

Suffer the children

Maryland is doing little to stop youths from smoking

By Taylor Branch

WAKE UP, Maryland! A miracle remedy for our state's long-lamented cancer death rate — fourth highest in the nation — lies within reach. While complex plagues such as poor schools and job loss may require solutions not yet imagined, the scourge of cancer will yield to a small campaign, led by children. A mere handful will do. They can arrest the long treadmill of costly suffering and premature death without new budget investments or bureaucracy. All the children need is the clear-headed support of voting citizens.

How? They have come maddeningly close already. Last summer, eight teenagers fanned out across Maryland like Joshua's scouts into Canaan. Trained by state revenue officers, they busily offered to buy cigarettes at 681 Maryland retail stores over a two-week period. They met no resistance at 110 of 118 vending machine sites (93 percent), or at 371 of 786 clerk-tended counters (46.8 percent). Because Maryland, like every state, bans cigarette sales to buyers under 18, the monitoring revenue officers could have — should have — followed right behind with a citation for the vendor each time a teen-age spot checker obtained cigarettes. If they had done nothing more than this, the lethal commerce of child addiction would be flushed out toward extinction by now.

But timid state authorities stopped short. For fear of political controversy, they made the two-week effort a "study" instead of an enforcement drive, and even that was undertaken under mandate of federal law.

The survey merely confirmed what every teen-ager knows: Tobacco enforcement is a joke. Although Maryland statutes more than a century old (dating back to 1836) decree that those who sell tobacco to minors shall pay fines ranging from \$300 up to \$3,000 for repeat offenses, there were

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no such cases brought in 1996 and none yet reported for 1997. Zero. It is small comfort that many states do no better. Virginia has not punished a single underage tobacco sale since 1990, and an embarrased Gov. George E. Pataki is scrambling to find a solitary example in New York.

Our dizzy priorities come straight out of Alice in Wonderland. In one of 188 work-piece inspections last year, MOSH officers fined President Carolyn Mammusak \$1,312 for smoking alone in the bathroom of her private office at Villa Julie College, thereby protecting from secondary smoke anyone who might have breathed tobacco fumes that escaped her bathroom door or window. No such effort protects the 60 Maryland kids who become new smokers each day, supplied by legal but more or less open

transactions. A third of these new smokers eventually will die early of tobacco-related heart or lung disease — roughly 6,000 per year by the mid-21st century. Their extra health care will cost Maryland roughly \$170 million a year at today's prices.

Similarly, Maryland troopers who rightly scour every jurisdiction for highway speeders give no thought to state laws on underage tobacco sales. No one expects them to, even though:

- Smoking kills eight people for every traffic fatality.
- More than 80 percent of those who ever smoke begin illegally before 18.

- Youth smoking has risen 50 percent in the 1990s. About 20 percent of eighth graders now qualify as regular smokers. More than 30 years after the tobacco companies grandly

(See Tobacco, 8)

Saving Md. youth from big tobacco

[Tobacco, from Page 1r]

pledged to end marketing to those under 21, the high school smoking rate of 35 percent now exceeds the legal, adult rate of 25 percent.

Today's teen-age smokers are tomorrow's terminal patients, just as yesterday's new smokers produced nine new lung cancer patients in Maryland every day. Their chances of surviving five years after detection are stuck at a chilling 13 percent, because lung cancer resists new treatments that have cured or retarded other cancers, such as those of the stomach, cervix and liver. Lung tumors now kill more Marylanders than breast and prostate cancers combined. A lag time of decades means that the death rate among women has grown fivefold since 1960, in the era of tobacco-marketed liberation.

Why do we put up with this? How can the epidemic of youth smoking continue when all parties, including the tobacco companies, proclaim their dedication to stop it?

A smoke-screen of arm-waving gestures leaves us apathetic and blindly misguided. Suppose for a moment that we tried to enforce highway laws the way we control nicotine traffic. Troopers who chase down mad motorists would be authorized only to hand out "Speed kills" bumper stickers and recommend safe driving classes. Judges might allow lawyers to argue in the abstract how fast one might "intend" to go, but courts would never act upon or even consider any driver's actual speed.

The obvious vulnerable spot of youth smoking is the illegal flow of money at the point of sales. Tobacco smoke is nasty and unpleasant even for the "coolest" beginners, and experimental smokers require convenient nurturing to develop an addiction that demands constant supply. This "hooking" phase is not a pretty part of the business, which makes cigarette defenders extremely sensitive about point-of-sale enforcement. They stave off the whole idea with their favored alternatives:

- Sticker displays, warnings, "mandatory" ID checks, training programs for clerks, rules on the placement of vending machines. Such plans sound vigorous and promising, but they always skirt the central question of enforcement.

- Education. Cigarette promot-

ers prefer education campaigns to enforcement, which they reject as "anti-business." In fact, spot-check fines are the most economical, least intrusive tool against underage smoking. They avoid cumbersome regulations and paperwork. The method does not interfere with adult smokers, and leaves proprietors free to decide for themselves how to make sure no underage smokers buy cigarettes on their premises. It pinpoints irresponsible vendors with fines heavy enough to make youth sales lose money. Honest, diligent vendors (roughly half the stores in last summer's study) not only escape fines but enjoy relief from unfair competition.

- Punishment for children instead of vendors. In 1994, lobbyist Bruce Berzano and tobacco forces deftly reshaped an enforcement bill to focus new penalties on the young buyers of cigarettes. Their maneuver subverts the entire rationale for underage tobacco law, of course, which holds adults accountable for fateful smoking decisions by minors.

- Blaming middle-schoolers and high-schoolers is ineffective, unprincipled, and downright ghoulish, because nicotine addiction fastens even harder upon children than adults. Half of Maryland's eighth-grade smokers say they have tried to quit already — and failed. Ninety-five percent of new teen-age smokers say they intend to quit within a year, but only 25 percent succeed within a decade.

In a pinch, tobacco interests will say that enforceable spot checks by a few deputized teen-agers would "corrupt" our youth in tattletale crime — never mind the comparable effect of routine sales welcoming thousands to the big illicit ashtray. Or they object that the economy cannot stand a serious drive against illegal smoking — as though Maryland's prosperity really depended on turning a fresh supply of pink lungs into soot-seared crusts.

These evasions should surprise no one. It is their practice to blow smoke rings and our choking task to see through them. What galls is that big tobacco regards states like Maryland so lightly.

Although the Clinton administration's pending regulations on youth marketing are limited, and subject to lengthy constitutional appeal, the Tobacco Institute is fighting them desperately because

the stakes the relative importance of federal politics are so high. Tobacco also fears the myriad local governments as unpredictable, though pure, and has pushed through the legislatures of 27 states recent boilerplate laws that curtail or forbid local ordinances on cigarettes.

Ironically, tobacco works hard to stay in the hands of the very jurisdictions that have the acknowledged power to enforce laws against underage smoking — the states. Why? Maryland and sister states have proven to be docile pushovers for scoundrels in the cigarette business.

The General Assembly now meets in Annapolis. Rumors fly of bank-shot deals that might use profits of one crassly addictive new vice (slot machines) to shore up

horse racing purses, cut income taxes, and scuttle Gov. Parris N. Glendening's proposal to raise cigarette taxes. A jingle of hard cash echoes from the background.

This is our legislature. Plenty of good people serve in it, but voters are responsible for the outcome and the tone of debate. Whatever happens in the gambling-and-tax thicket, a strong resolution on youth smoking would shine with the courage of proper adults.

Instead of averting our eyes from garish sales to puffing kids, we could work a revolution of leadership against cancer and cynicism at once. We could restore faith with new generations that yearn — literally — to breathe free. The enforcement issue stands alone. It touches nothing but the self-respect of citizens and the health of our children.

*Performance
check - cigarette
advice*

*Fed. children
Feb 25th
inf. fines*

*Some cigarette
advice -
eg. label etc.
- but for ways to
push advertising
around it, and is
... push*

O. J. Sequel 3

Want a Bonus, Too? Don't Make Me Laugh

At the Los Angeles district attorney's office, where prosecutors are still livid over the \$43,000 in bonuses given last fall to Marcia Clark, Christopher Darden, and Bill Hodgman for their work on the O. J. Simpson trial, wags have posted this "Application for 11% Bonus" on bulletin boards throughout the building.



Darden's bonus: \$10,747

1. Case title for which the bonus is requested: (Note: If the case does not have the potential for political impact, you do not qualify.)
2. How was the case assigned to you? (Note: Unless you actively pursued it from the inception, you do not qualify.)
3. Will handling the case cause you to be more concerned about your appearance and public speaking than your courtroom presentation? [Yes] [No] [Not Sure]

4. Does your involvement in the case cause you to believe you are in need of a public relations manager? [Yes] [No] [Not Sure] [Hopefully]

5. Will the case cause the office to provide a support staff and trial lawyers to handle any of the following types of witnesses: Evidence collection; coroner; domestic violence; DNA; glove experts (for cases where sizing decisions exist)?

6. Will the case require a case manager to assist in the day-to-day trial decisions most deputy district attorneys handle themselves on a daily basis? [Yes] [No] [Can't Decide]

7. In handling the case, will you be able to confidently and consistently write unjustified accrued overtime without shame? [Yes] [No] [Define "Shame"]

8. What was the result of the trial? (Note: Unless you lost the trial, held a press conference claiming you performed admirably, lauded the performance of your "staff," and put your public image above all else, you do not qualify.) [Guilty] [Not Guilty] [Jury Deadlocked] [Don't Care]

9. Are you willing to take an eight-month paid vacation at county expense while enduring the rigors and anxiety of book and movie negotiations? [Yes] [No]

(Final note: "No" responses to queries 6, 7, or 9 are cause for automatic disqualification.)



Clark's reward: \$14,330

American Heart Association. They accuse state officials of trying to usurp the power of the voters and, in the process, do the bidding of the tobacco industry. "At stake is the people's constitutional right to adopt laws through initiatives and whether those laws will be fully implemented by the Legislature and the courts," says George Waters, of Sacramento's Olson, Hagel, Fong, Leidigh, Waters & Fishburn, the lead attorney challenging the diversions. In suits filed in 1994 and again last year, Sacramento judges declared the diversions illegal. But the Wilson administration has appealed; with the 1996-1997 budget again calling for tobacco-control funds to be shifted to indigent care, yet another legislative and court battle seems likely. Meanwhile, \$160 million in disputed funds are frozen in the State Treasury.

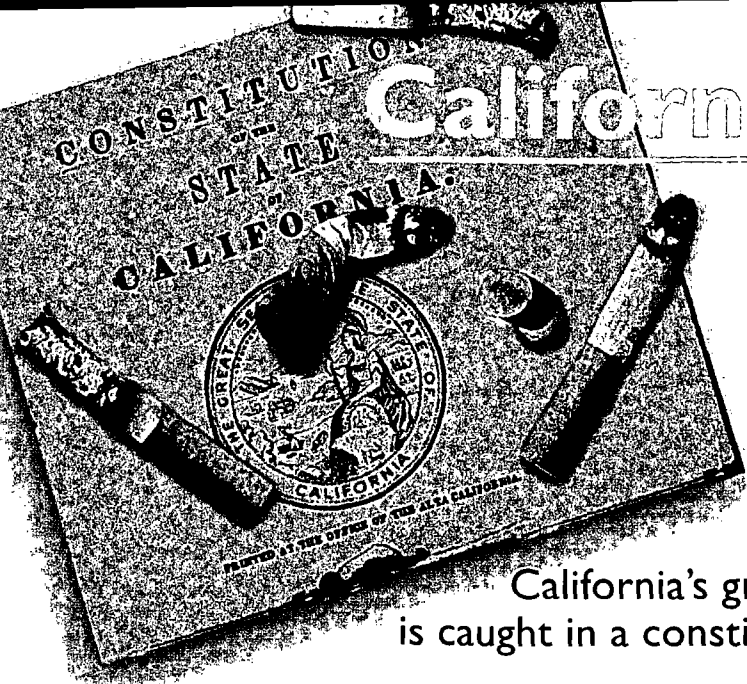
Like most ballot measures, Prop. 99 contains provisions allowing for amendment—but only if the amendment is "consistent with the initiative's purposes." The main legal issue in the appeal is whether the diversions meet that test. Last December, in *Amwest Surety Insurance Co. v Wilson* (1995) 11 C4th 1243, the state Supreme Court handed nonsmoking groups some ammunition, setting forth some standards of review for

Prop. 99 is the only time Californians have voted to tax themselves.

answering whether an amendment furthers an initiative's purpose and ruling that the Legislature's amendment of Prop. 103, the insurance reform initiative, did not. But Prop. 103 did not try to tell lawmakers how to spend money. The Prop. 99 case sets the stage for the first appellate ruling on the Legislature's right to divert funds after special restrictions have been imposed on their use by voters. "The essential issue is to what extent the Legislature is to be acceded a certain deference by the courts in its ability to enact laws and make changes in initiatives passed by the people," says Christopher Waddell, the state Department of Finance's chief counsel. A hearing before the Third District Court of Appeal is expected to be set for this summer.

Anti-smoking groups warn that if the state prevails, future drafters may write ballot initiatives barring the possibility of any legislative amendment—a potential disaster, since amendments act as safety valves to correct mistakes and ensure future flexibility. Fed-up voters could take matters even further, warns Fredric Woocher, of Strumwasser & Woocher in Los Angeles, who represents Americans for Nonsmokers' Rights in the suits. "If the people can't trust the courts to enforce [their mandate] and the Legislature proceeds to gut new measures ... the people not only won't allow amendments, they won't approve bond measures, initiatives, or taxes, and Sacramento won't have the money to provide government services."

—LOREN STEIN



California, ESQ.

Smoke and Mirrors

California's groundbreaking anti-tobacco program is caught in a constitutional battle over budgetary rights

In other states, 1996 is turning out to be a terrible year for tobacco companies, with at least six governors suing the industry to recover medical costs for smokers and the Liggett Group becoming the first cigarette maker ever to settle a smoking-related lawsuit. But in California, lawmakers—with the blessing of the tobacco lobby and a powerful doctors group—are expected to try for the third time to divert money from the state's anti-tobacco program, widely considered to be the most effective in the U.S. The battle has far-reaching implications for public health—and for the integrity of the state initiative process.

Proposition 99, aka the Tobacco Tax Initiative, established a 25-cent-per-pack surcharge on cigarettes and set aside 25 percent of that revenue for anti-smoking media, research, and education (another 70 percent went toward health care, mostly for the poor). The measure, passed in 1988, is the only time Californians have ever agreed to tax themselves, motivated by the goal of reducing addiction and the long-term costs associated with tobacco-related disease. In that regard, the initiative has been a resounding success, according to state and federal studies. Adult per capita smoking has fallen more than three times faster in California than in the rest of the country, cigarette sales have plummeted 41 percent, and 300 communities have adopted no-smoking ordinances.

But over the same period, the state has become increasingly desperate for money. Thus, twice in the past two years, Governor Pete Wilson has requested—and the Legislature has passed—bills amending Prop. 99 to shift money from tobacco

research and education to indigent medical care. Lawmakers argue, essentially, that the anti-tobacco program has been too effective for its own good. As cigarette sales have dropped, so has revenue from the surcharge, from \$573 million in 1988-1989 to an estimated \$444 million for 1995-1996. According to pro-diversion forces, this shows that the anti-tobacco program is no longer as critical as it used to be; meanwhile, indigent health care programs funded by Prop. 99 are in jeopardy. The amendments would cut education funds in half and virtually eliminate research—total program funds would be slashed to \$50 million for the current fiscal year. The diversion has overwhelming backing in the Legislature (a four-fifths majority is required to amend the initiative). It also has the support of some strange political bedfellows: the California Medical Association, which says health care for the poor is more important than anti-tobacco programs, and the tobacco industry, which spent \$22 million trying to defeat Prop. 99 and is one of the biggest financial contributors in Sacramento.

The funding shift is vehemently opposed by Prop. 99's sponsors, including the American Lung Association and the

Recession Alert: Bankruptcies Are Booming Again

More proof that the economy is less rosy than some would have us believe: After a two-year decline, bankruptcies jumped 11.3 percent last year nationwide. More proof that the pain is not being felt equally: While personal bankruptcies (Chapter 7 and Chapter 13) rose 11.7 percent, business bankruptcies (Chapter 11) fell 12.7 percent. In California, bankruptcies edged up 2.8 percent, with filings almost unchanged in the Central District (although in absolute terms, the Los Angeles area remains the bankruptcy capital of the universe). But filings were up 11.2 percent in the Eastern District (based in Sacramento), 6.1 percent in the Southern District (San Diego area), and 4.2 percent in the Northern District (based in San Francisco). While Wall Street romps and executives' salaries soar, "[most] people's take-home pay is declining," explains Daniel G. Bath, a bankruptcy attorney and commercial litigator at Cummins & White in Los Angeles. "There's not a lot of cash out there, but consumer credit is very easy to obtain, and people have taken advantage of that." The American Bankruptcy Institute echoes this view: It says credit card delinquency rates are at their highest level since the 1991 recession.

—KELLY FLAHERTY

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HEALTH POLICY

Child Health

PROMOTING AWARENESS OF MOTHERS AND CHILDREN IN STATE AND NATIONAL HEALTH POLICIES AND PROGRAMS

Lawmakers Debate Strategies to Reduce Tobacco Use Among Youth

Every day, 3,000 Americans under the age of 18 become regular smokers—a statistic with enormous implications for the nation's health. The leading cause of premature death, tobacco use is responsible for more than 400,000 deaths each year. And as experts in the field point out, adolescence is the key period in the decision to start smoking: the vast majority of adult smokers had started by their 18th birthday and more than half smoked regularly by that age. On the other hand, people who do not begin to smoke as minors are unlikely to ever do so.

In view of those facts, state and federal policymakers continue to explore a range of strategies designed to reduce tobacco use among youth. Some of the initiatives target easy access to tobacco products by teenagers and even younger children, while others aim to limit the appeal of tobacco to young people. But while approaches such as health education enjoy widespread support, others, including restrictions on advertising and sanctions for young users, are being sharply debated. Disagreements among lawmakers on the best approach in part reflect different beliefs about who bears the major responsibility for youth smoking: tobacco companies, retailers or young people themselves.

Young Smokers: A Profile

Almost 1 in 3 young people under age 18 uses tobacco, consuming a cumulative

516 million packs of cigarettes and 26 million containers of chewing tobacco a year, according to a 1994 report from the Surgeon General. More than three million of those teens smoke cigarettes, while one million use smokeless tobacco products. The mean ages for trying a first cigarette and for initiating smoking on a daily basis are 14.5 years and 17.7 years, respectively. By age 18, about two-thirds of adolescents in the U.S. have experimented with tobacco.

Teen smokers are fairly evenly divided between males and females, while smokeless tobacco users are almost exclusively male. Smoking is much more common among white youth than black youth (22.9 percent vs. 4.4 percent). According to a report released in February by the Centers for Disease Control and Prevention (CDC), the percentage of youth who reported smoking in the last 30 days varies from 16.7 percent in Washington, DC to 38.9 percent in West Virginia.

Most alarming to the health community is that after a sharp decline in smoking in the 1970s and a continued slow-down in the 1980s, smoking is again increasing among American youth. Among both eighth- and tenth-graders, the proportion who report smoking in the past 30 days has risen by a third since 1991, according to a December 1995 report from the University of Michigan, while the proportion of high school seniors who smoke has increased by >

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