

New York, A “Brody-Free” Zone

By Norman E. Kjono

From *The Eastside Journal*, a Seattle area regional news paper, Tuesday August 27, 2002, headline “New York’s Proposed Smoking Ban Is Good News,” byline Jane E. Brody:

“I for one refuse to dine in any restaurant that permits smoking or makes me walk through a smoky bar to reach my table or the restroom. The stink quickly destroys the most delectable of meals.”

Good for you, Ms. Brody! Thanks for providing us with a heads up on where normal people can go, to assure that we never have an uninformed delinquent in our midst—any restaurant or bar that permits smoking. That raises a problem, however, were Republican Mayor Bloomberg’s smoking ban to pass: you would have unlimited opportunity sneak up on human beings without their knowledge. I’m not certain how to solve that problem, but we’ll figure out something.

Ms. Brody continues her sage opinions:

“The smoking bans imposed at most work sites have significantly increased the number of Americans who have quit smoking. Indeed, those who continue to smoke have to a large degree become social pariahs, forced to step outside in all kinds of weather or lock themselves in rooms filled with other addicts. Even outdoor smokers have begun to take a beating, with many buildings banning smoking at or near their doors.”

That’s fine with Ms. Brody—one who cannot tolerate going potty near where people smoke shouldn’t need to put up with social pariah addicts desecrating *The Times*’ front door. Speaking of stink, we won’t even go near what Ms. Brody does in the potty that she apparently believes won’t smell.

Can you imagine what Ms. Brody would endure if she worked with an addict like Edward R. Murrow, whose cigarette in hand graces a memorable photo of him, including the journalism award bearing his name? I can hear her now:

“*Mister* Murrow, leave the building. And, *please* change clothes before you come to my office again, your filthy addiction makes you stink.”

Times change. No doubt Rod Serling and Ed Murrow are chuckling from on high. Negative labeling of coworkers and unfavorable stereotyping of others, behavior that would have resulted in a brat columnist being fired scant decades ago, now seems to be expected behavior at *The New York Times*.

Ms. Brody’s behavior and beliefs, described by her own hand, clearly communicate what anti-tobacco supporters are about, better than a thousand pages of editorial content could ever do. Her behavior is that of the self-anointed ‘Elect’ who mandate that the world to be in their image and as they prefer, regardless of what others believe. She implicitly says “Common addicts can eat their cake outside in the rain.”

One wonders if Ms. Brody’s first name should be Marie. Such behavior proves the adage “No one is entirely useless, they can always serve as a bad example.” In this case, the bad example is that Ms. Brody preens in her tobacco intolerance like an Alabama county sheriff at a 1964 civil rights rally. Credible journalists who seek to influence public opinion and health policy are held to higher standards.

We visit additional pearls of wisdom from Ms. Brody, beginning with her strident assertions about tobacco smoke:

“The Environmental Protection Agency classifies secondhand smoke as a Group A carcinogen.”

and;

“There is a cancer risk to consider: and estimated 3,000 lung cancer deaths alone among non smokers who are forced to inhale the smoke of others.”

Fortunately Ms. Brody’s “facts” about tobacco smoke are misleading and several years out of date. Ms. Brody’s strident claims about tobacco smoke are virtually verbatim from the December 1992 EPA report on secondhand smoke.

July 17, 1998 U.S. District Court Judge William L. Osteen ordered chapters 1 to 6 and appendices of that EPA report *vacated*, which is to say that such claims about tobacco smoke do not properly exist. A copy of Judge Osteen’s order is included with this commentary (**Enclosure 1.**) and EPA conclusions to which his order applied are in **Enclosure 2.**

Judge Osteen’s conclusions about EPA methodologies, stated in his July 1998 Memorandum Opinion, are relevant:

“EPA’s conduct raises several concerns besides whether a relative risk of 1.19 is credible evidence supporting a Group A classification. First, with such a weak showing, if even a fraction of Plaintiff’s allegations regarding study selection or methodology is true, EPA cannot show a statistically significant association between ETS and lung cancer.

Second, the court’s conclusions regarding EPA’s motive for reducing confidence level are based upon EPA’s litigation explanations and circumstantial evidence from the record. EPA does not provide explanation in the ETS Risk Assessment or administrative record. When an agency changes its methodology mid-stream, as EPA did here, it has an obligation to explain why.”

Judge Osteen also concluded in his July 1998 opinion:

“EPA apparently used a different risk assessment methodology for each chapter. Again, neither the Assessment nor the record explains the risk assessment components used in the different chapters, why methodologies varied between chapters, or why ETS and MS were or were not similar using each methodology.

The court is faced with the ugly possibility that EPA adopted a methodology for each chapter, without explanation, based on the outcome sought in that chapter. This possibility is most potent where EPA

rejected MS-ETS similarities to avoid a “cigarette-equivalents” analysis in determining carcinogenicity of ETS exposure. Use of cigarette-equivalents analysis may have led to a conclusion that ETS is not a Group A carcinogen.” It is striking that MS and ETS were similar only where such a conclusion promoted finding ETS a carcinogen.

EPA’s assertion that “EPA did explain the numerous criteria it used in assessing similarity . . . “ (Conformed Mem. Supp. EPA’s Cross Mot. Part. Summ. J. at 73), is without merit. EPA merely parrots the findings made in Chapter 3 of the ETS Risk Assessment. (Underline emphasis added.)

Neither the assertion that secondhand smoke kills 3,000 people a year nor the statement that tobacco smoke is a Class A carcinogen stand under responsible review. Not only were such conclusions soundly rejected by our federal courts, but a federal judge went so far as to characterize EPA’s methodologies as an “ugly possibility” with which his court was faced.

Judge Osteen’s ruling is at the 4th Circuit Court of Appeals. The above quotes are, therefore, the legal authority status of the EPA report on secondhand smoke.

Given her negative labeling of persons who smoke, and her negligent portrayal of tobacco smoke with which our federal courts clearly disagree, I understand why Ms. Brody did not disclose the above-quoted information: to do so would remove the “authoritative” basis for her attacks on persons who smoke and discredit her apparent personal agenda to negatively label fellow citizens who lawfully consume legal tobacco products. I do not understand, however, why Ms. Brody’s editor did not catch her serious omission of material fact from Judge Osteen’s Memorandum Opinion.

As I read Ms. Brody’s syndicated column an image emerged: there stands Ms. Brody in front of *The New York Times*—like Governor Wallace blocking entrance to a university four decades ago, in defiance of a federal court order—stridently proclaiming “keep the addicts out.” We are blessed that the rest of our nation got it, that segregating, negatively labeling, and unfavorably stereotyping one’s fellow citizens is wrong. Ms. Brody’s column proves that there is truth in the observation that behind every moron with a mandate stands a bigot with a ban. One day she and *The Times* may get it, too.

There are two additional information sources about the EPA and smoking bans that should be considered. These are a 1992 EPA contract to fund seminars about improving indoor air quality (**Enclosure 3.**), and a 1994 newsletter from Building Owners And Managers Association International (BOMA), **Enclosure 4.** The 1992 EPA contract was awarded to James Dinegar, Vice President Government Affairs, BOMA, who wrote the April newsletter. I entered these documents as an exhibit when I testified before the Washington Department of Labor and Industries August 1994.

EPA 1992 \$300,650 Contract: The project description for that contract was “Nationwide series of seminars to assist real estate professionals in improving indoor air quality.”

Mr. James Dinegar was responsible for fulfilling the terms and conditions of that contract. EPA was responsible to taxpayers for assuring competent performance of the contract.

April 1, 1994 BOMA Newsletter: Mr. Dinegar, was identified as a BOMA contact person. What did the BOMA newsletter say? I have underlined several sections on Enclosure 4.:

1. “OSHA’s plan goes much, much further in attempting to address the issue of indoor air quality.”

2. “BOMA calls indoor air quality ‘a threat to become the asbestos of the 90s’ and work must be done to make certain that nightmare is never repeated.”

3. “Where’s the research and science? Who’s to say, with impunity, what the safe levels of contaminants are?”

4. “BOMA has actively supported the call for a smoking ban through postcard and letter writing campaigns, numerous meetings, intensive media outreach and Congressional hearings.”

5. “BOMA’s support of this ban is directly related to efforts *aimed at preventing indoor air quality regulations* -- and that is a real threat this year.” (Italic, underline added.)

6. “Better them [persons who smoke] than us.

Read 5. above again, as a taxpayer who supports the EPA: a \$300,650 EPA contract for seminars to improve indoor air quality produced lobbying to prevent indoor air quality.

Why would BOMA lobby to *prevent* indoor air quality when it had been paid for seminars to *improve* indoor air quality? The answer is that if building owners were required by regulation to provide clean indoor air three things would occur:

First, any alleged material risk threat from Environmental Tobacco Smoke would immediately be removed because the December 1992 EPA report never considered or addressed improved air quality systems in its research or reports.

Second, building owners would be required by law to spend large sums to upgrade and improve indoor air quality systems. In Manhattan the sums involved would be considerable—at least in the centi-millions—to upgrade buildings.

Third, genuine indoor air quality systems that remove dust, pollen, and off-gassing of office products also address tobacco smoke, so *the ETS problem would have been solved*.

Those who promote and support smoking bans have vested economic interests in doing so, and the evidence strongly suggests that they will pursue those vested interests at the expense of providing indoor air quality for office workers.

In the *Eastside Journal* publication of her article, Ms. Brody dedicated 16 column inches to describing the alleged dangers of Environmental Tobacco Smoke. What she did not say is that with effective indoor air quality systems installed in offices, bars and restaurants those alleged ETS risks would not be in the facility, in fact she denies that is true.

What Ms. Brody overlooks are facts that contradict a pre-determined focus of her editorial opinion. What Ms. Brody affirmatively misstates in her published work is important:

“The gas phase of secondhand smoke contains at least 16 known probable carcinogens. The particulate phase contains nicotine, as well as known or suspected carcinogens for which there is no safe level of exposure. Neither phase can be effectively removed by mechanical filters, electrostatic precipitators or ion generators.”

My experience with indoor air quality systems says that Ms. Brody is *dangerously* misinformed.

In 1994 office smoking bans were promulgated in Washington. At the time I had leased offices in King County since 1985, and I always maintained supplemental air quality systems in our facilities over that nine year period.

When the smoking ban in Washington office work sites was promulgated we were moving to new offices. I upgraded our air quality systems at that time. I spent \$12,000 on equipment and installation, plus another \$8,000 to have system results professionally tested.

Our system reduced particulates to indoor air cleaner than outside air, while also materially reducing CO2 and dropping nicotine to *at or below trace levels of detectability*. Those results were achieved with employees smoking at work stations and common areas designated as nonsmoking.

I know from personal experience and hard dollars invested in working air quality systems that Ms. Brody's comments as stated above are false. Beyond the fact that indoor air quality systems can effectively address tobacco smoke, *as well as most other indoor air contaminants while doing so*, Ms. Brody is incorrect that nicotine is a particulate. Competent air quality analysis measures nicotine as a gas.

Our air quality system was featured in a heating and ventilation magazine. The proofs were that Environmental Tobacco Smoke can be effectively addressed through indoor air quality systems, *and improve overall indoor air quality for everyone—smokers and nonsmokers alike—while doing so*.

Despite two invitations, the Washington Department of Labor and Industries refused to review the design or testing of our air quality system, or to even visit our offices to understand test results. We were later informed that, *despite superior performance of our systems and improved working conditions for all employees*, our system would not be in compliance with state law. We wrote off our system at salvage value, it was not in conformance with intended use requirements of FASB accounting rules. Given a choice between clean indoor air for everyone and protecting a material risk basis for regulating tobacco smoke, Washington chose to protect their regulatory turf. Washington politicians and bureaucrats threw the clean indoor air baby out with smoking ban bath water.

Where is New York moxy and backbone? Begin to get the facts. It is disappointing to see some of the strongest and most self-reliant people in our nation bravely digging out from under the rubble of September 11, while allowing themselves to be herded like whimpering sheep toward smoking bans by a dangerously misinformed columnist.

Ms. Brody says that smoking bans have increased the number of persons who quit. But how many people still smoke, including *increases* under anti-tobacco programs during the 1990s? Based on the performance of anti-tobacco's Project ASSIST—*stabilization* of adult smoking and a 40 percent-plus *increase* in youth smoking—there are now *more* persons who smoke than before anti-tobacco. Joe Camel loves it; so do politicians who balance budgets with new tobacco taxes.

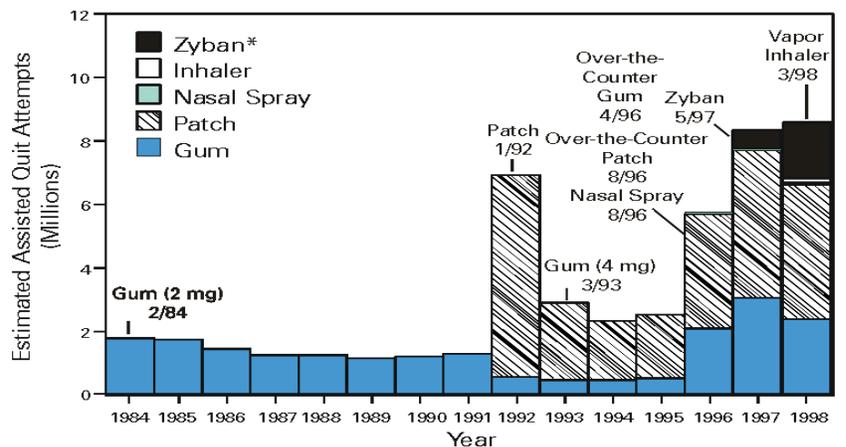
Smokers take heart, there are more of you today than before anti-tobacco began. You can be a credible political force if you come together and organize your efforts. New York's proposed smoking ban is an excellent opportunity to do so.

Ms. Brody seems to be pleased that a quarter of the adult population are now "social pariahs," and infers that you, too, can stop being outcast if you would just quit smoking. Wow, what a deal! Just think of it: you, too, can win Ms. Brody's fleeting approval as she toddles to the potty in a restaurant!

But what do most people use to attempt to quit smoking? Nicorette, NicoDerm CQ, Nicotrol. It should therefore be no surprise to New York smokers that during the 1990s the Robert Wood Johnson Foundation (largest shareholder of Nicotrol's distributor, Johnson & Johnson) awarded more than \$200 million in cash grants to anti-tobacco activists who promoted smoking bans; Zyban's Glaxo Wellcome, and Nicorette, NicoDerm CQ distributor SmithKline Beecham (Glaxo-SmithKline), added tens of millions more in grants during that period; and that sales of their smoking cessation products skyrocketed as smoking bans were enforced nationwide.

We have heard a great deal about "United We Stand" since September 11, 2001. I am thankful that in many ways that is true. But it also seems to me from Ms. Brody's column that she views some as standing more equally than others, the litmus test being whether one adopts lawful behavior with legal products that she and The Times approve of. The dust has barely settled at World Trade Center, and we already see col-

FIGURE 1. Use of pharmacologic aids to smoking cessation, by year, and month aid was introduced — United States, 1984–1998



* Use of trade names and commercial sources is for identification only and does not constitute endorsement by CDC or the U.S. Department of Health and Human Services.

umnists back to business as usual, fomenting hurt in pursuit of editorial approval and pharmaceutical advertising revenues.

The above facts send a vision of New Yorker smokers dutifully munching Nicorette Gum and sporting NicoDerm CQ patches, while passively knuckling under to Mayor Bloomberg's pharmaceutical donors, a news paper that doesn't have its facts straight, and a columnist who let's you know that she considers many of her fellow citizens to be pariahs.

The rest of us in the USA think better of you.

An alternative would be to count the number of pharmaceutical advertisements in a Sunday edition of *The New York Times*, then declare New York City to be a "Brody-Free" zone.

Redmond WA August 27, 2002