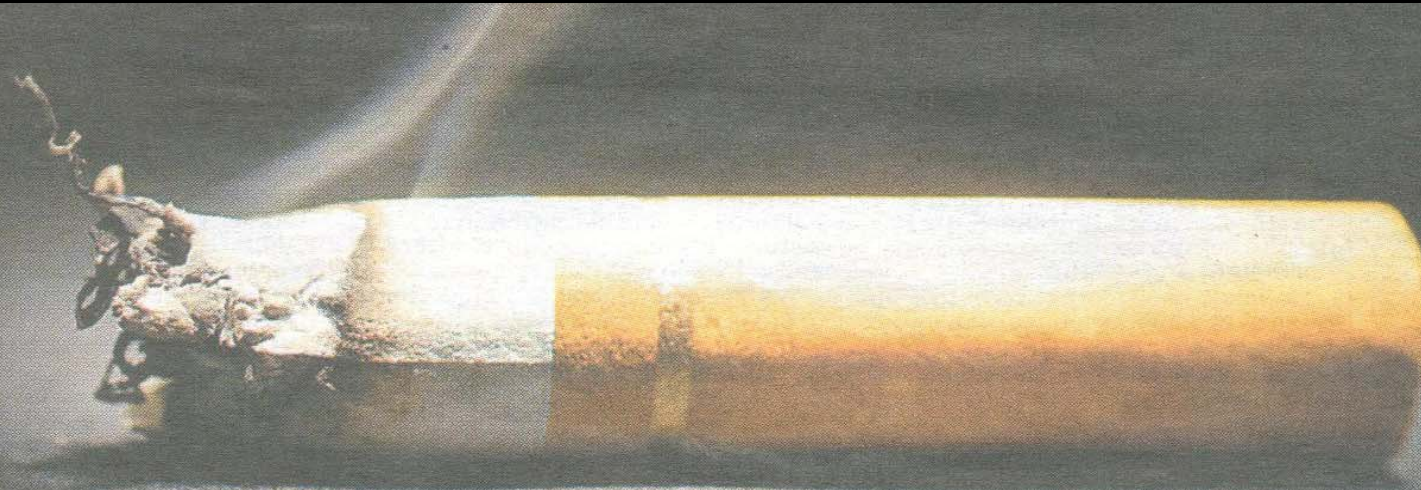


Imagining the Future:

**Law and tobacco control towards a sub-10%
prevalence environment**

*American Public Health Association
135th Annual Meeting, Washington DC, November 3-7, 2007*



Roger S. Magnusson, PhD
Centre for Health Governance, Law & Ethics
Associate Professor, Faculty of Law, University of Sydney



Tobacco Products Regulation Act 1997 (South Australia)

48—Smoking in motor vehicle if child present

(1) A person must not smoke in a motor vehicle if a child is also present in the motor vehicle.

Maximum penalty: \$200.

Expiation fee: \$75.

(2) In proceedings for an offence against this section an allegation in the complaint that a child was present in a motor vehicle at a specified time will be accepted as proved in the absence of proof to the contrary.

(3) In this section—

child means a person under 16 years of age;

motor vehicle has the same meaning as in the *Motor Vehicles Act 1959*.

Manly beach, Sydney – smoke-free since May 2004



What I'm hoping is that as this debate goes forward there will be enough people within the tobacco control community, and the scientific community, and governments, who say: "OK, we're not going to get rid of tobacco, it's not going to be gone, so let's decide what kind of tobacco industry we want, and let's create a regulatory framework that works for public health but also for those people who are going to continue to smoke and for those companies who – as long as this is a legal product – should be able to manufacture, market and sell that product, within constraints".

Vice-President, Corporate Affairs, Philip Morris
International (2007)

Global or trans-national influences: upon context, place and behaviour



Context: social, cultural, economic factors



Place: local environment, workplace, housing, transport



Behaviours: decisions, choices and habits around tobacco use



Biophysiological factors:
biological processes causing and
manifesting states of health and illness

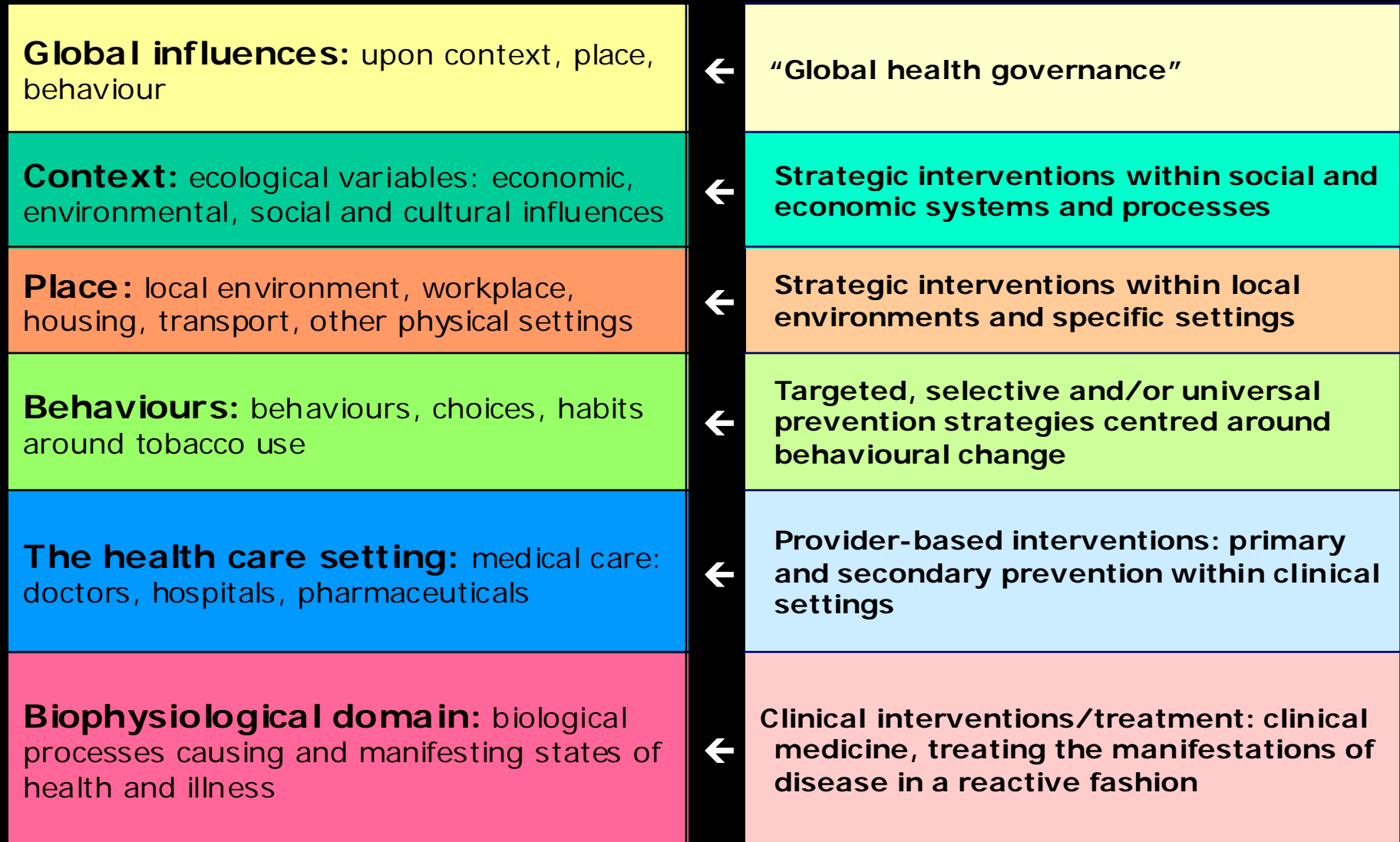


Healthcare Interventions:
Reactive, medical care in the health
care system (doctors, hospitals,
pharmaceuticals)



Health Outcomes: at individual & population level: CVD, cancer etc

The determinants of health and corresponding public health interventions and policies



Determinants of health/ Policy categories

Categories of laws

Global determinants	International laws, agreements
Context: economic & business environment, social & cultural variables	Economic policies: tax & spend Regulation of the business environment Product regulation Regulation of the informational environment
Place: physical and local environment, specific settings	Regulation of the business environment OH&S laws; planning & local environment laws
Behaviours: habits, choices around tobacco use	Regulation of the informational environment Prohibitions, direct restraints on behaviour
Health care interventions, treatment:	Health financing; insurance laws
Level of government: Cth, state, local; opportunities for healthy policies	Constitutional factors; federal pre-emption laws
Institutional infrastructure: effective structures for health governance	Laws setting up agencies and processes for governance and enforcement

Key policy categories	Categories of laws, and areas of regulation in Australia (Cth & NSW)
Global determinants	International law s, agreements → FCTC
Context: economic & business environment, social & cultural variables	<p>Economic policies: tax & spend:</p> <ul style="list-style-type: none"> ◦ Tobacco excise [Cth]; spending on tc programs <p>Regulation of the business environment:</p> <ul style="list-style-type: none"> ◦ Regulation of the supply chain → manufacturers, producers, dealers require licence [Cth] ◦ Regulation at point of sale: health w arnings, controls on display [NSW] <p>Regulation of the informational environment:</p> <ul style="list-style-type: none"> ◦ Advertising & promotion → restrictions on tobacco advertisements, competitions, free samples, sponsorships [NSW]; prohibitions on broadcasting of tobacco advertisements, publishing of tobacco advertisements [Cth] ◦ Consumer protection → prohibitions on deceptive claims by industry in TPA [Cth], similar state legislation. Agreement with ACCC to remove “light” and “mild” descriptors from packs. ◦ Pack labeling & w arnings [Cth] <p>Product regulation:</p> <ul style="list-style-type: none"> ◦ None, other than one-off disclosure of emissions data to the Cth (2001), and annual voluntary disclosure of ingredients data for Australian cigarettes [Cth] <p>Other “command and control”:</p> <ul style="list-style-type: none"> ◦ Bans on smokeless, confectionary, toys [NSW]; bans on chewing and oral tobacco [Cth]
Place: physical and local environment, specific settings	<p>Regulation of the business environment:</p> <ul style="list-style-type: none"> ◦ Smoke-free law s protect enclosed public spaces; duties imposed on occupiers [NSW]; restrictions on vending machines [NSW]; various Cth laws creating smoke-free areas; ◦ Anti-discrimination law protects those vulnerable to ETS [Cth, State] <p>Other setting-specific controls:</p> <ul style="list-style-type: none"> ◦ Local council smoking bans: <i>Local Government Act</i> 1993 (NSW) ss 632, 679-781 [NSW]
Behaviours: habits, choices around tobacco use	<p>Regulation of the informational environment:</p> <ul style="list-style-type: none"> ◦ Pack labeling & w arnings [Cth] <p>Prohibitions, direct restraints on behaviour:</p> <ul style="list-style-type: none"> ◦ Seizure of tobacco products from minors [NSW]; ◦ It is an offence to smoke in a smoke-free area [NSW]
Health care interventions, treatment:	<p>Health financing; insurance laws:</p> <ul style="list-style-type: none"> ◦ Zyban subsidized through the PBS [Cth] ◦ Medicare, private health insurance community rated [Cth]
Level of government: Cth, state, local; opportunities for healthy policies	<p>Constitutional factors; federal pre-emption laws:</p> <ul style="list-style-type: none"> ◦ Constitution precludes state excise tax ◦ TA PA does not pre-empt state (or local) controls
Institutional infrastructure:	Commonw ealth & State health departments

Context:

economic & business environment, social & cultural variables

Economic policies: tax & spend:

- Tobacco excise [Cth]; spending on tc programs

Regulation of the business environment:

- Regulation of the supply chain → manufacturers, producers, dealers require licence [Cth]
- Regulation at point of sale: health warnings, controls on display [NSW]

Regulation of the informational environment:

- **Advertising & promotion → restrictions on tobacco advertisements**, competitions, free samples, sponsorships [NSW]; prohibitions on broadcasting of tobacco advertisements, publishing of tobacco advertisements [Cth, TAPA]
- Consumer protection → prohibitions on deceptive claims by industry in TPA [Cth], similar state legislation
- **Pack labeling & warnings [Cth]**

Product regulation:

- None, other than one-off disclosure of emissions data to the Cth (2001), and annual voluntary disclosure of ingredients data for Australian cigarettes [Cth]

Other “command and control”:

- Bans on smokeless, confectionary, toys [NSW]; bans on chewing and oral tobacco [Cth]

Three ideas for the future of tobacco control law

- **Extension (or consolidation)**
- **Transformation**
- **Creation**

Three ideas for the future of tobacco control law

- **Extension:** increasing the reach or intensity of existing kinds of legal controls, but the purpose of the law remains the same
- **Transformation:** the justification for existing controls changes over time as a result of norm change, greatly increasing the scope of the law
- **Creation:** engaging with new determinants, new policy settings, new kinds of legal controls

SMOKING CAUSES MOUTH AND THROAT CANCER
Health Authority Warning



MOUTH CANCER

Quitline 131 848

Smoking is the major cause of cancers affecting the mouth and throat. These cancers can result in extensive surgery, problems in eating and swallowing, speech problems and permanent disfigurement.

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit www.quitnow.info.au

SMOKING CAUSES MOUTH AND THROAT CANCER
Health Authority Warning



MOUTH CANCER

Quitline 131 848

Brand Name

DON'T LET CHILDREN BREATHE YOUR SMOKE
Health Authority Warning



Quitline 131 848

Children exposed to passive smoking experience more serious illnesses such as pneumonia, middle ear infections and asthma attacks. Babies exposed to passive smoking are at greater risk of SIDS (Sudden Infant Death Syndrome).

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit www.quitnow.info.au

DON'T LET CHILDREN BREATHE YOUR SMOKE
Health Authority Warning



Quitline 131 848

Brand Name

SMOKING CAUSES PERIPHERAL VASCULAR DISEASE
Health Authority Warning



GANGRENE

Quitline 131 848

Smoking damages your blood vessels, which can prevent blood circulation, particularly to your legs or feet. This can result in blood clots, infection, gangrene, even amputation.

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit www.quitnow.info.au

SMOKING CAUSES PERIPHERAL VASCULAR DISEASE
Health Authority Warning



GANGRENE

Quitline 131 848

Brand Name

SMOKING CLOGS YOUR ARTERIES
Health Authority Warning



Quitline 131 848

Smoking narrows your arteries, causing them to become clogged, and can lead to heart attack, stroke, peripheral vascular disease, gangrene of the feet and impotence.

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit www.quitnow.info.au

SMOKING CLOGS YOUR ARTERIES
Health Authority Warning

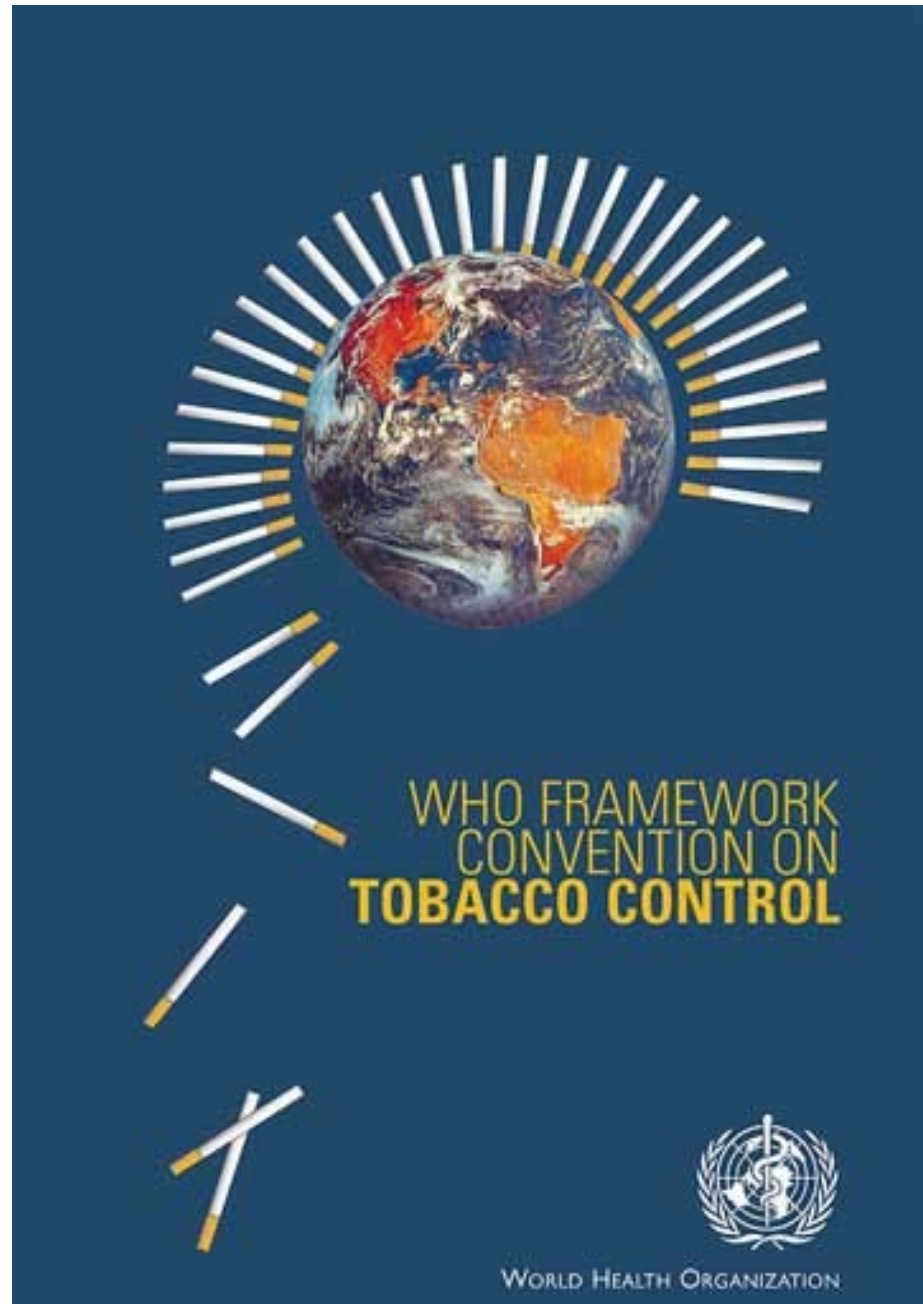


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Pathways to policy reform

What is the point of the change?

Economic policy: Tobacco excise tax:

Increase effective tax rate
[extension] → → → → → → → → → →

Hypothecated tax
[transformation] → → → → → → → → → →

Raise revenue; suppress demand

Dedicated funding for tobacco control & enforcement

Pathways to policy reform

Regulation of the business environment: Regulation of the supply chain - licensing:

- License fees for all parties involved in the supply chain [extension] → → → → → → → → → →
- Substantial license fees for tobacco retailers [policy creation]
- State: retail licensing fees charge on a “cost recovery” basis [policy creation] → → → → → →

What is the point of the change?

Raise revenue; suppress demand; dedicated funding for tobacco control & enforcement; rationalise number of tobacco retailers

- Enforce POS controls as a condition of tobacco retail license;
- Prohibit sale of tobacco except at licensed premises;
- Reduce number & density of retail tobacco outlets

Pathways to policy reform

What is the point of the change?

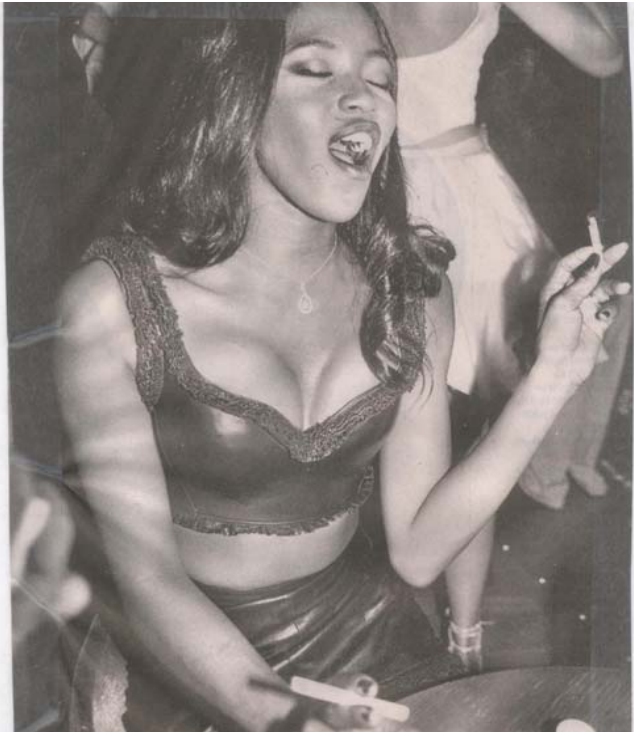
Regulation of the informational environment: Advertising & promotion:

•Laws targeting manufacturers and retailers, suppressing brand values and the visibility of tobacco **[extension]** →→→→→→→→

•Laws seeking to regulate smoking behaviour itself as a form of advertising, and tobacco use as a visible sign of individual identity **[transformation]** →→→→→→→→

•Preventing dissemination of brand values [de-branding and generic packaging controls]; requiring tobacco to go under-the-counter at POS.

•To reduce the visibility of tobacco use in order to prevent “social marketing”; to undermine smoking behaviour to the extent that tobacco branding acts as a visible sign of individual identity etc



Three ideas for the future of tobacco control law

- **Extension:** increasing the reach or intensity of existing kinds of legal controls, but the purpose of the law remains the same
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RM: Every time -every time people touch the pack, they're communicating with the brand, really, aren't they?

EH: Sure

RM: -it's it's a -it's almost an interactive thing,

EH: [signals agreement]

RM: -so they're getting something more than the nicotine, um aren't they, when they open a Marlboro pack?

EH: They're getting the Marlboro experience, yeah.

RM: so-

EH: -but getting rid of the Marlboro experience by making it a black and white pack doesn't mean that all those people who were enjoying the Marlboro experience are all of a sudden going to say: "I'm not going to smoke"

RM: But doesn't it mean that you would cut down smoking so that it is only about nicotine; you would get rid of that part of smoking behaviour that's about the Marlboro experience and not the nicotine?

EH: ...I ah don't know that that's true; I -look, I'm not a market researcher.... but I can tell you when I'm smoking and I run out of my Marlboros, I'm not looking for a Marlboros, I'm looking for a cigarette

