

# TOBACCO CONTROL

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## Editorials

### Protecting children from exposure to environmental tobacco smoke

Two articles in this edition of *Tobacco Control*, by Ashley and Ferrence<sup>1</sup> and Lund et al,<sup>2</sup> address an issue that is likely to become increasingly important in the new millennium. How will children be protected from the known health threat of exposure to environmental tobacco smoke (ETS) when that exposure occurs in places, such as the home or the private automobile, that are traditionally considered off limits to governmental or other outside intervention?

The overall problem is enormous. According to data collected in 1992-93 in the United States, 21.9% of children under 18 years of age are exposed to ETS at home by their parents.<sup>3</sup> As Aligne and Stoddard recently noted: "Parental smoking is an important preventable cause of morbidity and mortality among American children; it results in annual direct medical expenditures of \$4.6 billion and loss of life costs of \$8.2 billion."<sup>5</sup> A 1998 Canadian study has found that nearly half (47%) of children in that country are exposed to ETS in the home, whether by parents, visitors, or babysitters.<sup>4</sup> The authors concluded: "Additional efforts to reduce children's exposure to tobacco smoke are warranted."<sup>5</sup>

Societies will differ regarding the pace and extent of such interventions. Lund et al have begun to quantify the awareness of parents in Nordic countries of the harm to children caused by exposure to ETS. Their results are encouraging. In addition, according to a recent survey conducted in Massachusetts, United States, 94.5% of surveyed adults believed that ETS is harmful to children.<sup>6</sup> Awareness of the seriousness of the problem and voluntary efforts by parents and other adults to address it, are important first steps. For example, the balcony smoker noted in the article by Lund et al is an interesting phenomenon that merits further study. If some adults are willing to smoke outdoors in a Nordic climate, perhaps parents in warmer climates can be encouraged to follow suit.

Where appeals to good behaviour fail, legal remedies become necessary. As Ashley and Ferrence note, the United States has seen a rapid development of legal theories and judicial rulings that protect children from ETS. These include intervention by judges upholding the "best interest of the child" standard when ruling on child custody disputes between a smoking parent and a non-smoking parent.

A recent case in Tennessee, United States, for example, may illustrate an emerging interventionist trend. In that case, a couple's divorce decree adopted a local rule stating that the parents will not expose their children to tobacco smoke in enclosed places or allow others to expose them to

it. Within days of the final divorce decree, the child's mother filed a motion for contempt against the father of the child, alleging that he smoked around the child and exposed her to ETS during his visitation. The trial court found him guilty of criminal contempt by exposing his child to cigarette smoke, sentenced him to two days of incarceration, and suspended his visitation rights until convinced that the father intended to protect his child from all exposure to tobacco smoke. The Tennessee Court of Appeals upheld the trial court's decision, ruling that the father's smoking jeopardised the child's physical wellbeing.<sup>7</sup>

Another type of case represents a possible strategy that non-smoking parents in multiunit residential dwellings may pursue to protect their children from ETS. A non-smoking tenant in Ohio, United States, entered into a lease to reside on the top floor of a two-family dwelling. During the second year of a two-year lease, the landlord, a smoker, moved into the first-floor unit. Noting that smoke came into his unit from the common heating and cooling systems shared by the two units and that the smoke was causing him physical discomfort, the non-smoker wrote to the landlord. A month later, he vacated the premises and sued, alleging that the landlord had breached the covenant of quiet enjoyment and the statutory duties imposed on landlords (including doing "whatever is reasonably necessary to put and keep the premises in a fit and habitable condition"). The Court of Appeals reversed a dismissal of the case, concluding that there are "genuine issues of material fact concerning the amount of smoke or noxious odors being transmitted into appellant's rental unit".<sup>8</sup>

Additionally, Parmet et al<sup>9</sup> have cited litigation that directly benefited children who brought an action under the public accommodation provisions of the Americans With Disabilities Act to get access to McDonald's and Burger King restaurants in the United States.<sup>10</sup> A similar case has been filed in 1998 in the state of Maryland against two large restaurant chains.<sup>11</sup> The theory behind these cases is that, under federal law, places that are open to the public must not have policies which discriminate against persons with disabilities. By permitting smoking in their restaurants, the plaintiffs allege, persons with respiratory disabilities are denied access and experience discrimination.

ETS litigation in the United States is maturing. In February 1998, the first wrongful death case involving ETS went to trial in Indiana<sup>12</sup>; the jury returned a verdict for the tobacco company defendants on 19 March 1998.<sup>13</sup> The first phase of a class action suit brought by flight attendants

exposed to ETS was settled in October 1997 for \$300 million to fund tobacco-related medical research.<sup>14</sup> These lawsuits and other similar cases slated for trial may also help send the message to parents that ETS exposure, particularly over time, does indeed pose a potentially grave threat to their children.

Legislation is also affecting how America deals with the issue of children and ETS. For example, it is already illegal under United States law to permit smoking in facilities that provide kindergarten, elementary, or secondary education, library services, or health care to children.<sup>15</sup>

States are beginning to follow the lead of the federal government. After learning that smoking in a vehicle is 23 times more toxic than in a house and 8.5 times more toxic than in an aircraft because of the smaller enclosed space, Colorado state Senator Dorothy Rupert (Democrat from Boulder) filed a bill to impose a \$56 fine on adults caught smoking in a car where a child under age 16 is present.<sup>16</sup> While some commentators attacked the bill as being an example of excessive governmental intervention in people's lives—or "stupid purity legislation"<sup>17</sup>—others, such as Dr Frank Judson, director of the Public Health Department in Denver, Colorado, predicted that the bill will raise the consciousness of parents who smoke.<sup>18</sup> Dr Judson described smoking in a car as "putting your kids in a tobacco smoke chamber."<sup>18</sup>

Although Glantz correctly noted that the tobacco control community in the United States "should redouble our efforts to enact local clean indoor air ordinances and repeal preemption in the states that have it",<sup>19</sup> tobacco control advocates around the world must also explore practical ways in which their societies can protect children from the demonstrable and unnecessary harm caused by exposure to ETS in the home. Homes with children need to become smoke-free zones. Part of the answer is educating parents and other adults about the risks ETS poses to children. As recent legal developments demonstrate, regulation of such conduct in the home may eventually be required.

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- 1 Ashley MJ, Ferrence R. Reducing children's exposure to environmental tobacco smoke in homes: issues and strategies. *Tobacco Control* 1998;7:61–5.
- 2 Lund KE, Skrandal A, Vertio H, Helgason AR. To what extent do parents strive to protect their children from environmental tobacco smoke in the Nordic countries? A population-based study. *Tobacco Control* 1998;7:56–60.
- 3 US Centers for Disease Control and Prevention. State-specific prevalence of cigarette smoking among adults, and children's and adolescent's exposure to environmental tobacco smoke—United States, 1996. *MMWR* 1997; 46:1038–43.
- 4 Coutts J. Half Canada's children breathe smoke at home. *Globe and Mail* (Toronto, Ontario) 1998 Feb 4:A3.
- 5 Aligne CA, Stoddard J. Tobacco and children: an economic evaluation of the medical effects of parental smoking. *Arch Pediatr Adolesc Med* 1997; 151:648–53.
- 6 Biener L, Siegel M. Behavioral intentions of the public after bans on smoking in restaurants and bars. *Am J Public Health* 1997;87:2042–4.
- 7 Smith vs Smith. No 03A01-9603-00078, Tenn. App., Western Section (1996).
- 8 Dworkin vs Paley, 638 N.E.2d 636, 93 Ohio App.3d 383 (Ohio App. 8 Dist. 1994).
- 9 Parmet WE, Daynard RA, Gottlieb MA. The physician's role in helping smoke-sensitive patients to use the Americans With Disabilities Act to secure smoke-free workplaces and public spaces. *JAMA* 1996;11:909–13.
- 10 Staron et al vs McDonald's Corp., 51 F. 3d 353, 4 AD Cases 353, 10.2 2.33 (2nd Cir. 1995).
- 11 Shane S. Three women with asthma sue to ban smoking at two chain restaurants. *Baltimore* (Maryland) *Sun* 1998 Feb 5.
- 12 Potential jurors gather for secondhand smoke trial. *Orlando* (Florida) *Sentinel* 1998 Feb 10:A10.
- 13 Anon. Jury rejects secondhand smoke claim in Indiana. *Boston Globe* 1998 Mar 20: A12.
- 14 Anon. *Tobacco Products Litigation Reporter* 1997;12:3.397.
- 15 20 USC Sect. 6081 et seq. (Pro-Children Act of 1994).
- 16 Sanko J. Bill targets smokers in cars; Boulder Senator says state should step in on behalf of children. *Rocky Mountain News* (Denver, Colorado) 1998 Jan 10:6A.
- 17 Quillen, E. Sen. Rupert jockeys for lead in purity race against California. *Denver* (Colorado) *Post*, 1998 Jan 13:9B.
- 18 Brown F. Rupert Bill would shield kids from smoke in car. *Denver* (Colorado) *Post* 1998 Jan 10:1A, 17A.
- 19 Glantz SA. Back to basics: Getting smoke-free workplaces back on track. *Tobacco Control* 1997;6:164–6.

