Issue - Public Smoking

January 27, 1986

S. 1937

Smoking Restrictions in Federal Buildings

Unfair

S. 1937 would restrict the use of tobacco in all U.S. Government buildings throughout the world. The rights of persons desiring to smoke and those desiring not to smoke are subjects deserving careful consideration, but not more government regulation.

Smoking regulations set up a natural confrontation between workers, visitors, management and employees. By polarizing workers, they are likely to lead to low morale and productivity. Common sense and courtesy towards others is the time-honored way to settle such disputes over personal custom. If restrictions are necessary they should be developed by mutual consent on the job site.

Organized labor opposes S. 1937 because "it infringes on the collective bargaining process, imposing arbitrary work rules irrespective of individual workers and worksites."

Unnecessary

There has been no demand for this legislation from federal workers, who are the people who would be most directly affected.

The bill makes a series of "findings" which are not supported by data. The bill finds, for example, "that numerous studies have shown second-hand smoke to be a significant health hazard." In fact, numerous studies contradict this findings.

Unworkable

The Administrator of the General Services Administration would be required by the bill to issue regulations governing Departments as diverse as Treasury and Health and Human Services. Are considerations for restrictions the same in laboratories at HHS and in offices at the Department of Agriculture? Most Federal Departments and agencies already have regulations restricting workplace smoking. There is simply no need for a new antismoking bureaucracy.

Expensive

More Federal programs to burden the American taxpayer are particularly unwelcome at a time when Federal deficits are a major concern. Dr. Robert Tollison of George Mason University, estimates that implementing S. 1937 could cost more than $500 million annually.

Dossier - Public Smoking

Stenographic Transcript Of

HEARINGS

Before The

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE AND GENERAL SERVICES

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

HEARING ON S. 1440, THE NON-SMOKERS RIGHTS ACT OF 1985

OCTOBER 2, 1985

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C O N T E N T S

of the doctors in my area who feel very strongly about it and were very much the advocates of the change in the Alaska law.

Thank you very much. We appreciate your appearance and your testimony, and I am sure it will be heard by many of my colleagues.

Dr. Felts. Thank you.

Senator Stevens. The next witness is Robert J. Lewis, Senior Vice President for Federal Relations of the Tobacco Institute, who is accompanied by Dr. Sorell Schwartz, Professor of Pharmacology at Georgetown University and Dr. Witorsch, Clinical Professor of Medicine, Division of Pulmonary Diseases at George Washington University Medical Center.

£09 STATEMENT OF ROBERT J. LEWIS, SENIOR VICE PRESIDENT FOR FEDERAL RELATIONS

£10 ACCOMPANIED BY:

£11 SORELL L. SCHWARTZ, PH.D., PROFESSOR OF PHARMACOLOGY, GEORGETOWN UNIVERSITY AND;

£11 PHILIP WITORSCH, M. D., CLINICAL PROFESSOR OF MEDICINE, DIVISION OF PULMONARY DISEASES AND ALLERGY; GEORGE WASHINGTON UNIVERSITY MEDICAL CENTER

Senator Stevens. Mr. Lewis, are you going to present a statement first, or or will Dr. Schwartz?

Mr. Lewis. I will go first, Mr. Chairman.

Senator Stevens. Fine.

Mr. Lewis. Mr. Chairman, my name is Robert Lewis. I am Senior Vice President for Federal Relations of the Tobacco Institute, a trade association of major United States manufacturers of cigarettes. I appreciate this opportunity to offer the Institute's comments on S. 1440.

As you mentioned, appearing with me are Dr. Sorell Schwartz, Professor of Pharmacology at Georgetown University on my right, and on my far right, Dr. Philip Witorsch, a physician at the George Washington Medical Center specializing in pulmonary medicine.

As you know, Mr. Chairman, the Institute is opposed to this proposal to impose restrictions on smoking in all U. S. government buildings throughout the world. We believe that such regulation is unwise, unnecessary, unfair and, most likely, unenforceable.

We believe that most Americans -- and this certainly includes federal workers -- want less government regulation, not more. Unless a serious problem has been clearly demonstrated to exist and unless it is clear that the problem can be resolved only through government intervention, we believe that government should stay its hand and not create even one more program that might strain our already badly unbalanced budget.

We have several compelling reasons for our opposition,

and they can be briefly summarized.

First, legislation in this area is simply unnecessary. Federal departments and agencies that wish to restrict smoking have already proceeded to do so without seeking specific legislative authority. In fact, it is my understanding that the regulations at HHS are now seven years old.

Furthermore, we detect no evidence of any great demand for legislation which would restrict smoking in the workplace. No substantial segment of the federal workforce, and certainly, no federal employee labor organization that we are aware of, is asking for enactment of legislation like S. 1440.

I might note, Mr. Chairman, I understand a statement has been filed and testimony may be heard this morning by a member of a local union based upon the situation at a single agency. We are not aware, however, that that union's international or any other federal employee international has adopted the position of this local.

Second, the major premises or findings of the bill are not facts but, rather, assertions that have been rebutted by eminent scientists, economists and legal scholars, including the two gentlemen seated here with me. Tobacco smoke in the indoor environment has not been shown to be a significant health hazard. It has not been demonstrated that smoking

results in increased costs to employers. And this legislation is not required by court decisions.

Third, we believe that S. 1440 would burden the government with unmanageable and unenforceable regulations and the American taxpayer with excessive and unnecessary costs.

Finally, the legislation would tend to polarize federal employees and thus lower morale and productively. With more than one million federal employees, including 350,000 smokers, involved in jobs in varying working conditions, we believe that this is an issue that should be addressed on the job site and not by an edict from Washington.

In short, Mr. Chairman, and with all respect, we believe that this bill is a solution in search of a problem, and a flawed solution at that.

Let me be more specific. In late 1984, the Human Resources Policy Corporation surveyed 1,001 of the nation's largest and fastest growing firms. It looked at workplace smoking policies in the private sector, and here is what it found:

About two-thirds of the companies do not have a formal smoking policy but, rather, encourage their employees to use common sense and courtesy to solve problems among themselves.

Of these firms, about a third have considered and rejected smoking policies, most often because they believed

such policies would not be accepted by their employees or would cause unnecessary conflict.

Of the firms in the private sector that have restricted smoking, most did so with respect to employees who deal with hazardous substances, sensitive machinery and food, or when required to do so by local law or ordinance.

Results of this survey of company executives challenge the often-touted notion that there is a great public demand for restrictive workplace smoking policies.

Furthermore, it is difficult to understand the claimed need for this bill in light of the fact that the General Services Administration already has issued regulations restricting smoking in all GSA-controlled buildings and facilities. Most federal departments and agencies already have regulations restricting workplace smoking or have adopted a structure to deal with smoking in buildings under their control.

In fact, several departments and agencies have stricter smoking restrictions than those required by GSA.

We believe, Mr. Chairman, that many of these restrictions already discriminate unfairly against federal employees who smoke. In addition, other federal employees are covered by collective bargaining agreements that restrict smoking in one way or another.

Would all these agreements and regulations which are now

in place be abrogated by S. 1440? We do not know the answer to this question, or the other questions that typically arise when legislation attempts to make policy where policy already exists.

Mr. Chairman, let me turn to the three findings on which the need for this bill is premised. The first charge is that smoking in the workplace is a significant health hazard.

During the past two years, this charge has been contradicted by the conclusions of three major scientific conferences involving over 50 eminent scientists. The most recent conference was held in 1984 in Vienna, Austria in cooperation with the World Health Organization and the International Green Cross. The organizers of that conference were Ernst Wynder of the American Health Foundation and H. Valentin of the Bavarian Academy for Occupational and Social Medicine.

Here is how they summed up the conclusion of that conference:

"Should lawmakers wish to take legislative measures with regard to passive smoking, they will, for the present, not be able to base their efforts on a demonstrated health hazard from passive smoking."

Mr. Chairman, I will not read the conclusions that were reached by the other two conferences, which are included in my statement. I would ask that all three proceedings from

these conferences be included in the record.

Senator Stevens. We are not going to print the whole proceedings in this record, Mr. Lewis. I am sure you realize we couldn't do that. I will be happy to include the excerpts that you included in your statement.

Mr. Lewis. That is fine, Mr. Chairman. We will provide appropriate excerts.

Mr. Chairman, I think you will agree that this particular issue has been and should be the focal point of your hearings. I would like to include, since Mr. Witorsch will not be reading his entire statement, a conclusion which he reaches, which is as follows: "A careful review of the complete available scientific literature fails to support the conclusion that second-hand smoke is a significant health hazard. Rather, it leads to the conclusion that environmental tobacco smoke is an inappropriate target on which to base management policies for controlling indoor air-related health disturbances. For Congress to reach any other conclusion would be scientifically unfounded and misleading."

A second and equally faulty premise of S. 1440 is that employees who smoke cost more to employers, including the federal government, than non-smoking employees.

A statement that we would like to submit for the record by Professor Lewis Solmon, and this is a short statement, an

economist currently serving as Dean at UCLA's Graduate School of Education and President of the Human Resources Policy Corporation focuses on the issue of whether employers incur costs by permitting smoking in the workplace. As Professor Solmon points out, the claim that workplace smoking results in higher medical costs is based in part on studies that smokers have a higher accident rate than non-smokers.

Professor Solmon goes on to note, however, to find that since smokers are found disproportionately among blew collar workers, they are more likely than non-smokers to be engaged in strenuous physical activities and therefore, are more likely to be exposed to physical harm through accidents.

Moreover, a recent study of almost 2,000 union representatives and managers in business, industry and government contradicts the claim that smokers are less productive and therefore more costly to their employers than non-smokers. Two-thirds of the survey respondents stated that employee smoking has either a positive effect or no effect on worker productivity.

The survey was conducted by Response Analysis Corporation of Princeton, New Jersey. Another study released in 1984 by University of Minnesota researchers reported similar results, finding people who smoked tend to be more productive than those who do not.

We would like to submit copies or excerpts of these two

studies for the record.

As to the third finding of S. 1440 which asserts that the bill is required by recent court decisions, the courts consistently have struck down arguments that workplace smoking interferes with the constitutional rights of non-smokers. In cases in which employees have tried to use the common law to impose smoking restrictions, the courts also generally have sided with the employer.

We have a case cited here in the record, Mr. Chairman.

Indeed, with the exception of a few cases involving handicapped persons, the courts generally have held that employers, including the federal government, have no legal obligation to accommodate the demands of individual employees to ban or restrict workplace smoking.

Mr. Chairman, once again, I ask your permission to submit for the record a legal memorandum prepared by our legal counsel, Covington & Burling, analyzing the pertinent court decisions dealing with workplace smoking.

Finally, Mr. Chairman, let me turn to the requirements of S. 1440. The bill would direct the Administrator of the General Services Administration to implement regulations designating smoking and non smoking areas "in any building under the jurisdiction and control of a department or agency of the United States".

But some serious questions arise about how this will be

accomplished.

How is this new federal smoking law to balance the various needs in departments as different as Defense on the one hand and Health and Human Services on the other?

Are the considerations for restrictions the same in our Embasies abroad as in our VA hospitals?

Is the GSA Administrator going to dictate where foreign dignitaries may or may not smoke when visiting the State Department or the White House?

What makes the GSA Administrator the right person, if there is any "right" person, to resolve the countervailing needs in such widely varying work environments?

Or if it is intended that this authority be delegated, what is the need for legislation at all, since agencies and departments have already implemented, for the most part, their own regulations?

Mr. Chairman, why not let each department and agency continued to handle the issue on its own without creating a new anti-smoking bureaurocracy?

Mr. Chairman, if the American people have delivered a message to their government in the past two Presidential elections, we believe it is this: That American are disenchanted with the high cost and intrusiveness of their government programs. They want big government off their back, out of their pocketbook and away from their personal

behavior.

In that context, we believe that S. 1440 is a step in the wrong direction. However well-intended, it stands for overspending and overregulation at a time when the public wants less of each.

We urge you and this Subcommittee to consider whether the personnel relationships between workers who smoke and their fellow workers who do not smoke should be regulated by government fiat or by the rules of common sense, common courtesy, good will and mutual respect.

Thank you for your time and thank you for your consideration.

Senator Stevens. Dr. Schwartz, do you have a statement?

Mr. Schwartz. Thank you, Mr. Chairman. My name is Sorell Schwartz. I am Professor of Pharmacology at Georgetown University. I hold a Ph.D. in Pharmacology and have specialized in toxicology throughout my career. My special emphasis has been on cause and effect analysis, risk analysis and the absorption, distribution and elimination of chemical substances. Faculty members at Georgetown often report studies or speak out on various issues and are encouraged to do so by the University in a responsible manner. But they do so without representing the University.

I am Chairman of a group of about a dozen faculty members from a number of universities who, at the request and

expense of the Tobacco Institute, exhaustively reviewed the pertinent scientific literature concerning exposure to environmental tobacco smoke, particularly in the workplace, and possible health effects. Individual members of our group have expertise in the disciplines of toxicology, epidemiology, industrial hygiene and pulmonary medicine. Specifically, we were asked independently to evaluate the primary data focusing on exposure to environmental tobacco smoke and chronic health disturbances and to consider the place that environmental tobacco smoke has in the entire problem of indoor air pollution.

My purpose here today is to present the essence of our group's opinion on environmental tobacco smoke, which is currently being prepared for publication in the scientific literature. There are a few preliminary points that deserve mention because they represent the conditions for my appearance.

One, the opinions that I am presenting today are presented as part of our study for the Tobacco Institute, but they are our independently-held opinions.

Two, as such, I am appearing here as a spokesman for the group of scientists with whom I have been working. I am not a spokesman for the Tobacco Institute.

Three, I do not take issue with the position that active smoking per se is associated with significant health

disturbances. Nothing that I say here today about environmental tobacco smoke exposure is intended to imply a similar opinion about active smoking. Indeed, my colleagues and I consider environmental tobacco smoke exposure and active smoking to be toxicologically distinct phenomena.

Four, I am not taking a position on behalf of our group for or against the bill before you. I am only commenting on the proposed finding in the bill that numerous studies have shown environmental tobacco smoke to be a health hazard.

Five, I recognize that there are people here, laymen and scientists alike, for whom elimination of environmental tobacco smoke represents a personal agenda. My testimony does not address that position except, of course, to caution against the gerrymandering of scientific data to gain support for the agenda.

Six, finally and most important, our study was directed at the question of demonstrable chronic health effects of environmental tobacco smoke and not to the question of whether tobacco smoke is or can be a nuisance or bothersome to some people in some circumstances.

In undertaking our investigation, we were aware that there is controversy in the scientific literature concerning whether environmental tobacco smoke can have chronic health effects. We also were aware that three international workshops on the subject had found no persuasive evidence of

chronic health effects or had judged the available data to be inconclusive. We were aware, in addition, of extensive media reports claiming that environmental tobacco smoke had been found to affect people's health adversely.

Perhaps most importantly, we knew that as we undertook our study and in order to arrive at an opinion, we had to evaluate the available data ourselves. Anyone who has not fully evaluated all of the data and applied recognized evaluation techniques is not in a position to reach an independent conclusion; that individual can only report on other people's conclusions.

When we looked at the studies in the literature addressing the possible health effects of environmental tobacco smoke, the most significant problem we found was that they generally lacked appropriately validated exposure estimates or dosage measurements. This deficiency has been noted by others and is, in fact, the major point of consensus emerging from independent reviews, both by individual scientists and groups of scientists. Parts of this consensus are the three workshops on the subject, including those organized by the National Institutes of Health and the World Health Organization. In the absence of adequate dosage information, it is difficult to reach scientifically reliable conclusions regarding cause and effect relationships.

It is also generally recognized that environmental

tobacco smoke is not simply a diluted form of mainstream or sidestream tobacco smoke. It is a component of the complex mixture of chemicals known as indoor air pollution and is physically, chemically and toxicologically distinct from mainstream and sidestream tobacco smoke.

Measuring environmental tobacco smoke is part of the mosaic of measuring indoor air components. The accurate and precise measurement of indoor air components necessary for use in exposure assessment is difficult, tedious and expensive.

Such measurements are affected by temperature, barometric pressure, relative humidity, air leakage through cracks and windows, doors and other building components, use of combustion devices, human activity levels, building design, operation and maintenance procedures and ambient air pollution levels. The idea that exposure to environmental tobacco smoke can be estimated by measuring particles in the air and equating that to the number of cigarettes is one that cannot be supported within the conventional rubric of environmental monitoring.

In addition to the problem associated with documenting exposure, our group was impressed by serious flaws in design and methodology associated with the studies of health effects of environmental tobacco smoke: those purporting to show an effect and those purporting to show no effect.

Dr. Witorsch has submitted a statement discussing the studies focusing on respiratory and cardiovascular function. I will consider another area: The claim that exposure to environmental tobacco smoke is associated with an increase in lung cancer among non-smokers.

To say that it is easy to underestimate the difficulty of doing acceptable epidemiologic research and to overestimate the meaning of a study that purports to compare a control population with an exposed population is almost an article of faith today. We have carefully reviewed, in detail, all of the studies relating to environmental tobacco smoke and lung cancer. In addition, we have submitted the studies to emidemiologists outside of our group. Those individuals did not know the purpose of the review they were being asked to undertake nor the identity of the sponsor.

Without exception, every epidemiologist who has reviewed the pertinent studies has agreed with the conclusion of our group that the studies to date do not support a caucal inference relating exposure to environmental tobacco smoke to an increased incidence of lung cancer. Some of the eipdemiologic studies that have been represented as establishing an environmental tobacco smoke/lung cancer relationship are not usable to any degree because they were poorly described, poor done, did not use control groups, did not verify the nature and extent of exposure, did not verify

the histological nature of the disease or involved other inadequate documentation. The fact that a group of poorly designed and conducted studies may point to a similar conclusion does not necessarily enhance their validity.

It is an uncompromising rule of scientific endeavor that no type of statistical analysis can salvage data from poorly designed and improperly conducted studies.

The two largest and most quoted studies on the relationship between environmental tobacco smoke and lung cancer are one from Japan by Hirayama and an American Cancer Society study by Garfinkel on American women. Both involved studies of lung cancer incidence in the non-smoking wives of smoker husbands. Hirayama claimed to find an increase in lung cancer incidence. Garfinkel reported no statistically significant increase.

There is a substantial amount of published and unpublished opinion that the Hirayama study suffers from a number of serious methodological and inferential problems, including patient slectivity, definitions of smoking exposure, occupational considerations and analytical methods used.

The Garfinkel study has also been criticized for methodological problems. Given the current state of the scientific literature, one can assert a causal relationship between exposure to environmental tobacco smoke and lung

cancer, only if one is willing to ignore the available data and mainstream epidemiologic opinion.

That is not to say that such a causal inference has not been made and then promoted. One highly publicized paper, written by James Repace and Alfred Lowery, claimed that exposure to environmental tobacco smoke is responsible for between 500 and 5,000 cancer deaths per year in the United States.

The Repace/Lowery computations involved a notable misunderstanding of the power and usability of epidemiological data and risk analysis techniques. Again, that is not an isolated opinion. It is the relatively consistent opinion of those involved in epidemiological and risk analysis research who have reviewed the Repace/Lowery paper and the studies on which Repace and Lowery relied in making exposure assumptions and a causal inference.

At the outset, I stated that we considered environmental tobacco smoke a part of indoor air pollution. I should emphasize that we consider indoor air pollution, in general, to be a serious, scientific and public policy issue.

However, it is clear that environmental tobacco smoke is only one of a number of factors that influence indoor air quality. Those factors include outdoor air quality, building structure, building materials, consumer products, appliances, cleaning substances, combustion devices, ventilation rate and

occupant activity.

In the past ten years, health complaints related to indoor air pollution have increased dramatically. A number of public and private groups have recognized the complexity of the indoor air pollution problem. In fact, there is some evidence that attempts to use environmental tobacco smoke as a surrogate for indoor air pollution has been counterproductive.

For example, requiring lower ventilation rates in non-smoking areas has led to proposed ventilation rates for those areas that are clearly inimical to health with respect to other indoor air pollutants, including microbial agents. The problem of indoor air pollution in the long run is a problem of adequate ventilation, irrespective of whether or not smoking is permitted in the area.

There are studies that show that smoking restrictions have not led to less indoor air-related health complaints. One of those is a survey by NIOSH concerning indoor air quality that indicated that about 50 percent of the health complaints were related to high carbon dioxide levels, while only 2 percent were related to smoking.

We suggest that if there is a concern about the quality of indoor air in government buildings, the GSA should be directed to study the ventilation rates in those buildings and to evaluate the adequacy of that ventilation for

prevention of what has been termed the "sick building syndrome". That is more likely to be beneficial than directing efforts solely at environmental tobacco smoke.

Mr. Chairman, I appreciate your having permitted me to appear here today, and I would be pleased to respond to any questions that you may have.

Thank you.

Senator Stevens. Thank you very much.

First, Dr. Schwartz, I have high regard for the institution that you are associated with. I do have a question. You say you are commenting on the proposed findings in the bill that numerous studies have shown environmental tobacco smoke to be a health hazard.

You don't question that statement, do you, that there are numerous studies that show that?

Mr. Schwartz. Yes, I do, sir.

Senator Stevens. You disagree with the studies, but there are numerous studies. We have had them presented to the Committee. That is a statement of fact, that there are numerous studies that show that connection.

You have disagree as a matter of opinion with the basis of their conclusions; Repace, for instance. You mention him. But those studies are still there.

Mr. Schwartz. I don't want to get into a semantic distinction, but there is one. I don't disagree there are

numerous studies in the literature which propose that environmental tobacco smoke is a health hazard, but I do disagree with the statement that they show that.

In other words, looking at the data, we do not believe that the data show that there is a recognizable, significant health hazard for chronic disease and when referring to chronic obstructive pulmonary disease of the lung cancer and the like.

Senator Stevens. You mentioned the Geneve and the Vienna conferences. I am informed in neither conference did they dispute the finding that involuntary smoking causes respiratory problems in young children. Do you realize that?

Mr. Schwartz. Yes.

Senator Stevens. Well, now, is that not a finding?

Mr. Schwartz. I think that there are a group of papers which claim that children exposed in the home to mothers who smoke have an increased incidence of respiratory disease. That is a conclusion that has been made in the papers.

But that is not a workplace exposure. That is exposure in the home.

Senator Stevens. Maybe we have a semantic difference here. Do you differentiate between sidestream smoke and environmental smoke?

Mr. Schwartz. Yes, sir, definitely.

Senator Stevens. How do you differentiate that?

Mr. Schwartz. Well, sidestream smoke has been measured when trapped as it comes off the cigarette. I assume there has been enough testimony of what sidestream smoke is, that is, the material that comes off the cigarette that has not gone through the length of it, has not been inhaled, if you will.

As the smoke leaves the cigarette, as it moves away from the cigarette, temperature changes, air flow changes, and just natural laws completely change the characteristic of that. Environmental tobacco smoke could not be sidestream, could not be the same sidestream smoke unless we broach some natural laws, gas laws, those laws dealing with particle impact.

Senator Stevens. If two people are working in my office and they are literally four feet apart -- and I would be glad too show you the situation if you want to come see it -- one smoking very heavily and the other one is not smoking, that is not environmental exposure, that is sidestream exposure, is it not, within that range of six feet?

Mr. Schwartz. Not necessarily, no, sir. No.

If you, in fact, you analyze the smoke six feet away from the cigarette and you analyze the sidestream smoke as it has been analyzed as it comes off the cigarette, they would be substantially different. They would have to be.

Senator Stevens. Isn't that different from the overall

amount of smoke in the environment of the office, in general?

Mr. Schwartz. Yes.

Senator Stevens. That is what you are talking about.

Mr. Schwartz. Clearly, as you move away from the cigarette and you have mixing and such, yes, clearly, there is a -- it is constantly changing.

But sidestream smoke, as I define sidestream smoke, that which comes off the cigarette and is trapped and analyzed, and that smoke which even moves a few feet from the cigarette has to be different because of the cooling effects.

Senator Stevens. This Committee, long before my bill was introduced, banded smoking in this room. When two people are sitting next to one another, if one were smoking, the other, literally twelve inches away, is subjected to side stream smoke, isn't he?

Mr. Schwartz. Well, he is subjected to environmental tobacco smoke. Again, sidestream smoke refers to the material that is just coming off the cigarette. That is the material that has been analyzed.

If you want to expand the definition of sidestream smoke to be anything that comes off the cigarette, no matter what its position is, that is fine. But the analytical data which has been generated for sidestream smoke would not apply to that definition.

Mr. Lewis. Mr. Chairman, if I might?

Senator Stevens. Let me finish, please, with Dr. Schwartz, and then I would be happy to have an exchange with you. I want to ask Dr. Schwartz about this. We have before us now the findings of the Surgeon General of the United States and his firm, fixed support of this legislation.

We have now the findings and testimony of the American Medical Association. You and your colleague are the first to come forward from the scientific community and dispute those claims, not mine, but the presentations that have been made by the Medical Association and by the Surgeon General.

They are relying on the same studies that the Committee relied on to make that statement in the proposed findings of the bill. Do you dispute that the Surgeon General and the AMA and the position that they have expressed here?

Mr. Schwartz. The position they have expressed, Senator, is support for your bill. I am not, and in representing the group, we are not expressing support or opposition to your bill.

Senator Stevens. If you know Dr. Koop, you would understand that Dr. Koop shares the recitation of Mr. Lewis that the federal government should not be regulating anything that doesn't need to be regulated. He has demonstrated his position with regard to deregulation.

But he says, in this instance, as does the Administrator of GSA and as does the AMA, that this is a form of regulation

that is essential to assure that non-smokers are not subjected to hazards from smoke.

Mr. Schwartz. I understand the point, and I, again, would like to clarify that ours is strictly a scientific consideration. We have no -- I mean, we obviously have personal positions on the bill, but we don't make any representation, and I don't represent the group being for or against the bill.

But I think that it is clear that the American Medical Association and the Surgeon General are representing the general feeling that smoking causes significant health disturbances and it causes health problems. I addressed in my preamble that that, in fact, we don't disagree with that point.

But I would also state that you must look into and analyze all of the data. Senator, there have been conference after conference on this, and they all come out the same, and that is, that there is a lot, there is a lot to be stated; there is a lot to be decided with regard to the evaluation of the data.

Even the AMA, in its testimony, just preceding mine, stated, and I think they use the word, something to the effect of a tentative conclusion of an increase in lung cancer.

Now, there are various gradations of opinion on the lung

cancer issue.

I know of no one who really has concluded, who has reviewed all of the data, who really have concluded that there is a final causal inference.

The only people I know of who have made that conclusion are Repace and Lowery, and contrary to the implication that this represents a consensus of scientific opinion, I find it rather difficult to understand that every group, every workshop, one this summer in Colorado, every group that has addressed the problem of environmental tobacco smoke and lung cancer has wrestled with the inconclusiveness of the data with various gradations.

Some feel that as tentative as the AMA has put it; some have felt that it is -- that the studies are too flawed to make any conclusions. But nobody has said that the causal inference is clear and precise. Yet Repace and Lowery not only have no difficulty in coming to such a conclusion, but they will quantitate, within an order of magnitude, the number of deaths in the United States from that.

Now, I submit, Senator, it is not I or my group which is discording with scientific opinion, but it is Repace and Lowery.

Senator Stevens. I didn't say you distorted scientific opinion at all, doctor. As a matter of fact --

Mr. Schwartz. Discorded, not distorted.

Senator Stevens. In your area of the University, my memory is you have some places in the University that posted no smoking; isn't that right?

Mr. Schwartz. Oh, yes.

Senator Stevens. In the medical portion of the University, it is posted "No smoking" in several places.

Mr. Schwartz. Senator, I don't smoke. I sit in no smoking sections of airplanesand non-smoking sections of restaurants. I am not dealing with the matter of smoking being uncomfortable, being irritating to people. I am addressing the point of chronic health disturbances.

I am not taking an issue. If one locally decides that they want to ban smoking in certain areas and they all get together and they come to some sort of accommodation, I have no position on that as a scientist, or even as a citizen. I think that people should, people should do what they can get along with.

I am only commenting on the conclusions that there are demonstrable chronic health effects from environmental tobacco smoke.

Senator Stevens. I am dealing with the problem of people in Los Angeles, in San Francisco, in Florida, in Minnesota, in Alaska, who live in areas where the state and local law has determined that there should be designated smoking places and no smoking in other areas in public

buildings.

But those laws do not apply to the federal government buildings. A person who gets used to that concept of life and the lifestyle of being able to be in a smoke-free environment goes into the federal building, goes into the Post Office, goes into a restaurant in a federal building and suddenly finds that there is no way to object to what they consider to be a violation of their rights to have a smoke-free environment without this law.

Without this law, there is no way to subject those buildings to the same kind of decision made by the people in those areas that apply to all other buildings and all other public facilities in the area.

To me, that is unfair. I respect you and your judgment. The only thing I would say to you is I remember sitting here and listen to the testimony concerning the original Surgeon General's finding as to whether or not smoking was hazardous to your health. There were similar people who raised objections at that time.

You don't raise any objection to the conclusion, now, of the Surgeon General that direct smoking is hazardous to health, do you?

Mr. Schwartz. No. I think I indicated that understanding.

Senator Stevens. I understand your statement is clear

on it.

Mr. Schwartz. Right. I would like to point out, however, and I understand the analogy, and there is certainly a certain wisdom to the analogy, but there is also a caution with which you must use it. And that is, that every scientific study that is prolonged and leads to a conclusion of positive or negative began with data which was suggestive.

In other words, one doesn't pursue a study unless they start with suggestive data. But not all studies which start with suggestive data necessarily end up with the final conclusion that that suggestions were valid.

Senator Stevens. I take the point and it is well taken.

Mr. Lewis, you wanted to make a comment. Let me ask you first, the Institute still takes the position that the Surgeon General's finding that smoking is hazardous to your health is wrong, does it not?

Mr. Lewis. Mr. Chairman, I have to defer to the experts on that point on both sides of that issue.

Senator Stevens. You represent the Institute. Does not the Institute still take the position that smoking is not hazardous to your health?

Mr. Lewis. Mr. Chairman, I would like to answer that question this way: That I, so far as I am concerned, the Institute would defer to the judgment of the experts, and I believe that the current on-going cases indicate that there

are experts on both sides.

But I would like to add an observation, if I might. For decades, the question of smoking and health has been brought to the attention of the American people. For over 20 years, cigarette packages themselves have had required labels posted on them. For more than ten years, the advertising has required warnings. There cannot be anyone left in this country who is unaware of the determination and the determinations of the Surgeon General.

Yet millions of Americans, approximately 50 million adult Americans, continue to make their own risk benefit assessment and exercise their freedom of choice. We believe, Senator, that is the central issue.

Senator Stevens. Do you see anything in this bill that restricts the freedom of choice to smoke or not to smoke?

Mr. Lewis. As I understand it, the very essence of the bill would place restrictions on every federal building. That certainly would restrict the choice of the smoker as to when and where he might exercise that freedom and assumes that there are many instances where he cannot exercise that freedom without offending others.

Senator Stevens. That is the position of the bill. It is clear. As a smoker, I can tell you. I am a smoker. I do smoke pipes and cigars, and I know how offensive it is to others.

My problem now is beyond being offensive: Is it dangerous to their health? And the conclusions brought to this Committee by the medical profession, in my judgment, Dr. Schwartz' understanding notwithstanding, are clear, the hazards of the health for the employees of a fellow smoker to smoke in the area where people who do not smoke work. That is the target of this bill, is to provide a smoke-free environment for those people who do not wish to be in an area where there is smoke. We do it in airplanes.

That would be my next question. Have you seen any degradation in the number of people who smoke because of the segregation in airplanes between smokers and non-smokers?

Mr. Lewis. I'm sorry. Do I see --

Senator Stevens. Is there any impact on the cigarette industry by virtue of the decision that we have enforced for years, and that is, that there shall be a place in all airplanes where non-smokers can sit and not be offended by cigarette smoke?

Mr. Lewis. Senator, I don't think the impact on the cigarette industry is even an issue.

Senator Stevens. Well, I do. That is why you are here.

(Laughter.)

Mr. Lewis. We are talking, Senator, if I may, those who oppose smoking are very vocal, and earlier this week, we heard people talk about child abuse. We heard people talk

about slow motion murder. I submit, Mr. Chairman, that those are not the kind of people that are interested in reasonable regulations. These people are interested in a ban.

Senator Stevens. Do you smoke, Mr. Lewis?

Mr. Lewis. No, I do not.

Senator Stevens. Do you have children?

Mr. Lewis. Yes, sir.

Senator Stevens. Do you object to people smoking around your children?

Mr. Lewis. I do not.

Senator Stevens. You don't see any problem with them smoking around your children at all? I don't think, very frankly, if you don't read the one difference between us and the other mammals that inherit this earth as we ought to be able to read and learn from research and from just the data that is accumulated by mankind as a whole, I don't see how anyone today can take the position that smoking is not harmful to children and that they should not be exposed to smoke.

Mr. Lewis. Well, Mr. Chairman, as I told you, I don't smoke. My parents did, and I certainly don't consider them to be guilty of child abuse.

Senator Stevens. I can understand that. The data that has come in has come in considerably after your childhood, however, and it is very, very convincing to me.

As a matter of fact, as I mentioned, the two international conferences that met did not take exception to that conclusion, that smoking was dangerous, it did cause respiratory problems for young children, and that smoking should not be permitted around young children.

To my knowledge, there is no dissent from that conclusion now in the medical field and scientific field before this Committee. No one has disputed that.

If that finding alone can stand, then I think the premise of this bill that it is time for us to look as an employer to the question of providing a smoke-free environment for those employees who do not wish to be exposed to smoke is a good one.

Let me go on. I assume that the Institute opposed the Florida law which was just put into effect last week, in Los Angeles, San Francisco, the Alaska law. I know you opposed the one in in Alaska. That is not conjecture. I know that as a fact.

You have opposed these other laws that have been put into place.

Mr. Lewis. Mr. Chairman, we take the same positions, the same position in the states that we take here: That this is something that ought to be handled on the local job site and that government regulation, whether it is at the local level or at the state level or the federal level, is just

simply unnecessary; that it is costly, that it metes restrictions on personal freedom.

Senator Stevens. There is no reason for us to argue a difference of opinion. I believe that as one who is charged with trying to follow the impact of judicial decisions on the federal government, as far as employer responsibility is concerned, it is clear that the courts are now deciding, in case after case, that the federal government is liable to certain employees for having failed to provide a smoke-free environment.

The San Francisco case last week was a good example. You have cited a couple that went the other way. They are not all totally conclusive, I will say that. But there are several that have ended up with final liability on the part of the United States and the employer who is going to pay taxpayers' money for having failed to meet this obligation. Under those circumstances, I think this bill is a reasonable approach to that obligation and authorizes the designation of places where smoking can take place.

As a matter of fact, it requires it. You are going to hear some testimony from some agencies who are disturbed over the fact that smoking would have to be permitted in certain areas where it is now forbidden. It would permit the designation of smoking areas in all federal buildings and then require those areas not so designated to be non-smoking.

I think that is a reasonable position for the agencies of the federal government to be required to take. We have had testimony that it would not be expensive. I can tell you from the experience we have had in Alaska, it has not been expensive. Even the cost of the sign has not been as much as people believed it would be. In my judgment, it is time for us to move in this direction. If we can subsidize to the tune of the billions that are requested for the tobacco industry, I think we can extend the few dollars we need on signs to direct people to areas where they can be in a smoke-free environment.

Mr. Lewis. Mr. Chairman?

Senator Stevens. Yes, sir.

Mr. Lewis. I recognize I am not going to change your mind right now. I would like to complete a response to one question you asked, and that is: Why are we here?

We believe the issue is not an impact on our industry. We believe the issue is not the erosion of cigarette sales. We believe -- I have stated this before, but I don't think it can be stated too many times -- that the issue is erosion of personal freedom, and we feel very strongly, Mr. Chairman, that today the smoker is society's pariah, and who will it be next, and where will this lead, and we believe that is an important question.

Senator Stevens. I am pleased to have that answer

stated. I see nothing in the proposal before this Committee that would deny smokers the right to smoke. Under those circumstances, the issue will have to be joined later, I guess.

Mr. Schwartz. Mr. Chairman, may I clarify one point?

Senator Stevens. Yes, sir, Doctor.

Mr. Schwartz. On the issue of children in the home, you are quite correct: The workshops point to the fact that this seems to be a problem where the data is more persuasive. So I would question whether the theory is a uniform conclusion that this is the case.

I think there are some questions of whether or not it is the smoke or whether it is at home, in a factory, whether it is mom coughing all over the kid and spreading respiratory microbes.

But it does bring up a very important point, and that is that within the home, I think that one of the things that we have found in our review is we were happy to see EPA's being able to pick up on is that the whole area of indoor air pollution which has come about in the home because of, in many people's opinion, and in our opinion, the energy conservation with air flow in the home has been reduced; that if, in fact, tobacco smoke really causes a problem in the home, I think we should seriously consider that it is due to inadequate ventilation, in fact, for that matter, in the

workplace, too, in that removal of the tobacco smoke may remove certainly a participant in this indoor air pollution.

We could be falsely confident because of the fact that there remain a lot of indoor air pollutants which are not as visible, not as detectable, products of cooking solvents and such, and that what you have touched upon is really the far greater problem of indoor air pollution in the home, which, as long as you have personal interest in this, and you obviously do, it should be something I think you may keep in mind for future thoughts about how our agencies look at the home environment -- just an editorial comment.

Senator Stevens. I appreciate that. I think it is a point well taken. I think the evolution of thought about smoking is really something that everyone ought to think about. I remember so well when my first wife was carrying our first children, my first family, she was a smoker. No doctor ever asked her or told her that that might harm the children she was carrying in any way, and she did not stop smoking.

I think had anyone told her or made that suggestion to her, she would not have smoked. As a matter of fact, I know it, because her older daughter was so told by doctors not to smoke when she was carrying her children, and she stopped. I think that we have to realize that there has been this evolution of thought about smoking and health and the

evidence is coming in, Doctor.

It may not be that it is conclusive yet for you, and I respect your judgment on that. But the evidence is coming in. I think it is coming in as strongly now in terms of the environmental hazards for non-smokers as it did for the health hazards to smokers themselves. It is a matter of time until we get that firmly enough and experienced in the data firmly enough so that people such as you in your profession can validate that conclusion. I respect the fact that you cannot validate the conclusion. That is what I take your statement to be, that the conclusion cannot be validated in your judgment on the basis of the studies that have been presented to us so far, notwithstanding the fact that those who did the studies reached the opposite conclusion.

Mr. Schwartz. That is different. I don't think people who did the studies did reach the opposite conclusion, to be frank. I think there are studies which have been used to demonstrate causal inference, for example of cancer, where the authors did not necessarily reach the conclusion. But I think that is another discussion for another time.

Senator Stevens. All right. I look forward to it. Thank you very much. Thank you, Mr. Lewis. Dr. Witorsch, your statement will be printed in full in the record. I have looked at it. Thank you very much.

(The statement of Philip Witorsch, M.D. follows:)