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## Letter to the Editor

**Dear Madam:** Jacobson and Soliman's analysis of the public health effects of tobacco and firearm litigation is an important work because it does attempt to verify the efficacy of the use of lawsuits as a means of improving public health. However, their analysis did not go far enough ("Litigation as Public Health Policy: Theory or Reality?," *JLME*, Summer 2002).

All policy changes have benefits and costs. A proper analysis of the (potential) benefits of any law or judicial ruling should examine the net benefits, rather than the gross benefits. In other words, a cost-benefit analysis or, perhaps more appropriately in the public health policy field, a risk-benefit analysis is necessary to accurately assess the impact of a change in public policy.

Though the authors did examine various criticisms concerning the legitimacy of using litigation to shape public policy, they ignored an equally important point: Even if litigation is a legitimate means of policy change, it

may impose direct and indirect harms on society equal to or greater than its resulting benefits. My article (Burnett, "Suing Gun Manufacturers: Hazardous to Our Health," *Texas Review of Law and Politics*, 5 (2001): 433-94) cited by Jacobson and Soliman made precisely this point.

Litigation requires money and other resources. Every dollar spent and every attorney and related staff dedicated to lawsuits filed by states or municipalities are unavailable for other worthwhile social goals — including more direct investments in public health and/or safety. Engaging in litigation to improve public health is like playing the lottery to pay one's medical bills. Play enough times and it may pay off, but the odds are long and the bills go unpaid in the meantime. In light of the master agreement signed by the tobacco industry, it may seem that these suits paid big, but, as the authors point out, the public health benefits are, so far, modest at best.

The firearms industry is a much

smaller target than the tobacco industry, so even if municipal lawsuits against firearm manufacturers ultimately succeed, the pay-off will be miniscule compared to the millions of dollars spent pursuing the litigation. After extensive discovery, one municipality, Boston, dropped its lawsuit against firearm manufacturers based on just such considerations. By then, however, Boston had already spent several hundred thousand dollars on the litigation. One should consider whether money spent pursuing these lawsuits might produce better public safety and health results if it were directed at the outset to fund additional police or to increase public funding of prenatal care programs, drug treatment programs, or increasing staff persons and improving equipment at public health clinics, hospitals, and emergency rooms.

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