

The following is a cut-and-paste of an email conversation between myself (Carl Phillips) and David Balfour, editor-in-chief of the journal *Nicotine and Tobacco Research*, which is published by the Society for Research on Nicotine and Tobacco.

The cut-and-paste puts the content in chronological order and omits repetitions of previous emails in replies. A previous version of this document omitted the names of all correspondents other than myself and the editors-in-chief. However, subsequent to that, Balfour's has responded to the challenge and questions I presented here (and nothing more – there was no other communication) by attacking me personally, attempting to damage my career and censor my academic freedom, by writing a misleading and demanding letter to my University. (An accompanying file on this website contains Balfour's letter and my response to it.) Given this, I believe that the other editors of the journal who Balfour CCed, and who he claimed supported him in this, should be mentioned. Unless they are willing to be considered complicit in this, they each need to make known their objections to the attempt to attack, bully, and censor me. Thus, I have added their names back into this version. The names of other researchers who I openly CCed on my initial email to Balfour, whose inclusion as recipients implies nothing about their opinions, are still omitted.

[Note: In the previous version, the above paragraph was different and as part of specifying who was CCed during the correspondence, I wrote, "...Dr. Balfour CCed his first substantive email to a group that appears to be the 'team of senior editors' to whom he refers, and they were CCed on all subsequent emails." I repeat that passage here to provide context for Balfour's bizarre response to it in the letter to my University. In that letter, he confirms that my speculation about who they were was indeed correct.]

Subject: inaccurate conflict of interest statement by Stephen Hecht

From Carl V. Phillips
To: d.j.k.balfour

12/1/08

Dear Dr. Balfour (with open CC to other researchers with an interest in this matter):

I am writing to call your attention to the (presumably willfully) misleading conflict of interest statement that appears in the article you published, "New and traditional smokeless tobacco: Comparison of toxicant and carcinogen levels" by Irina Stepanov, Joni Jensen, Dorothy Hatsukami, and Stephen S. Hecht, *Nicotine & Tobacco Research* Volume 10, Number 12 (December 2008) 1773–1782.

You will notice that it is explicitly stated that "The authors do not have any competing interest pertaining to this work." However, currently and for quite a while, Stephen Hecht has been employed as a testifying expert witness in a lawsuit relating to the carcinogenicity of smokeless tobacco.

I have appended below a letter I sent to the editor of Lancet Oncology about this same conflict of interest. It goes into more detail about the situation. Following that, below, is an excerpt of the reply to me by the editor that points out that Hecht did indeed violate that journal's policy. As a result, the journal published a revised conflict of interest statement (a pdf of that as it appeared in the journal is attached; I have also attached a copy of the original article for your convenience).

I will note that the conflict of interest regarding the content of the article you published is not nearly as great as it was for the Lancet Oncology article, but I am sure you would agree that someone getting paid to testify about the carcinogenicity of smokeless tobacco should disclose that in any article about the toxicity/carcinogenicity of smokeless tobacco, even if the products being emphasized are different. Furthermore, the previous exchange with Lancet Oncology undoubtedly made Hecht aware of the need for disclosing this. The embarrassment of being forced to retract his original conflict of interest statement must certainly be focusing enough that it could not slip his mind that he had a substantial income stream that would appear to a reasonable observer to require disclosure, or that a journal might consider it worthy of disclosure.

The erratum statement that was published was presumably from him, so this represents an explicit acknowledgement on his part too. (This is notwithstanding his *doth protest too much* insistence that his conflict does not count, which seems to amount to him saying, "when someone else has a conflict that looks like this, I aggressively condemn them for it and conclude without evidence that it must be influencing their every word, but when I have this same conflict it does not matter because I assert it does not matter, and you should believe me because I am such a nice guy, unlike those other people." I notice that your journal's webpage about your COI policy includes an observation that explicitly points out the fallacy of this insistence, "The potential for conflict of interest can exist whether or not an individual believes that the relationship affects his or her scientific judgment.")

In short, before the article you published underwent its final edit, Hecht had already been successfully challenged for declaring he had no conflict of interest regarding this topic, and he recanted his previous claim to that effect. Yet he then declared to you that he had no such conflict. The editor of Lancet Oncology declared that he did not think the original misrepresentation in his journal was an intentional omission. It is difficult to understand what evidence might lead to such a conclusion, but whatever it might be, it is quite clear that such an excuse is not available the second time around. I cannot see any interpretation other than a disdain, by Hecht, for the concept of conflict of interest disclosure (except when it supports his own political goals), and a similar disdain and intentional disregard for your journal's policies.

Thank you for your attention. I look forward to your reply.

Sincerely,
Carl V Phillips
Associate Professor, University of Alberta School of Public Health

MY LETTER TO LANCET ONCOLOGY:

To: David Collingridge
Editor-in-Chief, Lancet Oncology

CC: Richard Horton, Editor-in-Chief, Lancet
Et al. (see email distribution list)

From: Carl V. Phillips
Associate Professor, University of Alberta School of Public Health

10 July 2008

VIA EMAIL

Dear Dr. Collingridge,

I am writing with regard to your recently published article, "Smokeless tobacco and cancer" by Boffetta, Hecht, et al., *Lancet Oncology*, 9:667-675. This letter deals specifically with the conflict of interest statement made by the authors.

(As a separate point: I have some substantive analysis about flaws in the article which seem appropriate for a formal for-publication letter to the editor if your journal is willing to publish major scientific criticisms of previously published articles. I would much appreciate knowing if there might be interest in considering such a letter, or whether it would be better for me to just include such points in a future paper.)

You will note on p.673 that the authors declare they have no conflicts of interest. As someone who studies and writes about the subject of conflict of interest, I have to concede that there is some irony in my bringing up an objection to such a claim. I have written that such declarations in health science journals are, at best, of little value since: (1) they regularly ignore the most important conflicts of interest (e.g., political preference/beliefs that lead to preferring particular policies; having devoted one's career to a particular activist position; drawing a salary from an organization that pursues worldly goals related to the content); (2) they fail to report the extent to which a funder influenced research (e.g., by specifying what research should be done using the funding or what methods should be used); and (3) they are primarily used for McCarthy-esque attacks (a characterization most often attributed to Rothman) on people who conduct politically incorrect research.

But in this particular case, there seems to be affirmative evidence that suggests the main genuine worry that justifies the current standards – that the content of the article was altered to serve some hidden goal – may be present. The second author, Stephen Hecht, is currently working as an expert witness, retained by the plaintiff's attorney, in an American product liability lawsuit in which it is alleged that smokeless tobacco (moist snuff) caused a young man's tongue cancer. (I know this because I am retained as an expert for the defense.) I believe

that he was disclosed as an expert witness in the case about a year ago, perhaps more, and gave deposition testimony early this year (the trial is scheduled for next year). It seems quite likely, therefore, that he was already working on this case when the manuscript was initially submitted. Based on your journal's stated turnaround time, it seems almost certain that the final edits (and thus a last chance to correct the COI statement) took place subsequent to the deposition testimony.

In keeping with my research on what constitute real conflicts of interest, I realize that much of Dr. Hecht's research career and activism relate to condemnation of the use of smokeless tobacco, and thus his being employed in one court case would not substantially change his overarching motives. Specific bits of funding have little explanatory power after other motives are controlled for. But I am aware that financial relationships, as opposed to strong career motives or political opinions, are what most people and journals think of as reportable conflicts of interest. Moreover, in this case, the particulars of the litigation might actually have influenced the specific content of the article.

I call your attention to the second row, eighth column of Table 1. In that cell, the risk for tongue cancer is singled out for reporting. This entry is quite anomalous. First, it can be observed that subsites or subtypes of the major cancers reported in that table (oral/pharyngeal, esophageal, pancreatic, lung) are available in many of the papers that the authors chose for inclusion in the table. Yet this result for tongue cancer is the only one reported in Table 1. Moreover, there is nothing about that paper (by Stockwell and Lyman, their reference 19) that emphasizes tongue cancer. Indeed, Stockwell and Lyman divided the oral cancers into multiple subsites and reported the estimates for each, but Boffetta, Hecht, et al. reported only that one subsite. Moreover, that estimate for tongue cancer is based on only a single exposed case (note the wide confidence interval) and thus is a rather pointless and uninformative sub-result to be emphasizing. (For what it is worth, it is interesting Boffetta, Hecht, et al. report – albeit not always accurately -- case counts for the other RRs in Table 1, but omit this one.)

Someone carefully reading the article without being aware of the current lawsuit might notice this anomaly in the table, puzzle for a moment, shrug, and forget about it. But someone familiar with the lawsuit cannot help but think that including this result was done because it might be useful for the plaintiff. Though the estimate is absurdly imprecise, the point estimate is above 2.0, which is often treated as the threshold for being able to claim that an exposure meets the legal standard of "more likely than not" to have caused the outcome.

In addition, one might wonder why the authors' summary estimates divide U.S. and Nordic results rather than the more scientifically meaningful divisions of dry snuff versus other forms of smokeless tobacco, or men versus women (the litigation involves an American man who is reported to have used moist snuff; it has been observed that studies of American women using dry snuff are substantial outliers and explain the U.S.-Nordic difference for oral cancer risk; U.S. results for men or for other types of smokeless tobacco are homogeneous with the Nordic results). I also observe that the authors substantially misrepresented the result of at least one U.S. study. Finally, I find myself wondering what is the purpose, other than trying to create a reference document for advocacy, of trying to pack into a single article of this size so many distinct topics; this article addresses toxicology, chemistry, risk factor epidemiology, and global exposure patterns, as well as introducing results from new (and ill-described) synthetic meta-

analyses for four different classes of cancers. Any one of these topics, cancers, or meta-analyses would require an article longer than what was published to explore properly; the result is that each piece is presented as a simplistic indictment. Fully explaining some of my observations require more detailed analysis than I will pursue here, but even a cursory discussion of them certainly suggests the appearance of possible conflict of interest related to the current litigation.

If there is any situation where a specific outside financial relationship (independent of general beliefs and disposition) should be seen as possibly influencing the content of an article, this seems to be it. When the IARC report from which this article is largely derived came out this January, neither Dr. Hecht nor one of the other authors, Scott Tomar, who also is working for the plaintiff in the same lawsuit, declared any conflict of interest. However for that document, I did not notice a claim that no such conflict existed. Such a claim appears in your journal.

I would never want to suggest that it is inappropriate for an expert to work as a witness in litigation, or be paid for that. Science-intensive litigation requires scientific experts, and few people other than the most extreme ideologues are likely to work for free. Additionally, I am not suggesting that Dr. Hecht punctuate everything he writes and every talk he gives with a statement about his consulting work. That would be distracting and annoying; I certainly do not attempt to advertise my own consulting work at every possible turn.

However, I would never actively state that I have no conflicts of interest on any research that had worldly political/legal/advocacy implications, and I go to some lengths to assess and report what I think are my greatest relevant conflicts in forums where such reporting is appropriate. The details vary by paper and venue, and I certainly cannot mention everything that someone might think worth reporting every time, but I believe that anyone collecting some of my writings would get a pretty good catalogue of the many things that I see as my potential conflicts of interest, financial and otherwise. When I write a paper that seems to have a direct bearing on a particular relationship or belief that I have, I try to mention that particular conflict. I do not recall whether I have ever disclosed any details about litigation support work I have done, as opposed to just generally acknowledging I had done such work when the context suggested that this was important. But if, for example, I published an article that related directly to the etiology of tongue cancer, I would be sure to mention if it was related to litigation or other consulting work I had done (and especially, if specific details of the publication could influence ongoing litigation). By contrast, I am not aware of anywhere in his recent writings about smokeless tobacco that Dr. Hecht has noted his role as a consulting expert witness, let alone any details about his work that might be seen as influencing specific bits of analysis or writing. In your journal he explicitly denied such a role (or explicitly claimed that it does not represent any conflict).

As someone who gives these matters much thought, rather than thinking of them as being merely throw-away notes whose only use is as cudgel for attacking people whose results we do not like but cannot dispute on the merits, I deliberated quite a bit before sending this. I feared that it might be interpreted as being no different from the naïve and simplistic remarks, along the lines of "ha! he has received money from someone I do not like, so his results do not count!", that litter the commentaries about any politically contentious issue in the health science, and thus interfere with real scientific discourse. As I suggested, I think the way conflict

of interest is discussed in the health sciences is a major embarrassment, and there is much need for major improvement. But one simple step would be to make sure that everyone (especially those who are quick to make the nihilistic, simplistic accusations) be held to the same standard of acknowledging that they too receive funds from entities that have worldly interests, be they government, advocacy groups, or plaintiffs' attorneys. Perhaps once we end the absurd pretence that some funders' narrow interests have fundamentally different implications from other funders' narrow interests, we will be able to get beyond the even more absurd claim that funding is the only (or even the most important) non-scientific motive.

Thank you for your attention. I look forward to your reply.

Sincerely,

Carl V. Phillips
Associate Professor
University of Alberta School of Public Health

P.S. Please note that I am openly CCing this letter to a group of other researchers who have an interest in the question of how non-scientific interests in research like this are best defined, analyzed, and reported. I invite any of them to also offer comments to you, me, or all of us. Given that my knowledge of the matter at hand comes because I am playing the same role in litigation as Dr. Hecht is, and cannot separate myself from any influences that might have, I believe there is value in soliciting the opinions of others.

EXCERPT OF THE REPLY:

Dear Dr Phillips, we have now concluded our investigation surrounding the issues raised in your letter of July 10, 2008.

....we do acknowledge that the non-disclosure was contrary to our policy and thus an *Erratum* will be published in the September issue noting Dr Hecht's involvement in the aforementioned court case. The journal's conflict of interest policy does not exclude authors from submitting manuscripts to the journal if they are retained as an expert witness; we acknowledge, however, in this case, there was a breach of process in this regard,

....

we strongly believe Dr Hecht's omission of the above detail in the original conflict of interest declaration was not an intentional omission to unduly influence the paper.

....

I thank you for highlighting these issues.

Yours sincerely,

Dr David Collingridge
Editor, The Lancet Oncology

32 Jamestown Road
London NW1 7BY
United Kingdom

From: David Balfour
To: Carl Phillips

12/8/08

Dear Dr Phillips,

Thank you for bringing this concern to my attention. I will ask the author about it.

David Balfour

Professor David Balfour
Centre for Neuroscience
Division of Molecular & Translational Medicine
University of Dundee Medical School
Ninewells Hospital, Dundee DD1 9SY
Scotland

From: David Balfour
To: Phillips and eight senior editors of the journal

12/23/08

Dear Dr Phillips,

I forwarded your e-mail to my team of senior editors and to Dr Hecht for his comments. We agree that it might have been more open to disclose Dr Hecht's involvement in this case. However, he argued that the data presented in this paper represented a scientific report which was in no way influenced by his acting as an expert witness in this case. Indeed, the request to him to act in this way reflected his expertise in the field. My senior editorial board unanimously agreed that there was no intention to deliberately mislead the readers in this instance and, indeed, the need to disclose that an author is serving as an expert witness is a moot point. The senior editorial board agreed that we should not take any further action in this case.

David Balfour

Editor-in-Chief
Nicotine & Tobacco Research

Professor David Balfour
Centre for Neuroscience
Division of Molecular & Translational Medicine
University of Dundee Medical School
Ninewells Hospital, Dundee DD1 9SY
Scotland

From: Carl V. Phillips
To: David Balfour, 8 editors, a few others

12/23/08

Dear Dr. Balfour et al. (I would be interested in a reply from any of you who care to reply),

Thank you for the reply. As someone who makes a study of conflict of interest, I am very curious about parts of it and would like more information about your position as a journal or individually.

- > ...However, he argued that the data
- > presented in this paper represented a scientific report which was in no way influenced by his acting as an expert witness in this case. Indeed, the request to him to act in this way reflected his expertise in the field.....

Does this mean that it is your position, as a journal and your own view, is that conflict of interest only exists when the author believes (or, more precisely, admits that he believes) that a competing interest influenced what he wrote?

If so, would it be all right if I submitted something to JNTR without mentioning any conflicts of interest? I will happily assure you that my consulting as an expert for the defense in the same cases Hecht has worked on, my serving on BATs scientific board, and my receiving funding from the industry have in no way ever influenced my scientific analyses (and I am sure that anyone who knows me would testify to that effect). Indeed, all exist because they reflect my expertise in the field.

- > My senior editorial board unanimously agreed that there was no intention to deliberately mislead the readers in this instance and, indeed, the need to disclose that an author is serving as an expert witness is a moot point.

I am not quite sure what the meaning of this statement is. I assume that readers who chose to thought about it would conclude, based on the lack of a COI disclosure, that Hecht had no

financial relationships with anyone with an interest in this matter (granted, this is a rather sad understanding of what real COI is, but that is most would conclude). Thus any such reader was misled, and it is difficult to understand how it could be interpreted as other than deliberate. I understand that your position is that it was acceptable to fail to disclose this information to readers, and thus acceptable to mislead them in this way, but I am having a very difficult time understanding how it is not a deliberate attempt to mislead.

I look forward to your reply.

--Carl Phillips
University of Alberta School of Public Health

From: David Balfour
To: Phillips

CC to N&RT editors:
Marcus Munafo
Ray Niaura
Kimber Richter
David Drobos
Ann McNeill
Nancy Rigotti
Ivan Berlin
Karl Fagerstrom

Jan 13, 2009

Dear Dr Phillips,

Before responding to you, I contacted Dr Hecht again and took the views of my team of Deputy Editors. Our list of potential conflicts of interest includes specifically payments for providing expert opinion in court - one of my Deputy Editors reminded me of that. However, in this case it appears that Dr Hecht did not receive any payment - he waived the fee. The law firm involved, as I understand it, made an equivalent donation to a US cancer charity. Thus, we accept that there is no conflict of interest to declare.

David Balfour
EiC, Nicotine & Tobacco Research

Professor David Balfour
Centre for Neuroscience
Division of Molecular & Translational Medicine
University of Dundee Medical School
Ninewells Hospital, Dundee DD1 9SY

Scotland

From: Carl V. Phillips

To: Balfour, 8 editors, various others

Jan 16, 2009

Dear Dr. Balfour:

I find your replies to my email getting curiouser and curiouser. (Actually, I suppose strictly speaking you did not really reply to my last email since you made no attempt to answer my questions, so your latest email simply represents a follow-up on your first email.)

First, I find your limited concept of what constitutes conflict of interest to be rather disheartening. Even if Dr. Hecht had been acting as an expert witness pro bono from the start, it would still clearly represent a non-truth-seeking worldly goal that might be perceived as influencing what he might want to claim in his scientific writings. After all, it would mean that he was spending lots of his time and resources to try to alter a worldly, rent-seeking outcome, and so must have strong feelings about what he wanted the outcome to be. Even if you as a reader would find that unproblematic, clearly many other readers would. Of course, what really constitutes the major conflict of interest is having a strong world view that, say, all tobacco use should be eliminated or that harm reduction is the most ethical public policy response to harmful but desired behaviors. Such conflicts could lead someone to work as an expert witness for free and also create some incentive to skew one's research; in light of that concern, I always start my conflict of interest statements with a statement about my relevant worldly preferences.

I would be quite interested in understanding why you and your editorial board do not seem to believe that adamantly held beliefs about policies and behaviors that could be influenced by one's research do not constitute a disclosure-worthy conflict. Is it because you do not trust your authors to make such disclosures?

Second, Dr. Hecht did not do his work pro bono, as you have made clear. His work gave him control of a pool of money, and he chose to direct that pool of money to a particular target. That process is normally called "getting paid" and "spending" (or "donating"), and the nature of that process would not change just because the money was never in his own checking account. Thus, by any normal definition, he was being paid for this work.

In addition to that point, could you clarify where your bounds are? Are you saying that if an author consulted for a cigarette company on the subject of, say, how to persuade a legislature to provide more favorable legislation, and then had the funds donated to, say, her local chapter of the Yale Club or perhaps a smokers' rights organization that she is a member of, that you would not be bothered by her failure to disclose this? Or are you saying that conflict of interest does not exist only when someone's political actions agree with your personal political views and when they donate the money to a charity you approve of?

Third, your cryptic reference to "a US cancer charity" raises a red flag. I could be wrong, but I am guessing that this is not a charity that works on breast cancer research or is devoted entirely to developing new surgical practices. Indeed, I am guessing there is a fair chance that this charity is either Dr. Hecht's own institution (a very common practice is to have consulting clients direct payment to a pre-tax account at one's university to cover travel or equipment expenses that no other grant will cover) or an anti-tobacco social activist group that he works closely with and perhaps hopes to get a grant from in the future.

Can you confirm that neither of these is the case?

Fourth, could it be that Dr. Hecht was expecting to receive into-his-checking-account payment for this consulting until the embarrassment of his failures to disclose it got too great? If so, then any conflict created by the payment, even if one sticks to this strange narrow view that money-to-checking is the only real conflict of interest, would have existed when the article was being written and when it was published.

Can you confirm that Dr. Hecht had directed that money to the "charity" from the start? Presumably that should be pretty easy to document, since it would be unlikely that he would have been working for his client for this long without issuing an invoice or similar statement that should contain the instructions about the charity.

Finally, and most important, I have to say that I cannot fathom what has possessed you to take this course of action. It is pretty clear that Dr. Hecht did something that should be quite personally embarrassing to himself. But that embarrassment was his, not yours or your journal's. All you had to say was, "it appears that we were misled". But now you seem intent on shifting the embarrassment from Hecht to JRNT.

JRNT, unlike other journals with "tobacco" in the title, has (had?) a reputation for being relatively unbiased (perhaps no more biased than the average health science journal) rather than a propaganda organ for those who pull the strings in this field. But given your tortured efforts to dismiss this matter, I cannot help but feel that this is evidence that your journal will do anything to avoid embarrassing a member of the power structure and orthodoxy in the field or to avoid admitting that conflict of interest is more complicated than "that guy talks to people we disapprove of, so he has a conflict". Yet you failed to respond to my questions by saying "sure, if you had asserted the same thing Hecht said, we would accept that too," suggesting that those of us who draw non-party-line conclusions from the scientific evidence would probably have our papers summarily rejected if we accidentally forgot to mention some financial relationship. I cannot help but wonder if this means that JRNT, and SRNT, is abandoning any remaining claim to being anything other than a standard anti-tobacco operation.

I look forward to your response.

--Carl Phillips

Note: At this point three of the eight CCed editors weighed in. The first of these is quite interesting in that I was removed from the distribution list, but one of my colleagues who was

CCed, who the editor apparently did not think to remove, forwarded it to me. No doubt that mail represents the tip of the iceberg in terms of internal correspondence among the editors; it would be awfully interesting to see the rest of it, though I hold out little hope of seeing such open discourse.

And, since I am departing from simple chronicling to analyze.... I will also note that it is quite fascinating to observe that at least two out of nine editors (with no active disagreement from the others) seem unable to imagine why this matter would be considered important enough to be worth a few hours' work (and thus must be "such an ax" or the result of me being "monomaniac"). It is even more fascinating that someone (who holds the title "professor") would rather write "is he a tobacco industry plant?" (whatever that even means) than bother to take a few minutes to look up what I have written about these matters. I believe it is further commentary on how impoverished the discussion in the anti-tobacco extremist community has become that they cannot recognize that disagreement with them might come from some source other than mania or bribery.

From: Raymond Niaura
To: everyone from previous Phillips distribution list except Phillips

New subject line: Who is Phillips? Is he a tobacco industry plant?

Who is this guy, and why does he grind such an ax? Is he a tobacco industry plant? I say this realizing that e-mail is documentary evidence.

From: Karl-Olov Fagerstrom
To: reply to all from the previous Phillips message

David and others.

O Jesus what a litania. Carl Philips doesn't give up easily. Done is done but I guess that implicitly the tobacco industry is treated different to any other industry. We do usually not need to chose our words and check or figures so carefully when it goes against tobacco industry (noone dares to accuse) . And what might be perceived as clear conflict of interest with tobacco industry may not seem as clear a conflict with any other industry.

Maybe we can learn from this and be more careful at other times.

Good weekend to all of you.

From: Marcus Munafo
To: as immediately above

I agree - this person seems somewhat monomaniac, but it's obviously true that we all have conflicts of interest related to our own prejudices, pet theories, etc. etc. But these are unquantifiable and often perhaps even unknown. I don't think much will be served by continuing this correspondence.

For the next chapter in this, please see the letter that Balfour sent to my University and my response to it, posted in a separate file.

Thoughts about this from readers are welcome. I will probably include an analysis of it in my next paper about conflict of interest. You can email me or (better still) post something to the TobaccoHarmReduction.org forums.

