citizens groups are opposed by evil special interests. And the tobacco industry is the most evil special interest of them all.

To this end, keep talking about the tobacco companies and their involvement, even if the specific arrangements they have made are not clear. In particular, do not let the tobacco companies hide behind front groups (such as the local restaurant association). Make sure that the press identifies the opposition as the tobacco companies. Sooner or later the cigarette companies will be smoked out.

The record for passing nonsmokers’ rights legislation is excellent whenever the people supporting the legislation have invested adequate resources to see that the legislation would be passed. Therefore, a positive sense of victory and political inevitability should be created.

Common mistakes

This is not to say that it is easy to get a piece of legislation passed. Success requires considerable work, often over a period over several months to a year. During this time, there are many pitfalls and several common mistakes people seem intent on making.

The most common of these mistakes is to seek comprehensive state legislation without adequate back-up. In politics, winning is everything, and creating a sense of political inevitability is important. Select a jurisdiction in which you can win and build on that.

The next most common mistake is an unwillingness to commit adequate resources to the fight in terms of staff time, money, volunteer time, and organizational risk capital. It is not uncommon for a group to go to a friendly legislator and ask that he or she introduce legislation, then to be unwilling to muster the support needed to push it through or to believe that all that is necessary is to show up at a hearing and make intelligent statements. Getting nonsmokers’ rights legislation passed takes considerable effort and, before the fight begins, this must be recognized and the requisite resource committed. People throughout the world have complimented Americans for Nonsmokers’ Rights on its record of legislative victories, most visibly the victory in San Francisco. Although this accomplishment required dedication and intelligence, the most important element was the willingness to raise and spend the money it took to win the campaign.

Another problem common to large agencies, such as the voluntary health agencies and professional groups, is an unwillingness to move quickly. In political activity, things often wait for months and then change very rapidly. It is often necessary to mobilize resources or to make decisions regarding critical negotiations on a moment’s notice. Volunteer groups tend to run by committee and act very deliberately and slowly. This time frame is inconsistent with what is required for successful political activity. Therefore, structures need to be put into place that permit rapid response to opportunities and crises as they develop. The most blatant example of this unwillingness to act quickly is if a sympathetic legislator introduces a bill, puts it on the table without talking to anyone, and then comes to ask for help. The response, “It is not in the budget this year,” does not portend success.

The tobacco industry is a well organized, well financed, and powerful — though not invincible — opponent. Any nonsmokers’ rights legislation, no matter how small the jurisdiction, will be violently opposed by the cigarette companies. It is not uncommon for people to greatly underestimate the ferocity of the counterattack the cigarette companies mount then to be terrified by it.

The fights for nonsmokers’ rights legislation are almost always protracted, since the industry will not give up until every bit of life has been stamped out of it. People begin to feel that they are in a war of attrition and agree to legislation that no one really likes, expressing the desire that something is better than nothing. In line with the principle that a bad law is worse than no law at all, this pressure should be resisted. Generally, if the people supporting the legislation commit adequate resources, work hard, and are patient, good legislation ultimately emerges.

What difference does it make?

Finally, there is the question of what difference all of this makes. Clearly, producing a smokefree envi-
environment is a major improvement in the quality of life of nonsmokers because there is a major reduction in the level of toxic chemical exposure that these individuals suffer.

There is also good evidence that enactment of nonsmokers’ rights legislation does affect primary smoking, just as the industry feared back in 1978. Virtually all adult smokers wish they did not smoke and most of them have attempted to quit at least once. With the provision of nonsmoking areas, particularly in the workplace, a social environment is created that supports the decision not to smoke. Smokers can, if they wish, sit in the nonsmoking area where there is a provision for smoking and nonsmoking and cannot smoke at all if there is a provision for a totally smokefree environment. Enrollment in the smoking cessation programs at Pacific Northwest Bell jumped from 13 to 174 employees per month after the company became smokefree, and there was a significant reduction in cigarette consumption (Martin M: Personal communication).

A final, but unconventional, measure of the effectiveness of the nonsmokers’ rights movement in dealing with the tobacco industry and the problem of smoking in general comes from Mike Daube, Director of Health Promotion and Educational Services in Western Australia. He said, “You can measure the effectiveness of a program by the response it provokes.” If our activities are damaging the industry enough to provoke the cigarette companies to spend money trying to stop us, that is the best evidence that we are making progress in the fight against smoking. Given that the tobacco industry has spent at least 20 million dollars unsuccessfully fighting the nonsmokers’ rights movement in California and elsewhere over the last few years, we can conclude that our program is indeed effective.

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References

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