

The Conspiracy Theory and Tobacco Litigation

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The current flood of litigation against the tobacco industry marks the culmination of more than 30 years of work to counteract tobacco use and promotion in the United States. Whatever the outcome, the American people have been promised by Attorneys General and plaintiffs attorneys backing these cases that truth will prevail.

Throughout the course of these law suits, the tobacco companies have turned over millions of documents dating from the 1950's documenting their research and collaboration with law firms, public relations agencies, and research organizations. In fact, the primary focus of these suits has been the tobacco companies' own research into the health problems associated with the use of their products. The suits allege that tobacco companies conspired to suppress the findings of their research and keep important health information from the public.

While the focus on tobacco industry research is unquestionably an important component of these suits, the investigation has fallen short, neglecting to include the single largest tobacco industry-funded research project--an \$18 million, 14-year collaboration between six tobacco companies and the American Medical Association (AMA). If tobacco companies conspired to deceive and mislead the public about the health problems attributed to smoking, they could not have done it alone. Tobacco companies needed credibility for their efforts to promote the notion that there was a controversy about the smoking and health issue. That credibility came from America's leading medical organization, the AMA.

This monograph explores the relationship between the AMA and the tobacco industry through a review of internal documents, public reports, and personal contacts with a number of individuals with close ties to the collaborative project, including former AMA staff. The primary objective is to shed new light on the history of this devastating public health issue. It is not an attempt to discredit the AMA's current positions and efforts to counteract tobacco use and promotion. Rather, it is an attempt to better understand the early role of the AMA on the tobacco issue and why it occurred, how their actions may have affected efforts to curtail tobacco use, and what role this history plays in current litigation against the tobacco industry.

According to legal scholars and public reports, the "third wave" of litigation against cigarette companies was launched in March, 1994 when a coalition of personal injury lawyers filed the nation's largest class action suit, a case known as *Castano v. The American Tobacco Co., et. al.*¹ The wide-spread release and media reports of internal tobacco industry documents, combined with the April, 1994 testimony from seven tobacco company executives before a Congressional subcommittee in which the executives stated they believe nicotine is not addictive, has no doubt added momentum to the third wave of tobacco litigation.

Legal experts say that earlier waves of suits, which occurred between 1954 to 1973 and 1983 to 1992, failed primarily because jurors held people who smoke responsible for their cigarette habits.¹ But, while the latest legal efforts against the tobacco industry does include some strict product liability cases, seeking recovery on a showing that the product caused some kind of personal injury and is defective, a large number of new cases seek

reimbursement for third parties, such as cities, counties, states, and private insurers.

What is new in these cases are the key political players (i.e., attorneys general), plaintiffs lawyers, venues, class actions, and the efforts on behalf of a host of third parties. However, while the latest wave of suits against the tobacco industry may prove to be the most concerted effort, much of the legal theories touted as new have been tried before. Consistent among most plaintiffs' complaints is the allegation that tobacco companies, working in collusion with various public relations firms, lobbying firms, research groups, and law firms, conspired to keep important information from the public regarding adverse health consequences due to the use of tobacco products.^{2,3}

The conspiracy theory in tobacco litigation, and the inclusion of such groups as the Tobacco Institute (the tobacco industry's lobbying arm), Hill and Knowlton (a public relations firm), and the Council for Tobacco Research (established by tobacco companies in 1954 as the Tobacco Industry Research Council) as defendants, is not new despite such claims by plaintiffs lawyers and public reports. An "unusual" case filed in New York in 1964 that "accused Philip Morris of breach of express and implied warranty and negligence, also accused Hill and Knowlton and the Council for Tobacco Research (CTR) of conspiracy."⁴ Perhaps the single most recognized case in the history of tobacco litigation, *Cipollone v. Liggett Group, Inc., et. al.*, also included allegations of conspiracy on the part of the Tobacco Institute and the Council for Tobacco Research.⁵

The discovery process in the current wave of litigation has uncovered millions of pages of internal documents from tobacco companies and other defendants, linking them all together on various research projects

from the 1950s to the 1980s (the case of *The State of Minnesota and Blue Cross and Blue Shield of Minnesota v. Philip Morris, Inc., et. al.* boasts more than 20 million pages of documents obtained during discovery, many of them housed in a depository in the United Kingdom).⁶ While many of these same documents were discovered in previous cases, more and more documents have been uncovered recently and reported by the news media, showing a network of communication between tobacco companies, CTR, the Tobacco Institute, and public relations and law firms that is becoming more clear.

Rogue Heroes

Aiding these cases, and the federal effort to regulate nicotine, are a host of whistleblowers and industry defectors--former tobacco industry employees including scientists, researchers, and executives now willing to share information about their work while employed by tobacco companies.^{7,8,9,10,11} Among these individuals are, from Philip Morris, William A. Farone, former director of applied research, Victor DeNoble, a former scientist for the company, Ian Uydess, former associate senior scientist, and Jerome Rivers, a former shift manager at a cigarette-manufacturing plant in Richmond, Virginia. Most notable are Merrell Williams, a paralegal who worked for a law firm representing Brown and Williamson (a unit of BAT Industries, PLC), and Jeffrey Wigand, a former Brown and Williamson top research executive.

While each informer provides a unique account of the internal workings of their respective former employer, Wigand and Williams became two defectors in the middle of controversy. Wigand was the

centerpiece of a CBS "60 Minutes" news interview that was not aired by the network in November, 1995, fearing a lawsuit by Brown and Williamson.¹² Portions of the interview were later aired in January, 1996 in which Mr. Wigand alleged that Brown and Williamson executives viewed cigarettes as "a delivery device for nicotine."¹³ Williams is defending himself from a lawsuit brought by Brown and Williamson after he allegedly removed secret documents from the law firm that he worked for which represented the tobacco company. According to news reports, the documents show that as early as 1963, some tobacco executives considered their products a risk for cancer and heart disease.¹¹

Publicity of the documents from Williams and other tobacco industry defectors was heightened when the American Medical Association (AMA) published papers by Stan Glantz, et. al. that focused on the tobacco industry's internal memos, documents, and own research findings. Nearly one-half of the July 19, 1995 issue of the *Journal of the American Medical Association (JAMA)* was devoted to an extensive analysis of approximately 4,000 pages of documents from within Brown and Williamson and its parent company British American Tobacco (BAT).¹⁴

The analysis in *JAMA*, which was divided into five separate articles, compared and contrasted statements from various reports of Surgeons General and statements taken from the tobacco companies' memos. While there is no doubt that the analysis of these documents provides a better understanding of what the tobacco industry knew, and when they knew it--and has added fuel to moral outrage, especially among individuals and organizations involved in tobacco control efforts--the analysis neglects to place the documents in the larger context of the era in which they were written--namely, the exact same time that the AMA was collaborating with

six tobacco companies, including Brown and Williamson. The five papers published in *JAMA* included no mention of the AMA's link to the tobacco industry during the period covered by the tobacco industry documents. However, a book entitled "The Cigarette Papers" by the same authors, and based on the same tobacco industry memos, included a brief section on the relationship between the AMA and the tobacco industry, stating the AMA "generally worked with the tobacco industry, both to perpetuate the scientific 'controversy' about smoking and health and to keep federal regulation to a minimum."¹⁵

While the AMA's policy statements on the tobacco issue have improved over the past three decades since the organization's collaboration with the tobacco industry, such was not always the case. In recent years, the American Medical Association has received positive attention for its increasing role in the public health effort to counteract tobacco use in the United States.¹⁶ This attention is due, in no small part, to the AMA's adopted positions on tobacco use and promotion introduced by its members of their House of Delegates.

According to the AMA's own count, as of March, 1996 more than 140 resolutions had been passed by the House of Delegates on tobacco issues.¹⁷ The resolutions cover a wide spectrum in tobacco control including protection of the nonsmoking majority from second-hand smoke to calling for a complete ban on tobacco advertising, a position taken by the AMA in 1985.¹⁸ In 1993, the AMA stepped up its role in tobacco control as the administrator of \$10 million from the Robert Wood Johnson Foundation to support a multi-state tobacco policy intervention program through grants to state tobacco coalitions. At its 1996 annual meeting, the

AMA called upon investment funds to divest themselves of tobacco stocks.¹⁹

To the medical and public health professions, and even the public-at-large, it should come as no surprise that America's leading medical organization would take a stand against the leading preventable cause of death and disease as part of its mission to promote "the betterment of public health." But the AMA's current stand on tobacco is one that evolved *not* from a genuine concern for the health of the American people, but through an embarrassing history that continues to plague the AMA.²⁰

To their credit, it has always been the AMA's own members and delegates who have been courageous in pushing AMA leadership into taking positions on various tobacco-related issues (and not the other way around). Twelve of the 72 resolutions submitted by delegates at the AMA's Annual Meeting in June, 1964 supported the conclusions of the Surgeon General's Report on Smoking and Health released earlier that year.²¹ But it has been a long struggle for the delegates as early resolutions on tobacco were met with stern objection from AMA's elected officials. Much of the struggle faced by the AMA's House of Delegates stems from the organizations response to the growing body of scientific evidence that had mounted against tobacco by the early 1960s. Rather than follow the lead of other major health groups, such as the Royal College of Physicians and the World Health Organization, and endorse the landmark 1964 Surgeon General's Report, the AMA instead entered into a \$10 million contract with six tobacco companies to conduct research into the effects of nicotine and other aspects of smoking--their target being a safer cigarette.²²

The AMA has been criticized publicly over the years for its acceptance of tobacco industry money, first by its own members and later

by journalistic accounts and scholarly articles.^{23,24,25,26} To early criticism of this unhealthy alliance, in 1964 the AMA leadership was able to satisfy its members and delegates by accepting a position that smoking had a "significant relationship" to lung cancer, a position that compromised the conclusions of the 1964 Surgeon General's Report.²⁷ The AMA leadership defended its new relationship with the tobacco industry by stating that the money would be used to support "independent research" that was needed for the "identification and removal of the harmful components in tobacco."²² More recent criticism of the AMA's role with the tobacco industry has been met with angry responses by AMA officials and others who point to the AMA's new and improved position on tobacco issues.^{28,29,30}

Thus, while tobacco industry defectors have come forward with information about their work with the tobacco industry, lone among these rogue heroes is the AMA, which has neglected to come forward with the information they possess on their collaboration with the tobacco industry.

AMA Collaborates with the Tobacco Industry

A series of documents uncovered during the second wave of tobacco litigation, primarily in the case of Cipollone v. Liggett Group, Inc., et. al., provide some detail regarding the relationship between the AMA and the tobacco industry. The AMA contends that their research efforts on tobacco began after their December, 1963 mid-year meeting in which the AMA approved a basic research program on smoking, committing \$500,000 of its own money from the AMA's Education and Research Foundation (AMA-ERF), and the establishment of a new Committee for Research on Tobacco and Health.²² But the events that led up to the AMA's decision to

study the issue are contradictory, as it seems the AMA could not make up its mind whether to pursue the issue. Senator Maurine Neuberger, an early anti-tobacco campaigner, had previously invited the AMA into her efforts in 1960, only to be told that the Trustees of the AMA had twice requested the AMA's Council on Drugs to explore the feasibility of a study on smoking, and on both occasions the Council had opposed such a study.³¹

When, in December, 1963, the AMA finally announced its intentions to form the new Committee for Research on Tobacco and Health, the tobacco industry was delighted. According to a September 3, 1959 letter to Mr. Bowman Gray (then president of R. J. Reynolds Tobacco Company) from Clarence Cook Little (the Scientific Director for the Council on Tobacco Research), the tobacco industry had for some time been looking for a way to work with the AMA.³² In the letter, Mr. Little states:

"I have looked through the list of officers and standing committees of the American Medical Association, and find that apparently their activities in research have been so few that there is no individual or group primarily appointed to consider or direct such a program.

The nearest thing I can find is the 'Committee on Scientific Assembly,' and this really means a committee to decide what the program of scientific papers at the annual meeting of the AMA should be. Dr. Reimann is Chairman of this Committee.

If any activity along the lines that we spoke of recently should be undertaken, I believe that a new group will have to be appointed by the AMA. It is high time that the Association did

this as we both recognized in our conversation. It does, however, bring up the problem of personnel of any such group.

It looks to me as though the AMA would have to do as much thinking and planning to create a proper body to receive support as those who may wish to give the support will have to do...

...I think that the Executive Vice President, Dr. Blasingame, is the man with whom to continue contacts and to take the initiative."³²

The result was a \$10 million, five-year initial contract between six tobacco companies (American Brands, Inc., Brown and Williamson Tobacco Corporation, Liggett Group, Inc., Lorillard, Philip Morris Incorporated, and R. J. Reynolds Industries, Inc.) that began in January, 1964. Upon its announcement, the AMA-ERF Committee for Research on Tobacco and Health stressed that the basis of the program would be "the identification and removal of the harmful components in tobacco."²² The collaborative effort represents the largest tobacco industry-funded research program to date.

While the precise reasons the AMA went out of its way to help originate this new alliance with the tobacco industry are not fully understood, it is clear that the continuance of the AMA-ERF tobacco industry-funded program evolved out of political motives on the part of the AMA. In 1968, the tobacco companies committed an additional \$8 million to the AMA-ERF Committee.³³ But in 1971, according to a Tobacco

Institute memo, the AMA executive staff had become concerned about their connection with the tobacco industry and discussed ending the relationship.³⁴ The September 3, 1971 memo from Tobacco Institute vice president, William Kloepfer, to Horace R. Kornegay, the organization's president, said Dr. Ernest B. Howard, the AMA's executive vice president, had told him the program was "a great liability...from AMA's view it has only caused further blackening of the AMA's image."³⁴ The AMA wanted out, Kloepfer said, but the organization "is most anxious to avoid any incident which will create displeasure with the AMA among tobacco area Congressmen--he said the AMA needs their support urgently." Howard's reference to support from tobacco-state Congressmen was what the AMA needed to fight Medicare, as these largely conservative politicians were also opposed to the federal health program.

The tobacco industry financial support for the AMA-ERF Committee for Research on Tobacco and Health came to an interesting conclusion in 1973, the final year of the second five-year contract. In 1972, Dr. Howard had been corresponding with tobacco industry executives searching for a way to announce the end of the support from the industry.^{35,36} The original agreement stated that no funds would be returned to the companies if any uncommitted research funds remained in the AMA's accounts. In a February 8, 1972 letter to Mr. A. H. Galloway (Chairman of R. J. Reynolds Tobacco Company), Dr. Howard asked that the remaining uncommitted funds (amounting to approximately \$ 1 million) from the tobacco companies be used to support the AMA-ERF's Medical Student Opportunity Loan Guarantee Plan, a fund to provide disadvantaged and minority medical students with interest free student loans.³⁵ According to Dr. Howard's proposal, some of the funds would also be made available as

medical scholarships to outstanding students given in the name of the industry. In July of that same year, the tobacco companies agreed that the remaining funds could be used to support these AMA-ERF programs.³⁶ The support from the tobacco industry to the AMA-ERF ended with little fanfare in 1973, and although AMA communications director, Frank Campion, had worked with staff at the Tobacco Institute to develop a list of questions and answers in case the members of the news media made inquiries, the AMA agreed with the supporting tobacco companies that neither party would "make any formal statement regarding termination of the...agreement."^{36,37}

Of Money and Men

Regardless of the reasons for the initiation of the joint program, or for its continuance, there had been communication between the AMA and the tobacco industry for some time in the development of the collaborative project. What transpired as a result of the alliance was a cover for the tobacco industry for nearly 14 years, as they could always point to the AMA-ERF project as evidence that the smoking and health "controversy" was still not resolved.

But another controversy, not yet reported, comes from within the AMA-ERF itself and how the money that kept flowing from the tobacco companies was spent. According to the final report of the program published by the AMA-ERF in 1978 entitled, "Tobacco and Health," the Committee disbursed 795 grants during the program.³⁸ But, despite the AMA's own promotion of the merits of its research grants, it was the Committee's own members who benefited most. Members of the AMA-ERF Committee were using the funds to pad the budgets at their own

medical and research institutions. According to one former AMA staff director who had originally been brought in to help direct the program, and soon after declined to have any part of the project, "it was evident that the [committee members] awarded themselves fairly handsome grants. At one point it was a very considerable percentage of the total funds. I never could learn how much overhead or administrative expenses the AMA charged the [program]."³⁹

Further examination of the AMA's final Tobacco and Health report reveals that of the 795 grants that were reported, at least 247 were awarded to the medical institutions and universities represented by the members of the AMA-ERF Committee (more than 30 percent of the total research grants awarded).³⁸ In many cases, when Committee members changed institutions, the money stream from the AMA-ERF program continued to follow them in their new positions. Those on the Committee who benefited most were Charles LeMaistre, MD (then Professor of Internal Medicine, Southwestern Medical School, and later promoted to Dean), Paul Larson, PhD (Professor and Chairman of Pharmacology, Medical College of Virginia), Richard Bing, MD (then Professor and Chairman, Department of Medicine, Wayne State University), John Hickam, MD (then Professor and Chairman, Department of Internal Medicine, University of Indiana Medical School), Richard Remington, PhD (who later became Dean, School of Public Health, University of Michigan), and Maurice H. Seevers, MD, PhD (who Chaired the AMA-ERF Committee and was Professor and Chairman, Department of Pharmacology, University of Michigan Medical School). LeMaistre is said to have reported that his institution, Southwestern Medical School in Dallas, Texas, received approximately \$2

million (20% of the original grant) for research from the AMA-ERF tobacco program.⁴⁰

The conflicts of interest did not stop there. The Committee consisted of more than simply individuals interested in a true research effort into the problems associated with tobacco use. Two members of the AMA-ERF Committee, Richard J. Bing, MD and Paul Kotin, MD, also served the Council for Tobacco Research Scientific Advisory Board.²² During his tenure and in his capacity on the AMA-ERF Committee (1964-77), Dr. Bing served as a liaison to the Council for Tobacco Research.⁴¹

Not surprising, then, was the fact that much of the AMA-ERF money was co-mingled with research grants handed out by the Council for Tobacco Research and individual tobacco companies. At least one-third of the AMA-ERF grants were awarded to proposals that were also funded by either the Council for Tobacco Research, a tobacco company, or both.³⁸ Another member of the AMA-ERF Committee, Paul Larson, PhD, benefited from 69 grants awarded by the AMA-ERF, several grants from the Council for Tobacco Research, while at the same time working under contract with American Tobacco Company to conduct research at the Medical College of Virginia.^{4,38}

Three of the AMA-ERF Committee members (Seevers, LeMaistre, and Hickam,) had previously served on the Surgeon General's Advisory Committee on Smoking and Health which released the 1964 landmark Surgeon General's Report.⁴² Why these individuals would serve the AMA, which not only did not endorse the Surgeon General's Report, but compromised its integrity, remains a question not yet answered.

In response to the Surgeon General's Report, the AMA had presented a neutral, balanced stand in a six-page brochure entitled "Smoking: Facts

You Should Know," published in May, 1964 and sent to all its members.²⁷ The brochure explained the dangers of burns and suffocation from falling asleep while smoking, and characterized the major risks connected with long-term smoking as "suspected health hazards." The pamphlet also concluded, "some...competent physicians and research personnel are less sure of the effect of cigarette smoking on health. Smoke if you feel you should, but be moderate."²⁷

The research funded by the AMA-ERF tobacco-industry program was also subject to criticism by insiders from both the AMA and the tobacco industry. Correspondence by a former AMA staff person stated, "even more compelling would be an objective examination of the research underwritten by the [AMA-ERF]. There were some interesting proposals made along with explorations for the 'safe cigarette,' a vexing problem because this implied the then current cigarettes were not really safe. I knew this should have been beneath the dignity of serious consideration but there was a chronic institutional affiliation of the emperor's new clothes syndrome about at the time. It was the first time I had ever encountered doublespeak in real life and real time."³⁹

Apparently, the heads of the tobacco companies' research departments were not pleased with the AMA program either. In a 1970 report marked confidential, entitled "Comments on AMA-ERF Program for Tobacco and Health From the Research Directors of the Supporting Companies," the AMA's shortcomings in directing such a program were discussed. The report states that "scientific representatives of the tobacco companies supporting the AMA-ERF program attended the presentations by grantees at [a meeting in] Scottsdale, Arizona, May 6-8, 1970. The general opinion of the scientific representatives was that not more than

50% of the program was relevant to smoking."⁴³ In his notes from that meeting, Helmut Wakeham, Director for Philip Morris Research Center, concluded that "it seems obvious that much of the work such as new pharmacology is more basic cellular pharmacology than it is tobacco oriented. It is not even relevant. It would appear that many investigators are doing their thing and that by including nicotine they qualify for an ERF grant."⁴⁴

Meetings of the Minds

The 1970 AMA-ERF Committee meeting in Scottsdale, Arizona was also important because it was one occasion that high-ranking members from the tobacco industry met directly with executives from the AMA.⁴⁵ Present at the meeting from the tobacco industry, in addition to the heads of the companies' research departments, were the highest ranking personnel from the tobacco industry's "Policy Committee of Lawyers," who were, according to a 1964 memo from the Tobacco Research Council (United Kingdom) "the main power on the smoking and health situation" in the U.S.⁴ The individuals present included Henry Ramm (representing R. J. Reynolds), Addison Yeaman (representing Brown and Williamson), Dave Hardy (of Shook, Hardy and Bacon, representing Philip Morris), and Fred Haas (representing Liggett Group).⁴⁴

While those representing the tobacco industry at the AMA-ERF meeting also included representatives from the Tobacco Institute, it was the presence of the lawyers who made up the Policy Committee of Lawyers that is suspect. This Policy Committee of Lawyers was responsible for determining "the high policy of the industry on all smoking and health

matters--research and public relations matters, for example, as well as legal matters."⁴

This was not the first time that AMA officials had met with leaders in the tobacco industry. A January 30, 1968 meeting at the AMA's corporate offices in Chicago included Drs. Seevers, Bing, Hasterlik, Hickam, Kotin, and Larson (from the AMA-ERF Committee); Dr. F. J. L. Blasingame (AMA's executive vice president); Dr. Ernest Howard (then AMA's assistant executive vice president), Dr. Roy Lester (director, AMA's Washington lobbying office); and from the tobacco industry, C. F. Hetsko (vice president and general counsel, American Tobacco Company), Edwin Finch (president, Brown and Williamson), Addison Yeaman (vice president and general counsel, Brown and Williamson), Manuel Yellen (chairman, P. Lorillard Tobacco), Philip Grant (vice president and general counsel, P. Lorillard), Milton Harrington (president, Liggett Group), Fred Haas (vice president and general counsel, Liggett Group), George Weissman (president, Philip Morris), Paul Smith (vice president and general counsel, Philip Morris), David Hardy (Shook, Hardy and Bacon representing Philip Morris), and W. T. Hoyt (executive director, Council for Tobacco Research).^{46,47} According to the hand-written notes of George Weissman (Philip Morris president) from this meeting Dr. Blasingame indicated that the debate on the tobacco issue continues in the AMA House of Delegates, and there is "no unanimoty of opinion." Blasingame's response to AMA delegates was that the "debate should take place in *JAMA* and scientific journals."⁴⁸

This was an example of AMA leadership taking control of the tobacco issue within the democratic make-up of the organization in order to satisfy the tobacco companies that everything within the AMA was under

control. Earlier that month, the AMA-ERF released a report on their "Project for Research on Tobacco and Health" that included goals for the future. The report stated that "problems related to establishing any kind of cause and effect relationship between tobacco use and health are far more complex than had been supposed."⁴⁹

Later that year, at the June, 1968 Annual Meeting of the AMA, such statements were challenged. The AMA-ERF Committee and AMA meetings had become a centerpiece for research efforts on tobacco and health. The 1968 AMA Annual Meeting served as the gathering point for the tobacco industry, government agencies, and the AMA-ERF in order to agree on certain statements. Attending the joint meeting were representatives from the Tobacco Institute, Council for Tobacco Research, National Institutes of Health, tobacco companies, the AMA-ERF, and others. According to a review of the meeting in a memo from the Tobacco Institute's William Kloepper to Rosser Reeves, president of the Tiderock Corporation (a public relations firm contracted by the Tobacco Institute), two participants in the meeting, Dr. Stanhope Bayne-Jones and Dr. Leonard M. Schuman (both former members of the 1964 Surgeon General's Advisory Committee on Smoking and Health) challenged the AMA on its most recent Progress Report of the AMA-ERF Committee.⁵⁰ They felt that the AMA report would be misinterpreted, as had previous reports, because the language used could be interpreted that "science has yet to substantiate any kind of cause and effect relationship between tobacco use and [disease]."⁵⁰

These meetings were all important, because while the AMA contends that they were "duped" and merely served as an administrator of the tobacco company funds, the meetings suggest a much closer relationship

with the tobacco industry. One inside account of this relationship is provided in a 1964 report prepared by the Tobacco Research Council (TRC) of the United Kingdom. After two representatives (Philip J. Rogers and Geoffrey F. Todd) from the TRC made visits to the United States to interview representatives from the tobacco industry and the AMA, and others, in order to assess litigation against tobacco companies in the U.S., they concluded that "the AMA appears to be more concerned with safeguarding the financial interests of doctors through political lobbying than with the doctors' patients."⁴ Rogers and Todd, in their quest for information, interviewed several executives with the AMA, including members of the AMA-ERF Committee.

The report provides examples of sharing information between the AMA and tobacco companies. According to the report, Dr. Maurice Seevers, Chairman of the AMA-ERF Committee, had specifically told the Director of Research for American Tobacco Company "that it was important to keep up the nicotine content of the smoke, while reducing anything that ought to be reduced. Dr. Seevers' recommendation was that American Tobacco Company should *add nicotine* in cut tobacco and then reduce both nicotine and tar by filter and porous paper" (emphasis added).⁴ The report indicated that the sharing of information was also available from the tobacco companies. "If the AMA required information from all the manufacturers for research purposes, they probably would supply it through an intermediary."⁴ A similar arrangement had been made with the 1964 Surgeon General's Advisory Committee, and according to memos from the tobacco industry to the Office of the Surgeon General, research data was provided to the Surgeon General's Committee prior to the publication and release of the 1964 Surgeon General's Report.^{52,53,54}

The Cigarette Controversy and Public Relations

Cooperation between AMA officials and the tobacco industry becomes more evident through review of their process for publishing AMA statements, reports, and journals. In an August 28, 1968 letter from Dr. Ira Singer, AMA staff secretary to the AMA-ERF Committee for Research on Tobacco and Health, to William Kloefer of the Tobacco Institute, Dr. Singer responds to a draft of a Tobacco Institute publication entitled, "The Cigarette Controversy." In his letter, Dr. Singer offered the following suggestions for inclusion in the publication:

"The American Medical Association, both a close observer of and participant in the cigarette, has emphasized that although epidemiological and correlational studies have associated smoking with a number of diseases, the actual causes of these diseases such as emphysema, coronary disease and cancer remain obscure, and only further research will serve to clarify the picture."⁵⁵

Dr. Singer's letter also illustrates that the AMA was also willing to share drafts of important publications with the tobacco industry. As an attachment to his letter, Dr. Singer included galley proofs for an AMA editorial on smoking and health to be published in the September 2, 1968 issue of *JAMA*.³³ Dr. Singer reminded Mr. Kloefer that the "position statement...is confidential until published."⁵⁵ The statements included in the *JAMA* editorial were the same statements that Drs. Bayne-Jones and Schuman had objected to earlier that year at the AMA Annual Meeting in June.⁵⁰ The editorial stated that "in the opinion of the Committee for

Research on Tobacco and Health of the AMA Education and Research Foundation, no new evidence has been adduced...which would substantially alter the conclusions [of the AMA-ERF Committee made in 1964]."³³ In short, the AMA was saying that in the four years since its research program with the tobacco industry had begun, no new conclusions could be drawn from the AMA's previous statement that smoking had only a "significant relationship" to lung cancer.²²

The statements made by the AMA to help perpetuate the so-called "controversy" on smoking and health provided ammunition for the tobacco industry. According to Glantz's book, "The Cigarette Papers," the Tiderock Corporation, a public relations firm contracted by the Tobacco Institute, developed advertising campaigns for the tobacco industry based on statements like those promoted by the AMA, "that there is no scientific evidence of a causal relation between smoking and lung cancer."¹⁵ Glantz contends that such campaigns succeeded in "[maintaining] the AMA's neutrality and to encourage the AMA to issue statements that could be used by the tobacco industry as part of its broader public relations campaign."⁵⁵

In their final publication of the tobacco industry-sponsored AMA-ERF Committee for Research on Tobacco and Health, the AMA provided the Tobacco Institute drafts of the final report entitled, "Tobacco and Health" published in 1978. In a December 3, 1976 memo from William Kloepfer of the Tobacco Institute to tobacco industry lawyers, Kloepfer says, "AMA has asked us to seek your indication of how many copies you might wish to have of the report it intends to publish next spring...We are asked to share with you the enclosed copies of certain proof pages."⁵⁶ The original draft of the report shared with the Tobacco Institute listed Dr. Paul Larson, a member of the AMA-ERF Committee and recipient of CTR

and American Tobacco Company research grants, as sole editor of the report.⁵⁷ This was changed in the final publication to read, "Compiled by the AMA-ERF Committee for Research on Tobacco and Health."³⁸

Publications by the AMA on the tobacco issue have continued to serve the political sensitivities of the AMA. In a September 7, 1982 memo from *JAMA* editor Dr. George Lundberg to *JAMA*'s editorial staff, Dr. Lundberg notes that a recent meeting of AMA executives and counsel "pointed out the existence of some particularly sensitive political questions and urged that we exercise caution in our *JAMA* publication on these subjects. They are: tobacco and control of tobacco use, nuclear war, abortion."⁵⁸ A more recent example of *JAMA*'s sensitivity to publishing on the tobacco issue, according to an AMA staff person, included a review by AMA chief counsel of the papers analyzing tobacco industry memos included in the July 19, 1995 issue of *JAMA* prior to publication, adding a new level to the peer-review process.⁵⁹

Hostile Witness

The Cipollone case provides an example of the AMA's involvement in a larger conspiracy to keep important information from the medical profession, the public health community and the public-at-large.

According to Marc Edell, the lead plaintiffs attorneys for the case, the AMA did not cooperate when it came to providing vital information. "B. J. Anderson (Betty Jane Anderson, associate general counsel for the AMA) was difficult to work with," stated Edell recently.⁶⁰ Only a year earlier, the AMA Board of Trustees had voted against two resolutions submitted by delegates asking the AMA to support tobacco product liability suits brought against the tobacco industry.⁶¹ Only through subpoena of

former AMA executives and employees was Edell able to gain further insight into the collaboration between the AMA and the tobacco companies, the Council for Tobacco Research, and others in the tobacco industry.

In a January, 1986 deposition taken from Dr. Ernest B. Howard, who served as assistant executive vice president of the AMA and later succeeded Dr. F. J. L. Blasingame as executive vice president for the AMA, Edell asks Howard a cascade of questions related to the agreement between the tobacco companies and the AMA-ERF Committee for Research on Tobacco and Health, resulting in angry responses from Howard.⁶² While denying involvement of the AMA leadership on all workings of the AMA-ERF and creating the senario that the AMA-ERF and AMA operations were kept completely separate, Dr. Howard was confronted with a series of memos that indicated AMA's leadership played an active role in AMA-ERF public relations and policy decisions.

In the deposition, Dr. Howard did not recall meeting with representatives of the tobacco industry until Mr. Edell provided AMA correspondence to Dr. Howard that specifically identified meetings between AMA officials and tobacco company executives, lawyers, the Tobacco Institute, and CTR. Dr. Howard testified, "I don't know if Doctor Blasingame and I met with all of them, with a key number, there, at one point, in the board room to discuss an action, very important action of the House of Delegates with respect to tobacco and health. I have forgotten the exact resolution. It may have been reported [by the committee], a two-year report of the committee on tobacco and health. I have forgotten the exact document; but I met with all of them, at one point, to report to them."⁶²

Mr. Edell was referring to a memo regarding the January 30, 1968 meeting at the AMA headquarters in Chicago (discussed earlier), which

identified nine AMA officials and all the CEO's and chief counsel of the six supporting tobacco companies. Contrary to the memos describing the meeting, Dr. Howard testified in his deposition that he met with them alone, and that no legal counsel was present.⁶²

In response to Mr. Edell's questions regarding any statements made by the AMA as to whether cigarette smoking caused lung cancer, Dr. Howard testified, in 1986, exactly what the defense needed to hear:

"I never made, I would not have made such a statement. I don't, I never believed that, one way or the other. I have already told you, at some length, about the word, causation...The word, trigger, would be much better...Triggering is another thing...We use the word trigger, ultraviolet rays trigger skin cancer. Why doesn't it cause it all over my hand, rather than give me two skin cancers? I have trouble with the word cause. Why don't all cigarette smokers, heavily smoking for 30 years, develop pulmonary cancer? If it causes cancer, why don't they all develop cancer? Why do only a few percent develop cancer? You are getting into a very difficult research area, here, on that word, causation."⁶²

However, Mr. Edell questioned Dr. Howard whether the AMA, in making public statements, had misled the public, and whether it is a complete statement to inform the public that it hasn't been proven that cigarette smoking causes cancer in humans. Dr. Howard testified, "You are right, it is not a complete statement. It is not the truth, the whole truth, and nothing but the truth...Because there are other facts, that are, clearly,

apparent; and that is the relationship, the association...To say that it doesn't cause pulmonary cancer, is not to tell the whole truth."⁶²

Conclusions

Plaintiffs attorneys, along with a number of anti-smoking organizations and individuals working in tobacco control, have asked the tobacco industry to disclose what they knew and when they knew it, referring to the harmful effects caused by their products and their efforts to keep important information from consumers. This morally-driven search for the truth about the tobacco industry could have just as easily been made by asking the AMA to open its file drawers and provide much the same information that has been so widely reported by the news media, and even in the AMA's own publications.

If there were any doubt of the AMA's mutual collaboration with the tobacco industry in this endeavor (i.e., that the AMA was in fact a dupe of the industry), Dr. Howard's testimony, maintaining that even in 1986 the scientific examination of a causal relationship between smoking and disease still wasn't complete, shows how the AMA continued to suggest that more research is still needed, and in doing so, continued to serve the tobacco industry's controversy on smoking and health. Likewise, Dr. Seevers, as chair of the AMA-ERF Committee for Research on Tobacco and Health, provided the industry with suggestions for adding nicotine to cigarettes, a process the AMA has denied knowing anything about until the recent release of internal documents from tobacco companies' own research reports.

In addition to the AMA's collaboration with the tobacco industry, the AMA helped to promote tobacco use--something that the AMA cannot

deny. Years before the AMA signed on to work with the tobacco industry in their research effort, the AMA, through its own scientific journal, published cigarette advertisements touting medical claims such as, "The benefits of reduced nicotine intake," and "More doctors smoke Camels than any other cigarette." It wasn't until 1953, and a controversy surrounding Kent cigarettes and their asbestos-containing "micronite filter" (combined with protests by AMA delegates and members), that the AMA stopped taking cigarette advertising in its publications.^{24,63}

The meetings and correspondence between AMA officials and tobacco industry executives contradict what the AMA now says today, as they work to revise their own history and put a 1990's politically-correct spin on the AMA-ERF project. If the AMA were to come clean on their work with and on behalf of tobacco companies, a new definition of conspiracy may follow and provide plaintiffs lawyers with new ammunition. Unfortunately for the AMA, such a definition would require that the AMA be added as a defendant along with the Council for Tobacco Research, the Tobacco Institute, and other industry allies as part of the conspiracy theory.

The AMA will no doubt respond much the same way to this paper as it has in the past--through angry denial and a retreat to accusations of present-day ethics being applied to a period more than two decades ago. But, the ethics of those who challenged the AMA during that period included the AMA itself--namely, its members, delegates, and employees. It was through a brilliant cover-up of AMA officials conspiring with the tobacco industry that kept important information from the scientific community and the public.

In the July 19, 1995 special issue of *JAMA* that focused on the internal memos of the tobacco industry, the members of the AMA Board of Trustees stated in a joint editorial that this issue of *JAMA* shows in a stark way "that some of those who speak for the tobacco industry dissemble, distort, and deceive" what the scientific community has known all along--that continued use of tobacco products "will endanger the lives and health of the public at home and abroad."¹⁴ The editorial includes an affirmation by the Trustees that "such tobacco industry entities as the Council for Tobacco Research, the Smokeless Tobacco Research Council, and the Center for Indoor Air Research are used by the tobacco industry to convince the public that there still is a controversy about whether tobacco has ill effects, to buy respectability, and to silence universities and researchers."¹⁴ The editorial concludes: "In summary, the evidence is unequivocal--the US public has been duped by the tobacco industry. No right-thinking individual can ignore the evidence."¹⁴

We feel the evidence presented in this paper regarding the AMA's mutual effort with the tobacco industry speaks for itself, and ask the AMA to open its archives to the public that they helped to deceive for so many years.

| | AMA-ERF Committee for Research on Tobacco & Health* | Surgeon General's Advisory Committee** | Council for Tobacco Research, Scientific Advisory Board | Other |
|-----------------------|---|---|---|-------|
| Maurice Seevers, MD | X (Chair) | X | † | |
| Paul Larson, PhD | X | | † | †† |
| Richard Bing, MD | X | | X, † | |
| Charles LeMaistre, MD | X | X | † | |
| Paul Kotin, MD | X | | X | ††† |
| John Hickam, MD | X | X | † | |

Notes:

X Indicates individual served respective committee or organization.

* Other members of the Committee included: Dr. Stuart Bondurant, Dr. Earl Evans, Dr. Robert Hasterlick, Dr. Marvin Kuschner, Dr. Richard Remington, Dr. Chester Southam, and Drs. Ira Singer and John Ballin as AMA Staff Secretaries.

** Other members of the Committee included: Dr. Stanhope Bayne-Jones, Dr. Walter Burdette, Dr. William Cochran, Dr. Emmanuel Farber, Dr. Louis Fieser, Dr. Jacob Furth, Dr. Leonard Schuman, and Surgeon General Dr. Luther Terry.

† Indicates individual's institution received funds from the Council for Tobacco Research for projects also funded by the AMA-ERF Committee.

†† Dr. Larson worked under contract for the American Tobacco Company while serving on the AMA-ERF Committee.

††† Dr. Kotin also worked for the National Cancer Institute while serving on the AMA-ERF Committee.

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