

Victims

Blaming tobacco's victims

S Chapman

People who develop diseases as a result of smoking are victims of the tobacco industry's tactics, and do not deserve to be blamed for their "own misdeeds"

The devastating judgment in the Supreme Court of Victoria against British American Tobacco (Australia)¹ following evidence of its 17 year programme of document destruction seems destined to become a milestone in the pursuit of justice for the tobacco industry's millions of victims. However, although Liberman points out in this issue² that the legal implications of the case may be momentous, public discussion of the case in Australia provides sobering reminders of the power of victim blaming to undermine what otherwise would be unequivocally good news.

Fifty one year old Rolah McCabe, the woman who brought the case against BAT, was in every respect a typical tobacco victim. She started smoking at 12, rapidly developed a dependency on nicotine, and by middle age was diagnosed with lung cancer. If she dies within the next year as predicted, she will lose 30 years off the lifespan that the average Australian woman can expect today. Over 4200 Australians aged less than 65 die each year from diseases caused by tobacco.³

People who sue tobacco companies find themselves as the focus of wider public discourses about the intertwined themes of personal responsibility, the spectre of the sort of bleak society which wraps its citizens in cotton wool in the lavish pursuit of zero risk, and rapacious, venal lawyers encouraging lawsuits. These discourses reach out to us all, including citizens who might be selected for jury duty in such trials. In Australia, two recent cases widely ridiculed by the public have included a man who became a quadriplegic when he broke his neck after diving into a sandbank in the surf at Sydney's Bondi beach. He sued the local government authority responsible for the beach's management for failure to warn him about the dangers of diving into waves and was awarded \$A3.75 million.⁴ Public comment went ballistic about what was seen as bordering on the idea that life itself should carry a health warning. Weeks later, a boy who was injured in a rock fight, while playing truant from school, successfully sued his school for

negligence in failing to supervise him, and was awarded \$A221 079.⁵ Such cases receive massive negative prominence and can infect all litigation involving any volitional activity as being all about rewarding the sort of people who blame others for their own misdeeds.

People who sue tobacco companies often have to run a public gauntlet of criticism.

Critics argue "no one forced them to smoke" and mockingly taunt "Hello! Was this person living on Mars for the last 40 years? Everyone knows smoking is dangerous, so those who smoke voluntarily assume the risks." They point to the millions of ex-smokers who have quit unaided—the subtext being that those who whine that they couldn't stop didn't really try. Parents of children suffering from horrendous idiopathic diseases like childhood cancers note that they can't sue anyone, so why should someone who consciously elected to smoke be thus "rewarded"? These popular accounts can frame powerfully issues of blame, responsibility, and justice and hold potential to influence jurors in such cases. They therefore deserve careful analysis and strategic responses by tobacco control advocates.

UNDERMINING VICTIM BLAMING

There are three cornerstones that can together work both legally and rhetorically to undermine the powerful victim blaming frame. The first is the Pied Piper metaphor. For all the sanctimonious re-birthing that has taken place in the tobacco industry (tobacco now "causes" disease—see News Analysis p 172), it is significant that the industry has resolutely clung to its public position that it does not want children to smoke. It knows that all societies revile those who would seduce and harm children, exploiting their innocence. It is thus inconceivable that the industry might ever swallow a truth serum powerful enough to cause it to say "We confess: we *love* it when children smoke! As our shareholders know, children's money is as good as any adult's. The earlier they start, the more money we get." With tobacco, the script for the Pied Piper metaphor could have been written in Business Studies 101:

"Realistically, if our company is to survive and prosper . . . we must get our share of the youth market"⁶ and no amount of denial and sugar coated earnestness about "adult choice" can ever make this bottom line reality go away. Thanks again to the revelations in their own documents, robotic denials about their designs on children may now be comprehensively matched with hundreds of gloating sales forecasts about the contributions of new smokers from the teenage market and focus group research on how children might use different brands to badge themselves, totemic style, in their relentless pursuit of teenage tribal identity.

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The industry's second *bête noir* is addiction. As a now infamous 1980 Tobacco Institute memo expressed so plainly: "Shook, Hardy and Bacon [the tobacco industry's lawyers] reminds us . . . that the entire matter of addiction is the most potent weapon a prosecuting attorney can have in a lung cancer/cigarette case. We can't defend continued smoking as 'free choice' if the person was 'addicted'."⁷ The acres of documentary evidence now available on industry nicotine manipulation (for example, Philip Morris Australia arranging to have Marlboro reformulated: "our aim is to make Red and Special Mild as close as possible to the USA blend and thus make it harder for existing smokers to leave the product") evoke nothing less than imagery of scheming industrial chemists setting out to maximise addiction.⁸ When this material is set next to the industry's blue-in-the-face denials on addiction, its desperate efforts to resist "addiction" on pack warnings, and its trivialisation via comparisons with chewing gum, chocolate, and television viewing, recourse to glib talk about free choice sounds simply puerile.

Finally, there is the sordid 40 year history now being painstakingly unearthed by tobacco control's document archaeologists who have found pharaohs' tombs full of private acknowledgement about tobacco causing disease, overlain by massive international programmes of public obfuscation and reassurance, and tame scientist dissembling. For every newspaper report that smoking was harmful, there were dozens of advertisements whose entire choreography said



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"forget all that! *This* is what smoking means!". And sprinkled liberally throughout the bad news on smoking were hundreds of carefully orchestrated stories placed by the industry's PR machine about air pollution causing all the cancer, confounders like diet and pet bird keeping, and apparent anomalies of low lung cancer in high smoking populations. The industry built lists of everyday agents and practices said to be dangerous which had ever been the subject of news reports, and distributed these to its spokespeople so that they could put it to audiences that "scientists" warned us that Brussels sprouts, bubble bath, and books were dangerous too" . . . so what were we to make of their claims that smoking was harmful? Stock phrases like "the jury is still out" and "only a statistical association" that fed the ordinary person's scepticism about science were grist to the same mill.

The victim blamers would have it that if, like Rolah McCabe, you were a 12 year old girl, awkward about your identity, and reassured by advertising that promised friendship and togetherness from smoking (Rolah McCabe smoked *Escort*, advertised with the cheery ditty "Join the Club"), you were to blame. If your nicotine receptors became rapidly primed via the best nicotine pharmacology that the industry's scientists could secrete without any warning into their chemical cocktails, again, it was your fault that you became addicted. And if you were stupid enough to have ever fallen for any of the scientific denials peddled by credentialed industry scientific stooges ("Light up, drink up and stay healthy! That's the good news from

American expert Dr Carl Seltzer who claims that smoking is not related to heart disease . . . The Harvard University lecturer says he's never been challenged by the medical profession . . . Dr Seltzer's word must be taken very seriously. After all, he IS the doctor of Harvard University"¹⁰), then you deserved what was coming to you.

All over the world, smoking and the diseases it causes are increasingly becoming the providence of nations' poorest and least educated subpopulations. Such people are the least able to assess the complexities of conflicting epidemiological evidence. They are also the very same people for whom aspirational brand names like *Hope*, *Holiday*, and *Longbeach* and the ad campaigns that accompany them are named by the cynical interpreters of tobacco industry smoker focus groups.

The mass document shredding uncovered in the McCabe case adds another potent element to the discourse about tobacco industry culpability. It is difficult to conceive of any industry other than criminal enterprises who would feel so ashamed and vulnerable about their work as to systematically destroy evidence about their core activity. Ordinary people like the citizens who make up juries know that this is what the guilty do when they know they are in the wrong. While the evidence from destroyed internal documents is damning enough, one can only begin to imagine the contents of the material that went into the shredders.

Tobacco Control has secured support from the Robert Wood Johnson Foundation to provide sets of Powerpoint slides

on most of the leading topics in contemporary tobacco control. We have commissioned 20 different topics from some of the leading researchers in our field. These will be placed on the *Tobacco Control* website over the next six months. Among these will be slide sets showing the "worst of" the tobacco industry documents. We believe these powerful tools will greatly assist advocates around the world to shame the industry, to bring justice to its victims, and to inspire governments to exert further control over the industry's activities.

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