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MAY 4, 1986

Tobacco wars

The antismoking movement gains momentum

BY CHARLES KENNEY

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Arthur Dehon Little,
cofounder of Arthur D.
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BY CHARLES KENNEY *For more than 50 years, after more skirmishes lost than won, antismoking activists have finally gained momentum in the tobacco war. (First of two parts.)*

THE ANTISMOKING GUERRILLAS

In the early 1930s, as Dr. Richard H. Overholt began his pioneering work in chest surgery, he noticed the difference between the lungs of patients who smoked cigarettes and the lungs of patients who did not smoke, and those differences — in both appearance and function — astonished him. Convinced that cigarette smoking reduced lung function, Overholt traveled the country, conveying his sense of alarm to colleagues at meetings of various medical associations. He would gaze out from a podium at assembled physicians who were puffing and squinting, Bogart-like, under dense, sagging clouds of sickly, bluish smoke. Overholt would stand up, tall, handsome, distinguished in appearance, a shock of wavy hair that has long since turned snow-white, and express his belief that cigarette smoking was dangerous. Then he would stand back and wait for the inevitable response to his message: laughter.

"They thought I was crazy, a lot of them," says Overholt. "I would propose resolutions that this was injurious to your health and we ought to inform patients. They'd vote it down by wide margins."

When Overholt began his medical career he had no idea that for the next five decades he was to be a combatant in one of the epic struggles in the annals of American industry. Overholt had no way of knowing so long ago that during the years that lay ahead he would bear witness to an unrelenting economic, cultural, and political conflict. But that is precisely what has come to pass, for Overholt is one of a handful of antismoking combatants who have waged war against the tobacco industry in an ongoing struggle over billions of dollars and countless human lives. For decades, it was an absurdly unbalanced conflict, pitting the \$82 billion tobacco industry and its loyal, economic dependents — a mighty political and financial force — against a poorly organized collection of doctors, lawyers, and public health professionals, a vastly outnumbered group of guerrillas armed with more resolve than resources.

Yet, against these enormous odds, the antismoking forces have persevered. This year, as Overholt approaches his 85th birthday, attitudes toward smoking have changed so radically that the habit is now recognized by the US Surgeon General as "the leading health issue of our time," and by the American Psychiatric Association as a psychiatric disease. Even the American Medical Association, which for years

resisted taking an activist role against smoking, recently has become an aggressive tobacco opponent and late last year went so far as to propose banning all cigarette advertising in the United States. And lawyers around the country have filed nearly 100 lawsuits against major companies charging that their failure to warn consumers of the dangers of tobacco was negligent. While the only two cases to reach trial have been won by the companies, more cases may be headed for court later this year. Activists and the tobacco industry are closely watching one case scheduled for trial this month in Oklahoma. The suit, brought by the mother of a 19-year-old man who died of mouth cancer, charges that the man's death was caused by chewing tobacco and that the company knew the product was dangerous yet never warned consumers.

However, suits against cigarette manufacturers were dealt a serious setback last month. A federal appeals court ruled that a 1965 law requiring companies to place warning labels on their packages renders the companies immune from charges that they failed to warn of cigarettes' hazards. In spite of that defeat, the plaintiffs are pressing on in attempting to prove that cigarettes are an unreasonably dangerous product and therefore no warning suffices.

The men and women who have fought alongside Overholt have been motivated, at least in part, by US

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CHARLES KENNEY IS A STAFF WRITER FOR THE GLOBE MAGAZINE.

Antismoking activists at their Boston convention in January. From left: Law professor Richard A. Daynard, founder of the Tobacco Products Litigation Project; Kenneth A. Warner, a professor and author of an analysis of the effects of the antismoking movement; John Banzhaf III, a lawyer who secured \$800 million worth of free television time to air antismoking commercials; and Dr. Alan Blum, founder of DOC (Doctors Ought to Care).



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Smoking

CONTINUED FROM PAGE 13

Public Health Service reports that cigarettes claim an estimated 350,000 lives annually — more Americans every year than died in World War II and Vietnam combined — and by the Surgeon General's findings that cigarette smoking is the chief cause of preventable premature deaths in the nation, the leading cause of lung cancer and emphysema, and a cause of seven other cancers as well as heart disease.

Overholt and his fellow activists contend that the tobacco companies' gravest offense is that they knew — years or even decades before the Surgeon General's landmark warning in 1964 — that cigarette smoking could cause disease; that the companies not only failed to warn consumers of the dangers but sought to convince smokers that they faced no danger. To this day the industry maintains, in the words of Tobacco Institute spokesman Walker Merryman, "that while certain studies have been done which associate smoking with a

variety of diseases, no causal relationship has yet been established."

Overholt's opinion is that the tobacco industry "has covered up the fact that they sell a product that causes disability and death. I think they've known it for 40 years." Many of his colleagues agree.

Spurred by their convictions, Overholt and other anti-smoking activists, after many more skirmishes lost than won, believe that they have finally gained momentum in the tobacco war and in the process have altered the course of American social history.

This transformation — and the people who made it happen — is the subject of this story. It is a story about the efforts of some of the antismoking activists who are working to topple the tobacco industry, a story not about cigarettes so much as about power, politics, money, medical science, and the law. And it is a story about conflict — conflict rich with irony — for among the tobacco industry's allies has been the US Congress, whose actions at

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Smoking

CONTINUED FROM PAGE 35

nearly every juncture benefited not the antismoking activists, but the companies. The tobacco guerrillas have found themselves combating on occasion such groups as the American associations of newspaper and magazine publishers over cigarette advertising. They have also found wanting at some points the efforts of one of the leading health organizations in the United States: the American Cancer Society. And, in an extraordinary irony, the antismoking forces have at various times found themselves opposing the largest organization of physicians in the United States — the American Medical Association.

Through the retrospective lens of history, Overholt now seems a visionary of sorts. He saw the danger earlier than most and sounded an alarm. From that time more than a half-century ago, Overholt and other activists have progressed to the point where, in recent years, they have demonstrated a newly found grasp of strategic wisdom and political savvy. In proving its effectiveness, this social and political movement has come of age. And in so doing, the movement has helped precipitate a plunge in the percentage of adult Americans who smoke, from a high of 42 percent in 1964 to 30 percent in 1985. It is a change so great that professor Thomas Schelling, head of Harvard's Institute on Smoking Policy and Behavior — an institute whose very existence illustrates the progress of the antismoking movement — calls it "one of the most spectacular social phenomena in the postwar period."

If there was a moment in

the tobacco war that symbolized the antismoking forces' coming of age, it may have come in Boston this past January 11, 22 years to the day after the publication of the original Surgeon General's report on the dangers of smoking. On that clear, frigid Saturday, leaders of the movement from across the country, traveling from as far away as Montana, California, and Hawaii, convened to talk strategy. Approximately 80 men and women, most of them lawyers but numerous doctors as well, made their way to the basement of the Northeastern University Law School, where they followed a winding corridor to the rear of the building. Behind closed doors they convened in a large amphitheater, where their discussion centered on legal strategies.

But this was more than a gathering of litigious minds — it was a slice of history. For in the room that day were activists who had tangled in every major battle of the tobacco conflict. Dr. Overholt, at 84 one of the pioneers of the movement, as though staking his symbolic historic claim, sat up front. Seated not far behind Overholt was the unmistakably ample frame of John Banzhaf III, a lawyer who single-handedly altered the course of the battle when, in 1968, he secured \$200 million worth of free television time to air antismoking commercials — the most potent weapon ever in the war. Across the room and toward the rear was the fiery Dr. Alan Blum, founder of DOC (Doctors Ought to Care) and editor of two of the most comprehensive works on the subject, special issues of the *New York State Journal of Medicine*. A few rows in front of Blum sat Marc Z. Edell, an impeccably dressed, perfectly postured young law-

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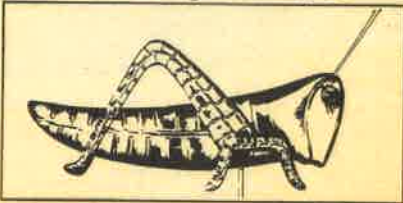
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yer who was suing the major tobacco companies on behalf of clients whose illnesses and deaths were caused, he contends, by cigarettes. Near Edell sat professor Kenneth Warner of the University of Michigan, the author of a widely praised analysis on the effects of the antismoking movement. At the front of the room was law professor Richard A. Daynard, founder of the Tobacco Products Litigation Project and organizer of this conference. The participants in the meeting were of different ages, from varying backgrounds

and regions of the country, but they were people who, as Daynard put it, shared a "determination to bring the tobacco industry to the bar of justice ... to do something about this epidemic."

A few people will always smoke, Overholt said, but "I think we're going to destroy it as an industry."

And where once the possibility of victory seemed remote, at Northeastern that day the antismoking leaders talked not of past defeats, but of a war being won — a belief that victory for

them was not merely possible or even likely, but inevitable.

When Overholt was growing up in Nebraska, not long after the turn of the century, cigarettes were an uncommon, even alien product in the United States. But that was changed by the First World War and General John J. Pershing's declaration that tobacco was "as indispensable as the daily ration." By 1918, cigarettes were distributed with each day's ration, and an army doctor reported from France that the effect of smoking on wounded soldiers was "wonderful. As soon as the lads take their first whiff they seem eased and relieved of their agony."

Overholt was too young to serve in the war, but by 1926, when he left his native Nebraska for a fellowship in surgery at the University of Pennsylvania, cigarettes were taking deep root in American popular culture. Even before Overholt found evidence through surgery of tobacco's effects on human lungs, popular and scientific publications reported that smoking caused disease. In 1924, *Reader's Digest* began what was to become a relentless antitobacco campaign. Four years later, a report in *The New England Journal of Medicine* found that heavy cigarette smoking was more common among patients with cancer than among noncancer patients. Between 1938 and 1940, three important articles in major medical and science publications found that heavy smokers had shorter life expectancies than nonsmokers; that there was a link between smoking and lung cancer; and that smoking heightened the risk of coronary disease.

In spite of such reports, however, per capita consumption of cigarettes in the United States doubled between 1920 and 1930, continuing a steep climb as the Depression settled upon the country and as Overholt arrived in Boston, in June of 1931, to work as a surgeon at the Lahey Clinic. He was one of the first physicians anywhere in the world to operate on the human chest — as Overholt puts it, "the last frontier in surgery."

Around 1933 or 1934, Overholt noticed the difference between the lungs of smokers and nonsmokers. He and a colleague soon found that tuberculosis patients who smoked didn't heal as well or as quickly after surgery as patients who didn't smoke. Nonsmoking patients, Overholt noticed, required shorter hospitalization periods than patients who smoked.

"Smokers develop a chemical bronchitis from the tar," says Overholt. "Some would get a post-operative pneumonia. They had low lung reserve, and smoking reduced their capacity more. Nonsmokers had smoother convalescence."

Opportunities to speak out against smoking were infrequent, particularly during the 1930s and 1940s, when it was not an issue of great controversy; and while Overholt did what he could, he was in great demand as a surgeon and unable to do nearly as much as he would have liked to fight smoking. "I felt very frustrated by it," he says.

As he fought, smoking was gaining popularity fast and taking strong hold, particularly among men — then the great majority of smokers. Smoking was also becoming an integral part of the image many men conveyed — an "image of masculinity," according to Allan Brandt, who teaches at Harvard Medical School. By the 1940s, cigarettes had grown so popular that

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Perhaps most disappointing to Overholt was that as of the late 1940s even his own colleagues recognized no real danger from cigarette smoking. In 1948, an editorial in the *Journal of the American Medical Association* — the official voice of the AMA — stated: "From a psychologic point of view, in all probability more can be said in behalf of smoking as a form of escape from tension than against it. Several scientific works have been published that have assembled the evidence for and against smoking, and there does not seem to be any preponderance of evidence that would indicate [that tobacco is] a substance contrary to the public health."

Comments such as these greatly discouraged Overholt. He knew that nothing would be done about "the poison," as he called it, until there was scientific proof it caused disease. As it happened, however, he was not discouraged for long, for within a year after the *JAMA* editorial he heard about work being done by Ernst Wynder, a young

medical student in St. Louis, work that would change opinions about cigarette smoking in the medical community and the world.

In 1947, during his second year of medical school at Washington University in St. Louis, Ernst Wynder received permission to interview lung cancer patients. After interviewing 20 or so cases he became convinced that there was a high correlation between smoking and lung cancer. At the beginning of his third year in medical school, Wynder visited Dr. Everts Graham, a thoracic surgeon. Wynder, a native of Germany, told Graham about the interviews he had conducted the prior spring and asked permission to continue interviewing lung cancer patients. He also asked Graham to sign on as his adviser for the project. Although Graham flatly did not believe that cigarette smoking could cause lung cancer, he granted Wynder permission to proceed, and agreed to guide him.

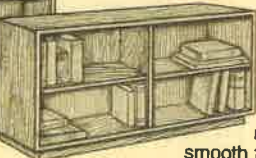
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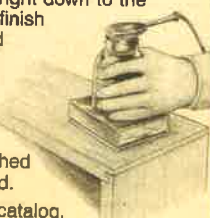
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health. As the two began analyzing the data, Graham's skepticism evaporated — so much so that he quit smoking. Wynder and Graham reported their findings in the May 27, 1950, issue of *JAMA*. The data were overwhelming: Of 650 men with lung cancer, more than 95 percent had been smoking for at least 20 years. Wynder and Graham wrote, without ambiguity, that cigarette smoking was an important factor in the etiology of lung cancer — a finding Wynder knew was historic.

"We knew we had a breakthrough, but we knew we had a number of obstacles to overcome," says Wynder, who is now president of the American Health Foundation in New York. "Being right in science is only one step." It is also necessary, he says, "to be recognized to be right."

"Pasteur says science must discover and apply the discovery, and oftentimes the application is more difficult than the discovery itself," says Wynder. "The discovery was simple. The application was to convince everyone else that what you've found is true, and appropriate action has to be taken."

The article was widely discussed in the medical community, but its findings were not taken to heart. "Among my peers there wasn't much support for this. That was perhaps a leading disappointment," Wynder says. "It took a great length of time before we had the support of the scientific community."

Many doctors were unmoved by Wynder's work, but in Boston Richard Overholt was delighted. He praised Wynder for the breakthrough and quickly sought to recruit another local ally in the person of Dr. Dwight E. Harken, who had already gained worldwide notoriety as the first surgeon ever to operate successfully on the inner chambers of the human heart. Wynder visited Boston and told Harken he believed cigarette smoking caused lung cancer. Harken replied that he considered that notion absurd. But, like Everts Graham, Harken changed his mind after seeing the data.

Not long after those findings — Harken believes it was 1951 — an extraordinary thing occurred. Harken was approached by C. Sidney Burwell, then dean of Harvard Medical

School. Harken recalls that Burwell told him that "he had an inquiry from a very reputable source," who preferred to remain anonymous, who wanted to know "the medical evidence on smoking." Burwell asked Harken whether he believed there was "any real causal relationship between cigarette smoking and cancer of the lung," Harken remembers. "I said, 'There's no question.' I said there could be no doubt about cancer being produced by smoking." Burwell asked Harken to put his view into letter form, and Harken complied. Burwell later told Harken that the party that had inquired about the matter was a major tobacco company. Harken does not recall which one.

Harken is one of the most distinguished men of science in the world, a professor of surgery emeritus at Harvard Medical School, former president of the American College of Cardiology, and the creator of the world's first intensive care unit. His reputation is as someone not given to paranoia or extremism. He says he has scoured his files for a copy of the letter that he wrote for

Continued on page 58

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Smoking

CONTINUED FROM PAGE 54

Burwell, but he cannot find it. He believes, although he acknowledges that he cannot prove it, that a tobacco company got the letter. "Probably through one of the secretaries," he says. "They got to her and asked that it be taken out of the files." Harken is deadly serious about his theory and says of the industry: "I feel like it's kind of like fighting the Mafia."

Wynder's findings marked the beginning of a period during which scientific research revealed consistent statistical evidence linking cigarette smoking to lung cancer. In 1952, two British doctors, Richard Doll and A. Bradford Hill, after four years of interviews, found that out of 1,357 men with lung cancer, all but seven were smokers. In 1954, Drs. E. Cuyler Hammond and Daniel Horn of the American Cancer Society found that men smoking a pack or more a day were five times as likely to die of lung cancer as nonsmokers and twice as likely

to die of heart disease. The evidence against cigarette smoking was mounting so fast and was so convincing that the AMA, a group that would soon show its reluctance to oppose the industry, banned all cigarette advertising in its publications.

While Wynder and others were augmenting the research on smoking and health, the American Cancer Society was reporting that the incidence of lung cancer in men was rising at an alarming rate. All of this posed what an article in *Business Week*, in December of 1953, called "potentially the gravest problem besetting any industry since prohibition shut down the liquor business."

It was clear that in addition to business analysts, some smokers also had noticed the scientific findings, for in 1953 and 1954, the first time since the Depression, cigarette consumption declined. For the nascent antismoking movement these were the signs of momentum — perhaps in its infancy, but momentum nonetheless.

Wynder recalls that it was also in 1954 that the tobacco industry, for the first time, seemed to ac-

knowledge that it faced trouble. It came in the form of an advertisement in various publications disputing evidence that cigarette smoking caused lung cancer, and announcing the formation of the Tobacco Industry Research Council. The ad stated, in part, that studies linking smoking to cancer "are not regarded as conclusive in the field of cancer research," and that "there is no proof that cigarette smoking is one of the causes" of cancer. The ad was signed by the presidents of the major tobacco companies.

In his 1982 book, *Coffin Nails and Corporate Strategies*, Harvard Business School professor Robert Miles wrote that "by the mid-1950s the smoking and health threat had become recognized as serious by all members of the Big Six [tobacco companies]. It was at that time that these corporations began to pool their resources and to carefully orchestrate their responses to this major event in their institutional environment."

Despite the scientific evidence, cigarette consumption again began to climb in 1954, and it would do so for another nine years. In the face of increasing consumption, the

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American Cancer Society, the American Heart Association, the National Cancer Institute, and the National Heart Institute organized a study group on smoking and health, which concluded that "the sum total of scientific evidence established beyond reasonable doubt that cigarette smoking is a causative factor in the increasing incidence of" lung cancer.

In response to what they referred to as the "health scare," the tobacco companies began aggressive marketing of filter-tip cigarettes, which the public thought to be safer than non-filter cigarettes — it was believed that filters would sift out some of tobacco's nicotine and tars. A congressional subcommittee later would assert that that belief was largely unfounded, but it was nonetheless the assumption upon which millions of smokers based their switch to filtered brands. In 1950, fewer than one in three cigarettes carried a filter, while seven years later nearly half of all cigarettes were filtered.

As the medical evidence mounted, Overholt, Wynder, and others were aware that a subcommittee of the US House of Representatives had stated that "the cigarette manufacturers have deceived the American public through their advertising." They were also aware that nothing came of the report, and the subcommittee was soon dissolved. All the news was not discouraging to Overholt and his fellow believers, however. Then US Surgeon General Leroy E. Burney watched the mounting evidence with growing horror. Burney closely analyzed that evidence and found Wynder's research extremely persuasive — so persuasive that he called a press conference in July of 1957 and stated that prolonged cigarette smoking was a cause of lung cancer. It was the first time the US Public Health Service had taken a position on the issue — the first time the US government told its citizens that cigarette smoking was dangerous.

Burney was not surprised that the companies reacted by digging in their heels and conceding nothing. That year the major tobacco companies formed a public relations and lobbying organization to represent their interests in Washington. They called it the Tobacco Institute, and in years to come, as battles over tobacco were

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waged in Congress, it would prove to be an organization of astonishing efficacy.

Progress was made in the years after Overholt had first seen the inside of a human lung nearly three decades earlier, and after Wynder had begun his painstaking series of interviews more than a decade before. Where Overholt had believed cigarette smoking was dangerous, Wynder had proved it, and his findings were corroborated by reputable scientists in both the United States and Great Britain. No longer were those cautions against the dangers of smoking ridiculed.

As he worked through the late 1950s, Wynder received some sad news. His friend and mentor — Dr. Everts Graham — wrote him a touching letter of a profound irony, "the irony that fate has played on me," as Graham put it. Graham wrote of their "long and happy cooperation in this enterprise of trying to defeat the enemy who seems to have got the best of me now." Not long after writing to Wynder, Everts Graham, who had quit smoking six years earlier after reviewing Wynder's data, died of lung cancer.

By the end of the 1950s, medical science had proved that cigarette smoking caused cancer. The evidence was so compelling by 1960 that the American Cancer Society stated that "the clinical, epidemiological, experimental, chemical, and pathological evidence presented by the many studies reported in recent years indicates beyond reasonable doubt that cigarette smoking is the major cause of the unprecedented increase in lung cancer." Yet consumption continued to climb along with tobacco-industry profits, and the

American people were smoking more than ever. The researchers were sure they were right, but the task at hand was, as Wynder put it, "to be recognized to be right." Not a single major institution in the United States — not the tobacco industry, not the government, not leading health and medical associations — mounted any sustained effort to inform the American people.

On June 1, 1961, a number of major organizations took a step in that direction. The presidents of the American Cancer Society, the American Heart Association, the American Public Health Association, and the National Tuberculosis Association wrote to urge President John F. Kennedy to establish a commission to study the problem. After a delay of many months, Kennedy agreed and instructed the Surgeon General to appoint a blue-ribbon commission to investigate. The expectation of some, perhaps understandably, was that a government commission would do what government commissions generally do — present a meaningless report that would receive as much attention as Overholt had gotten from his colleagues in the 1930s. This commission, though, would be different.

In an effort to ensure political and scientific impartiality, Surgeon General Luther L. Terry cautiously selected the commission. He met in late July of 1962 with representatives of various medical associations, volunteer health organizations, and the Tobacco Institute, distributed a list of the names of 150 "eminent biomedical scientists" — none of whom had taken a public position on the subject of smoking and health — and explained that he would select a committee of 10 from

Continued on page 66

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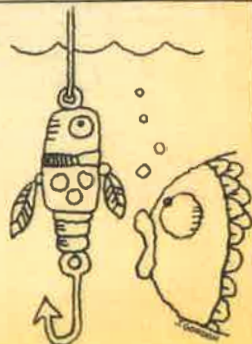


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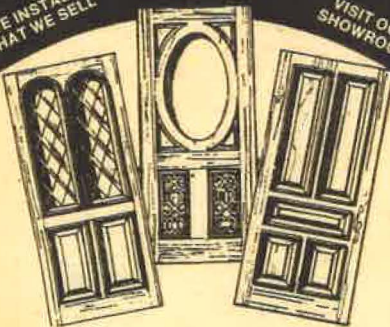
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Smoking

CONTINUED FROM PAGE 62

the list. Then Terry made an extraordinary offer. He said that if anyone at the meeting objected to any of the names on the list, he would delete them. There were no serious objections. Terry quickly demonstrated how seriously he took the committee's impartiality: Soon after the panel was selected, the physician chosen as the committee's executive director told a reporter that he believed the evidence to date "definitely suggests that tobacco is a health hazard." Terry swiftly fired the man.

The committee began its work of reviewing the available scientific literature on smoking — 7,000 articles in all — in late 1962 and worked in secrecy for 14 months. When the members finally had analyzed the data, "it blew all of our minds," says Dr. Peter V. V. Hamill, the committee's medical coordinator. "It was hair-raising."

On January 11, 1964, the committee convened a press conference and released a 387-

page report that contained the most profound implications ever for the health of the American people in a government action. The report concluded that cigarette smoking was a primary cause of lung cancer, was overwhelmingly associated with emphysema, chronic bronchitis, and cardiovascular disease, and was a major factor in premature death.

It would be difficult to overstate the significance of that historic report. Untold numbers of Americans threw their cigarettes away that day, and millions more soon followed. There immediately ensued a precipitous drop in cigarette sales — 20 percent in just the next seven weeks. The tobacco industry was shaken, for the report was a threat not to any one company's market share, but to the industry's very existence.

The committee's final product was sweet vindication for the likes of Overholt and Wynder. They greeted it with great joy, each gratified that the government seemed now to have entered the fray on their side. But at the same time, each man felt a sense of frustration, and others surely felt bitterness, for in the eyes of these

men and other antismoking activists, the report came perhaps a decade or more too late. The fact was that the committee had drawn its conclusions from data that in some cases were 10, even 20, years old.

Wynder says the evidence was clear in 1950, 14 years before the committee's findings were issued. And Overholt believes that the report should have been issued in 1954 or even 1944. "Lives," he says, "would have been saved."

Given the strength of the report and its lack of ambiguity, it would have been reasonable in January of 1964 for the antitobacco forces to expect a closing of the ranks and a frontal assault by the government, and by the major voluntary health and medical organizations, against cigarettes. Perhaps there were some who even anticipated that the industry would bow to the findings and, in deference to the public good, begin winding down its operations. After all, how could the companies combat the report? How could they manufacture and sell a product that caused, as the government told the nation's people, the dead-

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liest of diseases?

That the companies would not only survive the report but actually see their profits grow in the years to come is testimony in part to extraordinary business and political acumen — brilliance, really. It is proof as well of the industry's ability to rally its economic dependents, including publishers and broadcasters, the advertising industry, tobacco farmers, paper producers, and governments at every level that counted on tobacco tax revenues.

But that the industry survived the report is owed as well to another important factor: In the mid-1960s, the antismoking movement was in disarray. Worse, it was a riderless horse, a movement without a strong institutional or individual leader. Overholt, Wynder, Harken, and the others did what they could, but these men were surgeons and researchers, not orators and lobbyists. The health establishment not only did not close ranks and mount an attack, but some groups effectively abetted the tobacco companies, and without doubt the most egregious offender was a national group of nearly 160,000 physicians — the American Medical Association.

At its 1964 convention, the AMA stated that it recognized "a significant relationship between cigarette smoking and the incidence of lung cancer and certain other diseases, and that cigarette smoking is a serious health hazard." In spite of that rhetoric the AMA subsequently opposed the first initiative against tobacco in the wake of the Surgeon General's report. Just two months after the report was released, the Federal Trade Commission proposed requiring warning labels on all cigarette packages and advertisements. The warning would read that cigarette smoking "is dangerous to health and may cause death from cancer and other diseases."

At the hearings on the proposal an AMA executive vice president stated that "labeling cannot be anticipated to serve the public interest with any particular degree of success. The health hazards of excessive smoking have been well publicized for more than 10 years and are common knowledge. Labeling will not alert even the younger smoker to any risks of which he may or may not be already aware." (Public-opinion surveys, however, would later indicate that the hazards of

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smoking, while having been known to the scientific community for more than 10 years, were anything but common knowledge until the mid-1960s.)

"Why did the AMA do this?" asks Elizabeth Whelan in her 1984 book, *A Smoking Gun: How the Tobacco Industry Gets Away with Murder*. "Cynics suggested that AMA representatives were attempting to appease southern congressmen to ensure their support against socialized medicine — a charge that the AMA termed ridiculous." Whelan also reports that in 1964 the AMA put out a leaflet advising consumers to be moderate if they chose the habit but to "smoke if you feel you should."

"Negligent" is the word Overholt uses to describe the AMA's behavior. And Donald Shopland, acting director of the US Office on Smoking and Health, says the AMA should be "horsewhipped."

Perhaps there is a simple explanation of the AMA's behavior. Within weeks after the release of the Surgeon General's report, the AMA accepted a research grant of \$10 million

(to be given over a five-year period) from the Big Six tobacco companies — The American Tobacco Company, Brown & Williamson Tobacco Corporation, Liggett & Myers, Lorillard, Philip Morris, Inc., and R. J. Reynolds Tobacco Company. In 1968, the companies pledged to give the AMA an additional \$8 million. Shopland says that during the time the AMA was receiving money from the tobacco companies, the AMA was "not willing at all to take any kind of a public stand, and, in fact, on several [pieces] of legislation that were introduced in Congress they took pretty much a tobacco-industry position."

Dr. Alan Blum of Manhasat, Long Island, who once worked at the AMA as an editor of its journal and is today one of the leading antismoking activists, says flatly that the money the Big Six gave the AMA "was a grant to buy off the complacency and, more importantly, the silence of the AMA for 14 years."

In the wake of the committee's report, Surgeon General Terry, moving quickly

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to support the warning proposal, said he was "convinced that the American people have been deceived and misled by cigarette advertising — and their health has been harmed as a consequence." At congressional hearings on the warning legislation, a parade of opponents to the bill — including the AMA, newspaper and magazine publishers, broadcasters, and advertising executives — marched across Capitol Hill. While industry ranks moved in lock step, the antismoking people stumbled hopelessly.

Professor Robert Miles of Harvard, who has studied the tobacco industry over the years, reported in *Coffin Nails and Corporate Strategies* that "the major difficulty that plagued the health groups throughout the congressional hearings was a lack of agreement about what they wanted Congress to do. . . . All they could seem to agree on was that smoking was harmful to health and that the federal government should do something about it. Their inability to develop an action plan comparable to that of [the industry's] strategy resulted in a disunity that became evident as the health groups testified before the congressional committee."

Not only were the antismoking troops outorganized, they were outflanked: Nearly a fourth of all congressional committees and a third of the committees in the House were chaired by members from the six leading tobacco states (North Carolina, Kentucky, Virginia, Tennessee, South Carolina, and Georgia). But the industry could not have its way on everything — its strategists knew they had to yield on something. As a result, the companies volunteered to place a warning on packages, but it would be a much milder warning than the one proposed by the FTC. In return for agreeing to a warning, the companies demanded, and got, a major concession in the bill. The cigarette-labeling act prohibited any federal or state agency from requiring a health warning in cigarette advertising for four years (Congress would later extend that to six years). Instead of the originally proposed warning — that cigarette smoking "is dangerous to health and may cause death from cancer and other diseases" — the industry got what it wanted: cigarette smoking "may be hazardous to your health." Over the years that warning "paled with familiarity," says Michael Pertschuk, former FTC chairman.

The bill became law in July of 1965 and drew a chilly reception from some quarters. An article by Elizabeth Drew in *The Atlantic Monthly* called the bill "an unabashed act to protect private industry from government regulation," while a *New York Times* editorial called the new law "a shocking piece of special interest legislation."

In spite of the threat that the Surgeon General's report posed to its existence, the American tobacco industry was in very good shape by the late 1960s. Sales were again climbing. The tobacco companies had headed off government regulation, and they won a reprieve from regulation for years to come. Their right to manufacture, market, and sell a product that the Surgeon General's committee had declared carcinogenic was unfettered. That lack of regulation makes the cigarette unique, says Donald Shopland. No other product sold for consumption in the United States was so completely free of regulation. "We regulate everything," says Shopland. Except tobacco.

The companies had weathered the storm and

emerged in fine shape. But that would not be so for much longer, for the industry was about to meet one of the most effective antismoking activists ever — a relentless and unforgiving young man named John Banzhaf III.

When John Banzhaf graduated from Columbia Law School in 1965 he was not, like so many of his fellow students, burning with the fever of '60s activism. A young engineering graduate from MIT, Banzhaf recalls frankly that his ambition was "to become a big, fat, rich patent attorney." Instead, he became one of the most effective leaders of the anti-smoking movement.

Before settling in to a career that would make him a well-to-do patent lawyer, Banzhaf clerked for a judge in Washington for a year, then worked on a cruise ship. It was before he left on a lengthy cruise that Banzhaf set in motion events that would forever change the course of the tobacco war.

The thought struck him one day that cigarette advertisements on television presented one side of what was clearly a significant issue. He knew that the Federal Communications Commission's fairness doctrine required television networks and stations to provide free time to air views on all sides of controversial issues of public importance. Banzhaf's polemical nature was at work when he wrote to WCBS-TV in New York requesting "a balanced presentation" on smoking. He wrote that he sought balance to "all the cigarette advertisements, which by their portrayal of virile-looking or sophisticated persons enjoying cigarettes in interesting and exciting situations deliberately seek to create the impression and create the point of view that smoking is socially acceptable and desirable, manly, and a necessary part of a rich, full life." He was at the time a 26-year-old lawyer who had never practiced law and who was in the employ of a cruise line of Swedish registry. No doubt thinking him a quack, WCBS-TV dismissed his requests. That dismissal was precisely what the contentious lawyer in Banzhaf wanted. In early January of 1967, on the day he was to depart on a 92-day, around-the-world cruise, Banzhaf sat down in the purser's office of the *MS Kungsholm*, docked in New York Harbor. In the company of a book on admiralty law in Swedish, which was of no use whatsoever, and a pamphlet from the FCC on procedures for filing complaints, Banzhaf spent several hours writing a three-page letter requesting equal time under the fairness doctrine to rebut cigarette commercials. He wrote out the letter, typed it up, mailed it, and sailed around the world.

Not quite two months after he returned and was working for a major New York law firm, the FCC replied to Banzhaf. To the shock of the financial, tobacco, advertising, and broadcast industries — and to the surprise of John Banzhaf — he won. The commission ruled that he was entitled to substantial free time to air views opposed to cigarette smoking. The ruling was issued on a Friday. The following Monday morning, Banzhaf went to work and was quickly summoned by his law firm's senior partner. "He said, 'John, did you know that our major client was Philip Morris?'" Banzhaf recalls. "He said, 'Did you know that we're in the Philip Morris building?'" He said, "Did you know that the word is going around the street already and people are calling up and asking what we're going to do for

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Banzhaf explained to his superior that he had no intention of continuing his legal action against the industry; that he wanted to practice law and planned to leave it up to the major health organizations to prepare counteradvertising, monitor network compliance, and fight the inevitable appeal by the industry. The anti-smoking forces would be gaining a staggering amount of free air time — it would eventually total some \$200 million worth from the beginning of 1968 to the end of 1970 — and Banzhaf assumed that the major health organizations, led by the American Cancer Society, would take up the fight. But he was wrong.

Banzhaf met with a group of officials from the leading health groups and told them, "The battle ahead will be long, hard, and costly. I am unequal to such a legal battle. I fear that I am hopelessly outclassed. I have carried this fight so far only on my own back and at no small risk. I cannot carry it any farther alone. I need your support."

Banzhaf wanted the major voluntary health organizations to use their considerable resources to defend the FCC decision against appeals from the industry to the FCC, and to defend the ruling in appeals courts, a process that Banzhaf knew would take years. Banzhaf also wanted the groups to organize their volunteers across the country to monitor local television stations to see whether they were complying with the FCC ruling.

The voluntary health organizations unanimously rejected his request. Banzhaf was shocked at the time, but in retrospect he believes they turned him down "for a variety of reasons. One was simply kind of bureaucratic inertia. They just didn't conceive of a health organization that would be taking legal action. To them that was a dirty word. There was speculation, which they denied, that they were afraid of offending the networks and the stations who give them a lot of free time for their other kinds of public-service announcements."

Former FTC chairman Michael Pertschuk sheds some light on the health organizations' decisions as well. In his book *The Giantkillers*, scheduled for publication next fall, Pertschuk writes that "like chambers of commerce, the or-

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ganizational culture of voluntary associations like the Cancer Society is shaped by their dependence upon the support of the business community. Much of the staff and many of the volunteer leaders are simply not comfortable taking an aggressive, adversarial stand against any segment of the business community, nor with any form of political advocacy other than support for research funding."

Thomas Whiteside of *The New Yorker*, who has written insightfully on the tobacco industry and its opponents, puts it more bluntly. "The American Cancer Society, before Banzhaf, was playing footsie with the networks," says Whiteside. "They got their little scraps of time on Sunday morning early, and they didn't want to get into a scrape with a great big industry."

One of the problems created by the FCC ruling was the question of what to fill the enormous amount of free air time with. The voluntary health organizations had produced a few anti-smoking commercials, which were aired infrequently and often at odd hours of the morning. Those commercials were used more often, and Banzhaf says actors, writers, producers, directors, and others responded by volunteering their services to make additional antismoking spots.

Banzhaf felt a growing disaffection with the practice of law and an increasing interest in anti-cigarette activity. "I very slowly found myself getting turned on to this public-interest law," he says. "I mean, here I was actually seeing these antismoking commercials running. You would hear about people who were quitting or kids who were bugging their parents to quit. I got a feeling of pride out of it. Some publicity. I didn't mind the publicity; I liked it. I contrasted that with what I was doing at the law firm, which was dull, which either had no public interest or, in some cases, negative public interest, as I saw it; where you didn't come home with a feeling of accomplishment. I got interested in doing this on a more full-time basis."

In September of 1968, Banzhaf, as he puts it, worried his way onto the list of speakers at the First World Conference on Smoking and Health, in New York City. While urging the voluntary health organizations to take up the fight, Banzhaf denounced the cancer society for its unwillingness to get down into the trenches and fight the cigarette war. At one point, although he says it was not during his speech, he called the cancer society "gutless." "They dug their heels in, and I was denounced," says Banzhaf. "When they finally, absolutely refused to take it over, it was clear to me that I was going to do it alone."

Banzhaf knew that to continue the work he would need money for legal costs and staff. In Boston, physicians Overholt and Harken heard that the cancer society and others had rejected Banzhaf's plea for help, and they were appalled. Here was a young man who had won the most significant victory ever against the tobacco industry, and his request for help had been denied? It was absurd, and Overholt and Harken meant to do something about it. Harken organized a party at his Cambridge home to solicit sponsors for the organization Banzhaf was about to found. Harken and Overholt, along with US Senator Maurice Neuberger, Louis Jaffe, the eminent Harvard Law School professor, Dr. Alton Ochsner, the legendary researcher of the effects of tobacco on health, and Dr. Paul Dudley White, the renowned

Continued on page 77

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Smoking

CONTINUED FROM PAGE 75

heart specialist, agreed to become trustees of Banzhaf's organization, Action on Smoking and Health (ASH); and several of them contributed start-up money. Harken also appealed for funds for Banzhaf in a 1968 article in *The New England Journal of Medicine* in which he wrote that "the medical profession has a rare opportunity to help the minuscule financial structure of ASH through direct financial contribution and by encouraging patients to do likewise." Against the giant tobacco companies, Harken wrote, "the only advantage ASH has is its moral position." Thus was born the first organization in the United States dedicated solely to fighting the tobacco companies. In contrast to the political and economic might of the tobacco industry, Banzhaf's one-person staff (himself), two-room office, and \$8,000 in contributions, which he used to pay the rent, seemed almost absurd. But it was a start.

The television screen was stark in black and white. A familiar face appeared, but somehow the face was not the same. The man looked strange, not quite right. Perhaps he was ill. Yes, that was it, he looked sick — very sick. William Talman, who played Hamilton Berger, Perry Mason's foil in years of courtroom episodes, looked directly into the camera and spoke: "I didn't really mind losing those courtroom battles. But I'm in a battle right now I don't want to lose. I've got lung cancer. So take some advice about smoking and losing from someone who's been doing both for years. If you haven't smoked, don't start. If you do smoke, quit. Don't be a loser."

The commercial, which ran frequently as a result of Banzhaf's win at the FCC, was made all the more poignant by the fact that by the time it was aired, Talman, at age 53, was dead. During the 3½ years prior to Banzhaf's victory at the FCC, the cancer society reported it had distributed 982 antismoking spots to radio and TV stations throughout the country. During the eight months after the FCC ruling, the cancer society distributed 4,723 commercials. In all, Banzhaf estimates that the FCC ruling gave the antismoking forces a staggering \$200 million worth of free air time. There is no doubt, to this day, that the commercials were the most powerful weapon ever in the arsenal of the antismoking movement, and the tobacco companies knew it. They surely watched with alarm as the commercials worked their devastating power on cigarette sales. In 1968 and 1969, cigarette consumption declined, and the companies realized that the only way to get the counteradvertising spots off the air was to remove their own commercials, thus nullifying the free-time requirement. In early 1969, as the FCC issued notice that it wanted to ban all cigarette advertising on radio and TV, the companies hatched a plan to withdraw from the airwaves voluntarily. Executives in the tobacco industry saw quite plainly that the tide was turning, slowly yet inexorably, against it. And to lessen mounting pressure, the companies acceded to a strengthened warning on packages and advertisements: "Warning: The Surgeon General has determined that cigarette smoking is dangerous to your health."

Although the antismoking ranks, thanks in

large measure to Banzhaf's work, were gaining momentum, the tobacco industry was in better shape financially in 1970 — largely owing to diversification — than it had been 10 years earlier. Diversification notwithstanding, the Big Six still had a huge stake in the tobacco business, so huge that in the late 1960s the most heavily advertised product in the United States was tobacco.

Congress legislated tobacco broadcast ads off the air as of January 1, 1972. The virtual disappearance of powerful spots such as the one with

William Talman resulted in an immediate increase in cigarette sales. But over the long term, most activists agree, the broadcast ban hurt the industry by stripping it of the single most powerful communications tool in society, and thus undermining the legitimacy of smoking.

By the early 1970s, Banzhaf saw clearly that the battlefield had changed. No longer was the conflict to be waged in medical laboratories, for proof that smoking was danger-

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ous was by then overwhelming. The new field of battle, Banzhaf knew, would be political. The war would be fought in Congress, certainly, but more important, he thought, it would be taken to state houses, county commissions, and even city and town halls. Banzhaf believed that to make major advances in the tobacco war, Americans who did not smoke had to be enlisted in the fight. And the announcement by Surgeon General Jesse Steinfeld, in 1971, that so-called secondhand or ambient smoke was dangerous to people who did not smoke was just the sort of alarming news needed to spur nonsmokers into action. Steinfeld went so far as to propose outlawing smoking in "all confined public places such as restaurants, theaters, airplanes, trains, and buses." The Surgeon General's finding that secondhand smoke was harmful to nonsmokers "gave an important reason for the great majority of nonsmoking Americans to take an interest" in the antismoking movement, says Banzhaf. The nonsmokers'-rights movement, he says, "led to the Groups Against Smoking Pollution [GASP], to laws and ordinances restricting smoking in public places."

Banzhaf was already litigating against airlines to assign separate seating areas to smokers, and in 1971 United Airlines became the first major carrier to do so. Soon thereafter, under pressure from Banzhaf, the Interstate Commerce Commission limited smoking to the back five rows on interstate buses. And, again at Banzhaf's instigation, the state of Arizona enacted a comprehensive law prohibiting smoking in all elevators, indoor theaters, libraries, buses, and other enclosed spaces. Banzhaf says the nonsmokers'-rights movement "has a strong impact on getting people to quit. We're finding people more concerned with the here-and-now social acceptability and social pressures than they are about health risks. When smoking was an 'in' thing to do, it made you sophisticated and glamorous and sexy and attractive to other people, and you saw it on the silver screen and on TV, and you wanted to do it. Today, people increasingly see smoking as a kind of a dumb thing to do."

As Banzhaf looks back on it,

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he sees distinctly different phases in the antismoking movement. "Phase one was aimed at the smoker," he says. "There was the original Surgeon General's report, health-education campaigns, the Fairness Doctrine decision, the banning of cigarette commercials, health warnings on packs and ads, tar and nicotine disclosure. They were effective — millions of people quit smoking.

"The second front was the nonsmokers'-rights movement. Its major emphasis, its major purpose, was to protect the nonsmoker from annoyance, physical irritation, and the health hazards of ambient tobacco smoke. It gave an important reason for the great majority of nonsmoking Americans to take an interest. There were laws and ordinances restricting smoking in public places. ... The nonsmokers'-rights movement is making it much more difficult for people to smoke. If you can't smoke at your desk, if you've got to get up and go down the hall to a little smoky room every time you want to smoke a cigarette, if you can't buy a cigarette from a vending machine or somewhere else on the premises, it makes it much

harder to keep up a habit which depends on automatic and rote response."

In 1973, the tide turned against the tobacco companies and in favor of the antismoking movement in the tobacco war. That year, per capita consumption of cigarettes in the United States began a steady decline that has continued, without interruption, until today. Still, the insurgents suffered defeats in all kinds of skirmishes. Funding for the National Clearinghouse on Smoking and Health, the only federal agency devoted to educating the public about the dangers of smoking, was cut by more than half.

The movement was far from unified. Banzhaf felt the cancer society and the heart and lung associations were contributing little to the effort, and they treated him as a pariah. And even then the tobacco industry had the run of Congress, and the antismoking forces had, in the nation's capital, not a single lobbyist. •

Next: The tobacco war intensifies as the antismoking forces advance.



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