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Richard A. Daynard: Evidence of harmful products target our rationality, our decisions are rarely such

Law professor Doctor Richard A. Daynard of Boston Northeastern University is considered one of the most passionate opponents of the tobacco industry in the United States. While harmful effects of smoking policies were still a thing of debate among politics, his exposure of deception and concealment of data continued to decrease share price of cigarette manufacturers.

He sticks by the rule: “Reforms that do not cause any resistance are a waste of time.”

After implementing anti-tobacco legislation in 2007, the percentage of smokers in Slovenia decreased a certain amount but then stabilized at 25% of the population. It has even increased in adolescent girls. Is this a sign that the measures are starting to wear off?

The key is perseverance. There is no excuse about not having plain packages and noticeable warnings on cigarette packs. There should also be strict monitoring of selling cigarettes to minors. The fines for selling cigarettes to minors are too low therefor the sellers are indifferent. The authorities should threaten ban the operating of the business.

We should also consider new approaches. Non-tobacco generation is for example one of them. My goal was to focus on those that were born after year 2000. They should never be allowed to smoke, not even as adults. Personally, I would also try to reduce the nicotine to the point where it would not be addictive any more. These proposals may seem to extravagant to some people, but so was banning smoking in enclosed and public places, the ban on cigarette advertising, or lawsuit against tobacco industry.

Studies that linked smoking to lung cancer and cardiovascular disease were published in the beginning of fifties of the 20th century. Why did it take the governments so long to face the evidence?

One of the reasons was poor understanding of addiction. The healthcare sector assumed that people, once faced with clear evidence of the harmful effects, would simply quit. A lot of people did quit initially, but then started again about 6 months later. Nevertheless, the doctors only blamed the patients, saying they did not want to listen to good advice. This helped the tobacco industry to deny the evidence of the harmful effects of smoking up until the end of the twentieth century.

In the last decade, countries around the world, however, began tightening legislation and the industry in US had to pay a high compensation. What has contributed to this?
Since condemning documents leaked in to the public, the politics could not refer to false controversy of this topic any more.

Soft drinks industry uses similar methods to deceive the public. Why does it still hold a better reputation than tobacco industry?

Maximizing profit is in every industry’s best interest. When it comes to promoting greater consumption of healthy foods no one is worried. On the contrary, when it comes to tobacco, greater consumption automatically negatively affects public health. The majority of food industry is somewhere between these extremes, but tobacco is quite similar to soft drinks. Research shows that nothing good comes with soft drinks. Considering the increasing rate of obesity this area should be regulated. Countless health problems that come with obesity deteriorate the quality of individual’s life and brings higher rate of sick leave and reduced productivity in the companies. Increasing taxes would to some degree lower the consumption of soft drinks.

Slovenian soft drinks industry has succesfully prevented all tax atempts so far.

Politicians may in this case very cordial relations with industry lobbyists. On the other hand, your children will in twenty years rightly criticize that all the negative effects of soft drinks were well known but no one acted. The industry of course is trying very hard to convince the public that taxes would harm the economy. But they forget that people’s money that would be otherwise be spent on soft drinks will be spent somewhere else. Given the fact that Slovenia is not cultivating sugar cane this would increase the likelihood that the money would be spent on real Slovenian crop or product. Besides, Slovenian industry is most likely using imported sugar, therefore part of the revenue go across the border.

What advice would you give to doctors and other professionals who have unsuccessfully been reminding the government that consumer awareness in soft drinks is not enough?

In particular they should not accept that there is nothing they can do. We should loudly and clearly report to our regulators the harmful effects of soft drinks. Rejecting accountability is also unfair. Parents are no less loving than they were decades ago. The only thing that has changed is increasingly stronger marketing of soft drinks and their availability at every step.

Merely publishing the information about dangers of a product is not enough. Evidence of harmful products target our rationality, our decisions are rarely such.

Regulation in Slovenia causes dissatisfaction for interfering with individual’s freedom. Is there any concern as to taking it too far?

If the government does not take the role of nanny the industry will. But our health is not their concern therefore it is sensible to consider who to trust. If a government raises taxes on soft drinks or cigarettes, these products are not banned but merely less attractive to the consumers.

Even with recent measles outbreaks in Europe and the US it was shown that shifting the entire responsibility on the individual has its limitations. Slovenia is one of the few countries with compulsory vaccination, but there are increasing numbers of parents who insist that vaccination should be voluntary. Which solution do you believe to be more appropriate?
Avoiding vaccination is the result of spreading rumors and false science on the Internet. The Supreme Court of the United States has more than a century ago concluded that compulsory vaccination protects the population. Government policy should always reflect the findings of science, whether it is cigarettes, food industry or measles.
Richard Daynard, the public health fighter

“If the industry screams, you are on the right way.”

Tobacco industry, soft drinks industry, alcohol industry. They all have two things in common - harmful effects on public health and Doctor Richard Daynard as a tireless opponent.

Professor of Law at Northeastern University in Massachusetts and his associates have had over 30 years of experience in preparing court actions for damages against tobacco and other companies whose products threaten the health of the population. They also provide legal support to others who choose to take such a step. He is one of the few lawyers who were not discouraged after numerous failed lawsuits against the tobacco industry.

How many lawsuits against the tobacco industry have you lost before you won the first one?

About 150. That is the least amount of lawsuits we have filed until the mid eighties. Some we lost and the majority of the hearing got rejected by Court. Most lawyers who had dealt with this had already given up by the time the Court ruled some applications to be justified in 1991. The problem is that if you are capable enough to prepare groundbreaking lawsuits against the tobacco industry, you're good enough to earn money the easier ways. Lawsuits against the pharmaceutical companies for example are much easier.

Why is that?

Pharmaceutical companies normally negotiate for a cash settlement. Tobacco companies, however, refuse to negotiate. The reason is simple. The pharmaceutical company usually compensates a few hundred people who were harmed taking their medication. The tobacco industry kills about half a million Americans per year. The tobacco cannot afford a settlement. Therefore they win by forcing the other side to spend all their money. This was written in the internal document of the tobacco company RJ Reynolds that someone anonymously sent to us.

What was the turning point?

The central role most certainly played tobacco companies' internal documents that began to come into the open in the nineties. Some of the documents were obtained by plaintiffs, others were disclosed by whistleblowers. They included some of the largest media companies and Congress. All this has caused the dam to give way.

What are you currently working on?
Next month, we intend to file a few individual lawsuits in Massachusetts and we already know the tobacco companies will not be willing to negotiate. We'll have to go to court. But we are very confident, mainly due to recent judicial decisions. This was a case of a woman coming from poor neighborhoods, where the tobacco company distributed sample packs of cigarettes. She was already a smoker at the age of 13, and after 40 years, she died of lung cancer. The relatives received compensation in the amount of 35 million dollars, with interest the amount increased to 80 million. In doing so, the court stated something very important in its judgment: each cigarette is a dangerous defective product. Massachusetts became probably the most successful state of all for filing lawsuits against the tobacco industry.

**Did you achieve the goals you have set for yourself regarding the tobacco industry? Which ones are yet to be achieved?**

Certainly I have achieved a lot. Less than 20 percent of Americans smoke today. Of course I am not saying that this all thanks to me, but I am happy to say I made a contribution. I do believe, however, that with current methods it is going to be difficult to achieve the rate below 10 percent. There are some ideas for even more radical changes. FDA could prescribe a maximum level of nicotine in cigarettes. My favorite idea is a tobacco-free generation. Government can ban the sale of tobacco products to anyone born after a certain date, for example, after year 2000. These are still minors and are not allowed to buy cigarettes. Why would we enable them to start smoking?

**You are also a fighter against soft drinks industry. Is the struggle similar to tobacco industry?**

Their tactics are actually very similar. The tobacco industry, its lawyers and communication experts are in a way idols or an example to other industries that do bad things. They sell and defend a product that kills two thirds of their clients, but they still manage to exist. One of the most popular tactics is recourse to personal choice. As I learned during a visit in Slovenia, the proportion of overweight children here is among the highest in the world. This was not so 30 years ago. What has changed? Are kids today so different? Have their genes changed? Have their parents changed? They do not care about welfare of their own child? The only thing that has changed is the way the soft drinks industry markets its products. Based on statistical data there should be no excuse for politicians to not increase taxes on soft drinks.

**Is this the best method in your opinion?**

It is proven to be effective. The tax doesn't even have to be that high. People are very sensitive to prices. That is why every time any state in USA tries to higher taxes, the industry spends millions of dollars for ani-campaign. This is what we call »a screaming test«. If the industry screams, you are on the right way.

**Do you believe soft drinks are bigger problem than alcohol in USA?**

The alcohol industry is starting to imitate the tobacco industry and play the card of personal responsibility of consumers. All ads in the US say: "Drink responsibly!" What does that even mean? Nobody has a clue. Because of this sentence the alcohol industry can refuse responsibility, saying: "we told you to drink responsibly and you didn't listen". 
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»I really don't know why the next generations should be addicted to this deadly product«

Your basic thinking is: Cigarettes cause cancer and tobacco industry knows this perfectly. When smokers suffer from smoking-related diseases, the responsibility lays with tobacco industry.

Tobacco companies know that smoking causes lung cancer that was discovered decades ago in their internal documents. But they continued their lies in the US at least until the end of the 90s, but in some cases they still lie today. Smoking causes not only lung cancer, but also in emphysema, bronchitis, heart disease and so on. The list of diseases associated with smoking is only getting longer. Every year about six million people die due to smoking-related problems. I think that with the new calculations that number will increase.

What is the goal you want to achieve in the fight against the tobacco industry? Do you want to achieve a complete ban on cigarette sales and production?

Our goal is to minimize the number of addicts to tobacco products and the number of people who die from smoking-related diseases. In fact this is a public health issue. There are a number of different strategies on how to achieve the aforementioned objectives and many are included in the Convention on Tobacco Control. For example warnings on cigarette packets should occupy at least half of the packet and, if possible, should be supported by a visual image that leaves a stronger impression. We have examples such as Nepal or Pakistan, where these signs or images overlap 85 - 90 percent of the pack. You know, a picture is worth a thousand words.

Another thing is the neutralization of cigarette packs without any company logotypes. This kind of packaging prevents false assumptions that tobacco companies have been trying to evoke with different phrases and concepts.

The newest research shows that smoking will actually be lethal for two thirds of smokers, which is significantly more than previous researches have shown.

When we talk about reducing the number of smokers we have two sides of the story: on the one hand, the fight against the tobacco industry through legal rules, and on the other hand, to raise awareness of the public on harmful effects of smoking. How do you see the relationship between them?

The relation is synergistic. I think it always went hand in hand. When internal documents revealed that tobacco companies know about harmful effects people stopped supporting them blindly. If the government bans smoking in public places this is also a message to smokers about the harmful
effects of smoking. Here it is worth mentioning that smoking used to be cool, today it is considered a nasty habit.

**Did you believe you would be able to achieve so much when you first started your actions against the industry?**

In fact I was even too enthusiastic and optimistic. I thought that the tobacco industry would be defeated in 10 years. But then I quickly realized how powerful and influential the companies are, especially in courts.