

STRICTLY PRIVATE AND CONFIDENTIAL

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IMPLICATIONS OF BATTELLE HIPPO I & II
AND
THE GRIFFITH FILTER

The determination by Battelle of the "tranquilizing" function of nicotine, as received by the human system in the delivered smoke of cigarettes, together with nicotine's possible effect on obesity, delivers to the industry what well may be its first effective instrument of propaganda counter to that of the American Cancer Society, et al, damning cigarettes as having a causal relationship to cancer of the lung. The Battelle work is not in any degree responsive to that indictment nor to the Report expected to be returned by the Surgeon General's Committee on Smoking and Health. I would submit, however, that the Griffith filter offers the bridge over which the industry might pass from its present terrain of defense to a field for effective counter attack using the Battelle study as the basic weapon. I will assume for purposes of this note that the "Griffith filter" is one which permits filtration to specification; it filters selectively, both qualitatively and quantitatively. It can deliver taste and nicotine (and nicotine in even more effective form) free of constituent #1 to infinity, selectively. I grossly overstate and oversimplify Dr. Griffith's claims deliberately.

The problem is simple, if the answers are complex. Assume the Surgeon General's Committee concludes (whatever the jargon of scientific analysis and to whatever degree specific) that there is real and compelling evidence of a causal - or even a strongly "predisposing" - relation between smoking and cancer. Cardiovascular disorders will, in all probability, also be found related to smoking. Upon that event, it would seem clear to me the industry must do two things.

1. Whatever qualifications we may assert to minimize the impact of the Report, we must face the fact that a responsible and qualified group of previously non-committed scientists and medical authorities have spoken. One would suppose we would not repeat Dr. Little's oft reiterated "not proven". One would hope the industry would act affirmatively and not merely react defensively. We must, I think, recognize that in defense of the industry and in preservation of its present earnings position, we must either a) disprove the theory of causal relationship or b) discover the carcinogen or carcinogens, co-carcinogens, or whatever, and demonstrate our ability to remove or neutralize them. This means that we must embark - in whatever form of organization - on massive and impressively financed research into the etiology of cancer as it relates to the use of tobacco; what constituents or combination of constituents in cigarette smoke cause or are conducive to cancer of the lung. Certainly one would hope to prove there is no etiological factor in smoke but the odds are greatly against success in that effort. At the best, the probabilities are that some combination of constituents of smoke will be found conducive to the onset of cancer or to create an environment in which cancer is more likely to occur.

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The TIRC cannot, in my opinion, provide the vehicle for such research. It was conceived as a public relations gesture and (however undefiled the Scientific Advisory Board and its grants may be) it has functioned as a public relations operation. Moreover its organization, certainly in its present form, does not allow the breadth of research - cancer, emphysema, cardiovascular disorders, etc. - essential to the protection of the tobacco industry. I suggest that for the new research effort we enlist the cooperation of the Surgeon General, the Public Health Service, the American Cancer Society, the American Heart Association, American Medical Association and any and all other responsible health agencies or medical or scientific associations concerned with the question of tobacco and health. The new effort should be conducted by a new organization lavishly financed, autonomous, self perpetuating, and uncontrolled save that its efforts be confined to the single problem of the relation of tobacco to human health.

Thus to accept its responsibility would, I suggest, free the industry to take a much more aggressive posture to meet attack. It would in particular free the industry to attack the Surgeon General's Report itself by pointing out its gaps and omissions, its reliance on statistics, its lack of clinical evidence, etc., etc. True we might worsen our situation in litigation, but that I would risk in contemplation of the greater benefits to be derived from going on the offensive. My record of advice in this area may well justify the charge of inconsistency, but let me say that so long as the industry does not assume its research responsibility my long-held position would remain unchanged and I would oppose either outright attacks on the Surgeon General's Report or the giving of assurance to the smoking public not supported by research evidence.

There is however the problem of what to do until the doctor comes and this leads me to the second of the two measures I would urge the industry to take:

2. The Surgeon General's Report will, of course, set off attacks all along the line. Our harsher critics - Senators Moss and Neuberger, the American Cancer Society, et al - will immediately press for all sorts of restrictive and repressive programs:

- a) Public education directed particularly at the young.
- b) Much harsher FTC rules in respect of cigarette advertising, with restriction of the scope and control of content thereof. One might anticipate rules seeking to prevent the use of "glamour situations", endorsements including those of athletes, prominent entertainment figures, etc., and quite likely an effort to bar tobacco advertising from television and radio.
- c) "Content" labeling or cautionary legends.
- d) FTC to be given power of preliminary injunction in respect of cigarette advertising.
- e) Repressive taxation.

To meet these threats, which will arise not merely at the Federal but at the state level as well, the Tobacco Institute is available but it can be effective only if the industry abandons its timorous approach to the Institute as a functioning trade association. It should be noted that current activities in the Institute indicate, indeed, that that attitude is beginning to change and it is to be hoped that our present dangers may further that progress.

Even to outline the possible defensive and offensive programs the Institute might engage in to meet the dangers I have prophesied is far beyond the scope of this note. I must confess that I have heretofore rather opposed the idea of attempting to make forward plans before the Surgeon General's Report is issued, but I am beginning to believe that perhaps a session of company presidents to consider the possibilities of such pre-planning might be desirable.

To accomplish anything effective, the Institute needs the leadership of a strong tobacco figure, e.g., Albert Clay, Paul Hahn, etc., a highly expert trade association staff including experienced and respected lobbyists and, lastly, such adornments of public figures as appearance and occasion warrant.

The question immediately arises: how would such aggressive posture affect litigation? With one exception (*Green v. American Tobacco Co.*), those actions which have gone to judgment were won by the defendants on the defense of assumption of risk. The issuance of the Surgeon General's Report will, in my opinion, insure the success of that defense as to causes of action arising in the future if the industry can steel itself to issuing a warning. I have no wish to be tarred and feathered, but I would suggest the industry might serve itself on several fronts if it voluntarily adopted a package legend such as "excessive use of this product may be injurious to health of susceptible persons" and would embody such a legend in pica in its print advertising. This is so controversial a suggestion - indeed shocking - that I would rather not try to anticipate the arguments against it in this note but reserve my defense.

It is difficult to assess the effect of the Report on causes of action arising prior to its issuance. Logically, it would be argued, the Report does no more than to collate pre-existing knowledge, knowledge as available to the buyer as the seller. But logic might - in the minds of a jury - yield to the emotional reaction that if this knowledge was available to the seller it was up to him, having the means to do so, to make the product safe. A jury might, whether instructed or not, operate on the theory of comparative negligence: "True the buyer was negligent in smoking a product he knew was dangerous, but he was lulled by the seller and the seller's negligence was the greater in failing to make his product safe."

All one can say is that the Report will in all probability greatly complicate the litigation problem.

Now at long last I come back to the Battelle report and the Griffith filter. If Dr. Griffith is no more than on the trail of effective controlled filtration, we should conduct our planning on the assumption of success.

Battelle says:

"The reasons for the 'pleasure of smoking' must be found partly in the relief of anxiety that cigarette smoking brings so constantly, and in such a very short time.

"This sedative - or soothing - effect of cigarette smoking and of nicotine is however very different from the 'tranquillizing' effect as it was defined by pharmacologists after the discovery of the Rauwolfia alkaloids. Tranquillizers are highly effective in the management of overactive psychotic patients and, as such, are largely used in psychiatry; nicotine is certainly devoid of such effects.

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"Our investigation definitely shows that both kinds of drugs (Rauwolfia alkaloids and nicotine) act quite differently, and that nicotine may be considered (its cardiovascular effects not being contemplated here) as more 'beneficial' - or less noxious - than the new tranquillizers, from some very important points of view.

"The so-called 'beneficial' effects of nicotine are of two kinds:

"1. Enhancing effect on the pituitary-adrenal response to stress;

"2. Regulation of body weight.

"These effects do not seem to be shared by reserpine, which on the contrary shows undesirable side-actions that are not given by nicotine, i.e. a nearly complete blockade of gonadic and thyroid activities, reflecting most probably a general blockade of the hypothalamo-pituitary system, which normally controls all the endocrine activities."

Moreover, nicotine is addictive.

We are, then, in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms. But cigarettes - we will assume the Surgeon General's Committee to say - despite the beneficent effect of nicotine, have certain unattractive side effects:

- 1) They cause, or predispose to, lung cancer.
- 2) They contribute to certain cardiovascular disorders.
- 3) They may well be truly causative in emphysema, etc., etc.

We challenge those charges and we have assumed our obligation to determine their truth or falsity by creating the new Tobacco Research Foundation. In the meantime (we say) here is our triple, or quadruple or quintuple filter, capable of removing whatever constituent of smoke

is currently suspect while delivering full flavor - and incidentally - a nice jolt of nicotine. And if we are the first to be able to make and sustain that claim, what price Kent?

Dare we as a matter of policy make such claims? If they are true and if we make no claim of freedom from danger - indeed, if we cry caution - why should we not? I would submit that the FTC in the face of 1) the industry's research effort, 2) the truth of our claims, and 3) the "public interest" in our filter, cannot successfully deny us the right to inform the public.

As for litigation, it would be my opinion that we would not put ourselves in substantially worsened position and in any event a successful Avalon could be expected to satisfy a number of judgments for damages.

Have we an obligation to make our knowledge available to our competitors? If the Griffith claims stand up and when we have perfected the Griffith filter and stocked the necessary machinery, etc., then I suggest there is strong moral obligation on us to make our knowledge public and free. And think of the kudos. I will be vastly surprised if such disclosure markedly adds to our competitors' knowledge but that is beside the point.

The point is: On this new terrain, permitting strong offensive action, we get there fustest with the mostest.

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