

PUBLIC HEARING

before

ASSEMBLY JUDICIARY COMMITTEE

on

ASSEMBLY BILLS 546, 547, 548, 639, 640, 864

SMOKING LEGISLATION

Held:

September 25, 1984

Assembly Chamber

State House

Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Martin A. Herman, Chairman  
Assemblyman Eugene H. Thompson  
Assemblyman Walter M. D. Kern, Jr.  
Assemblyman Thomas J. Shusted

New Jersey State Library

ALSO PRESENT:

Steven V. McGettigan, Research Assistant  
Office of Legislative Services  
Aide, Assembly Judiciary Committee

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**ASSEMBLY, No. 546**  
**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen HERMAN and PELLY

AN ACT controlling smoking in places of employment and supplementing Title 26 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. The Legislature finds and declares that the resolution of the  
2 conflict between the right of the smoker to smoke and the right  
3 of the nonsmoker to breathe clear air involves a determination  
4 of when and where, rather than whether, a smoker may legally  
5 smoke. It is not the public policy of this State to deny anyone the  
6 right to smoke. However, the Legislature finds that in those places  
7 of employment affected by this act the right of the nonsmoker to  
8 breathe clean air should supersede the right of the smoker to smoke.  
9 In addition to the deleterious effects upon smokers, tobacco smoke  
10 is (1) at least an annoyance and a nuisance to a substantial per-  
11 centage of the nonsmoking public, and (2) a substantial health  
12 hazard to a smaller segment of the nonsmoking public. The purpose  
13 of this act, therefore, is to control smoking in places of employment,  
14 except in designated areas.

1 2. As used in this act:

2 a. "Employer" means the proprietor, regardless of whether he  
3 is the owner or lessee of the place of employment, or his authorized  
4 agent, who ultimately controls, governs or directs the activities and  
5 conduct in the place of employment. The term "employer" means a  
6 corporation as well as an individual.

7 b. "Place of employment" means structurally enclosed location  
8 or portion thereof which is not usually frequented by the public

9 at which more than 50 or more individuals perform any type of  
10 service or labor for consideration of payment under any type of  
11 employment relationship with or for a private corporation, partner-  
12 ship or individual.

13 c. "Smoking" means the burning of a lighted cigar, cigarette, pipe  
14 or any other matter or substance which contains tobacco.

1 3. Every employer shall establish written rules governing  
2 smoking in that portion of a building for which he is responsible.  
3 The rules shall contain a written policy and procedure to protect  
4 the health, welfare and comfort of employees from the detrimental  
5 effects of tobacco smoke, which policy shall include designated  
6 nonsmoking areas but may include designated smoking areas, unless  
7 otherwise prohibited by municipal ordinance under authority of  
8 R. S. 40:48-1 and R. S. 40:48-2 or other statute or regulation  
9 adopted pursuant to law for purposes of protecting life and prop-  
10 erty from fire. Nothing in this act shall prevent any rule, policy or  
11 procedure concerning smoking, which is not contrary to the pro-  
12 visions of this act, from being established by the employer or  
13 negotiated as a term or condition of any agreement or contract of  
14 employment. Employees shall be provided with a copy of the  
15 written rules upon request.

1 4. a. The State or any agency or political subdivision thereof  
2 may suggest guidelines for rules governing smoking in places of  
3 employment which may be adopted by employers, but in no case  
4 shall they be mandatory.

5 b. The provisions of this act shall supersede any other statute,  
6 municipal ordinance, and rule or regulation adopted pursuant to  
7 law concerning smoking in places of employment except where  
8 smoking is prohibited by municipal ordinance under authority of  
9 R. S. 40:48-1 and R. S. 40:48-2 or other statute or regulation  
10 adopted pursuant to law for purposes of protecting life and prop-  
11 erty from fire.

1 5. Every area in a place of employment where smoking is pro-  
2 hibited or specifically permitted shall be so designated by the  
3 employer with a sign containing lettering not less than one inch  
4 in height and stating either "Smoking Permitted" or "Smoking  
5 Prohibited" or the appropriate "Smoking Permitted" or "Smoking  
6 Prohibited" international symbol. The sign may indicate that  
7 violators are subject to a fine. Every sign shall be located so as to  
8 be clearly visible to employees and shall contain letters or a symbol  
9 which contrast in color with the sign.

1 6. a. The employer or any agent thereof or a police officer or  
2 other public servant engaged in executing or enforcing this act

3 may order any person smoking in violation of this act to comply  
4 with the provisions of this act. Thereupon any such person who  
5 smokes in a place of employment in violation of this act is subject  
6 to a fine not to exceed \$100.00.

7 b. The State Department of Health or the local board of health  
8 or such board, body or officers exercising the functions of the local  
9 board of health according to law, having reason to suspect that  
10 any place of employment is or may be in violation of the provisions  
11 of this act shall, by written notification, advise the employer thereof  
12 accordingly and order appropriate action to be taken. Thereupon,  
13 any employer or person receiving such notice who knowingly fails  
14 or refuses to comply with the order is subject to a fine not to exceed  
15 \$25.00 for the first offense and not to exceed \$100.00 for the second  
16 offense and not to exceed \$200.00 for each offense thereafter. In  
17 addition to the penalty provided herein, the court may order im-  
18 mediate compliance with the provisions of this act.

19 c. Any penalty recovered under the provisions of this act shall be  
20 recovered by and in the name of the Commissioner of Health of  
21 the State of New Jersey or by and in the name of the local board  
22 of health. When the plaintiff is the Commissioner of Health, the  
23 penalty recovered shall be paid by the commissioner into the  
24 treasury of the State. When the plaintiff is a local board of health,  
25 the penalty recovered shall be paid by the local board into the  
26 treasury of the municipality where the violation occurred.

27 d. Every municipal court shall have jurisdiction over proceed-  
28 ings to enforce and collect any penalty imposed because of a viola-  
29 tion of any provision of this act, if the violation has occurred within  
30 the territorial jurisdiction of the court. The proceedings shall be  
31 summary and in accordance with "the penalty enforcement law"  
32 (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of a  
33 summons or warrant and shall issue only at the suit of the Com-  
34 missioner of Health of the State of New Jersey, or the local board  
35 of health, as the case may be, as plaintiff.

1 7. No employer or any agent thereof shall be subject to any action  
2 in any court by any party other than by the Commissioner of Health  
3 of the State of New Jersey or the local board of health for failure  
4 to meet the provisions of this act.

1 8. The Judiciary, Law, Public Safety and Defense Committee of  
2 the General Assembly, and the Law, Public Safety and Defense  
3 Committee of the Senate, or their respective successors, are con-  
4 stituted a joint committee for the purposes of monitoring the effec-  
5 tiveness of the implementation of this act. The Commissioner of  
6 Health of the State of New Jersey shall, one year from the effective

7 date of this act, report to the joint committee, an evaluation of the  
8 effectiveness of this act and the committee shall, upon receiving  
9 such report, issue as it may deem necessary and proper, recom-  
10 mendations for administrative or legislative changes affecting the  
11 implementation of this act.

1 9. This act shall take effect on the 180th day after enactment.

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#### STATEMENT

The purpose of this bill, as well as its companion bills is to protect and preserve in a reasonable manner the health and comfort of the people in this State by establishing areas that are free from the toxic and annoying effects of tobacco smoke. As a result of hearings held on smoking, it is clear that there is overwhelming scientific evidence that tobacco smoke is detrimental to nonsmokers' health, welfare, and comfort, especially to those who have allergies or cardiovascular or respiratory diseases. The regulation of smoking in certain confined places, i.e., determining when and where, rather than whether, a smoker may legally smoke is, therefore, necessary for the public health. This bill is even more important in our industrial State where tobacco smoke acts to exacerbate the effects of our existing air quality.

Specifically, this bill requires employers to balance the health and comfort of nonsmoker employees with the right of employees who desire to smoke by establishing respective areas for each. Several employers have adopted this policy and either prohibit smoking in their facilities or control it by limiting smoking to certain areas. The provisions of the bill do not mandate private businesses to adopt a particular policy, but only set broad parameters. This bill would permit further restrictions not contrary to the bill to be adopted by the employer or to be negotiated as a term or condition of employment.

A person smoking in violation of this act would be subject to a fine not to exceed \$100.00. Failure to establish nonsmoking areas and to post such areas after being notified of noncompliance by the Department of Health or local board of health may result in a fine not to exceed \$25.00 for the first offense, not to exceed \$100.00 for the second, and not to exceed \$200.00 for each additional offense.

Fines shall be collected by the Department of Health or local board of health. No suit may be brought to enforce this act except by the Department of Health or local boards of health. The Commissioner of Health shall report back to a joint committee of the General Assembly Judiciary, Law, Public Safety and Defense Committee and the Senate Law, Public Safety and Defense Committee in 2 years as to the effectiveness of this act.

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**ASSEMBLY, No. 547**  
**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen HERMAN, GILL, MILLER, FLYNN, WEIDEL,  
PATERNITI, Assemblywoman PERUN, Assemblymen HAY-  
TAIAN, DORIA, ALBOHN and DEVERIN

AN ACT controlling smoking in certain restaurants and supple-  
menting Title 26 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. The Legislature finds and declares that the resolution of the  
2 conflict between the right of the smoker to smoke and the right of  
3 the nonsmoker to breathe clear air involves a determination of  
4 when and where, rather than whether, a smoker may legally smoke.  
5 It is not the public policy of this State to deny anyone the right to  
6 smoke. However, the Legislature finds that in those restaurants  
7 affected by this act the right of the nonsmoker to breathe clean  
8 air should supersede the right of the smoker to smoke. In addition  
9 to the deleterious effects upon smokers, tobacco smoke is (1) at  
10 least an annoyance and a nuisance to a substantial percentage of  
11 the nonsmoking public, and (2) a substantial health hazard to a  
12 smaller segment of the nonsmoking public. The purpose of this  
13 act, therefore, is to control smoking in certain restaurants.

1 2. As used in this act:

2 a. "Bar" means an establishment or portion of a restaurant,  
3 including any contiguous lounge or common area in which the  
4 principal business is the sale of alcoholic beverages for consump-  
5 tion on the premises of such establishment or in such portion of  
6 a restaurant.

7 b. "Restaurant" means an establishment in which the principal  
8 business is the sale of food for consumption on the premises.

9 c. "Smoking" means the burning of a lighted cigar, cigarette,  
10 pipe or any other matter or substance which contains tobacco.

1 3. a. The provisions of this act shall apply to any restaurant  
2 that has chosen to maintain a nonsmoking area. Every restaurant  
3 with a seating capacity of 50 or more shall, on or before the effective  
4 date of this act, notify the State Department of Health as to  
5 its decision. Thereafter, any restaurant that does not maintain a  
6 nonsmoking area as provided by this act shall post a sign clearly  
7 visible to the public at every public entrance to the restaurant in  
8 letters not less than one inch in height, contrasting in color, with  
9 the sign stating "This restaurant does not maintain a nonsmoking  
10 section." Any restaurant that maintains a nonsmoking section  
11 shall in the same manner post a sign stating that "This restaurant  
12 maintains a nonsmoking section." This requirement shall not apply  
13 to any portion of a restaurant or bar while it is being used for a  
14 privately sponsored social affair, which is outdoors or which is  
15 equipped with electronic air cleaners or air recirculating systems  
16 approved by the State Department of Health as adequate in  
17 removing smoke or cleaning the air of smoke pollutants pursuant  
18 to standards which the department shall adopt.

19 b. The size and location of the nonsmoking area shall be determined  
20 by the owner or manager or person in charge in accordance  
21 with patron needs.

1 4. a. The State or any agency or political subdivision thereof  
2 may suggest guidelines for establishing nonsmoking areas in  
3 restaurants which may be adopted by the owner, manager or person  
4 in charge but in no case shall they be mandatory.

5 b. The provisions of this act shall supersede any other statute,  
6 municipal ordinance, and rule or regulation adopted pursuant to  
7 law concerning smoking in restaurants except where smoking is  
8 prohibited by municipal ordinance under authority of R. S. 40:48-1  
9 and 40:48-2 or by any other statute or regulation adopted pursuant  
10 to law for purposes of protecting life and property from fire.

1 5. a. Any municipal or county health official or other public  
2 servant engaged in executing or enforcing this act shall order any  
3 person smoking in violation of this act to comply with the provisions  
4 of this act. Thereupon any such person who smokes in a restaurant  
5 in violation of this act is subject to a fine not to exceed \$25.00. The  
6 owner, manager or person in charge of the restaurant or any agent  
7 thereof shall only be responsible for providing signs governing  
8 smoking pursuant to section 3 of this act and shall not be responsible  
9 for the enforcement of the provisions of this act.

10 b. The State Department of Health or the local board of health  
11 or such board, body or officers exercising the functions of the local  
12 board of health according to law, upon written complaint and having  
13 reason to suspect that any restaurant is or may be in violation of  
14 the provisions of this act shall, by written notification, advise the  
15 owner, manager or person in charge of the restaurant accordingly  
16 an order appropriate action to be taken. Thereupon any person  
17 receiving such notice who knowingly fails or refuses to comply with  
18 the order is subject to a fine not to exceed \$25.00.

19 c. Any penalty recovered under the provisions of this act shall  
20 be recovered by and in the name of the Commissioner of Health  
21 of the State of New Jersey or by and in the name of the local board  
22 of health. When the plaintiff is the Commissioner of Health, the  
23 penalty recovered shall be paid by the commissioner into the trea-  
24 sury of the State. When the plaintiff is a local board of health,  
25 the penalty recovered shall be paid by the local board into the  
26 treasury of the municipality where the violation occurred.

27 d. Every municipal court shall have jurisdiction over proceed-  
28 ings to enforce and collect any penalty imposed because of a vio-  
29 lation of any provision of this act, if the violation has occurred  
30 within the territorial jurisdiction of the court. The proceedings  
31 shall be summary and in accordance with "the penalty enforcement  
32 law" (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of  
33 a summons or warrant and shall issue only at the suit of the Com-  
34 missioner of Health of the State of New Jersey, or the local board  
35 of health, as the case may be, as plaintiff.

1 6. No owner, manager or person in charge of the restaurant or  
2 any agent thereof who has provided signs governing smoking pur-  
3 suant to section 3 of this act shall be subject to any action in any  
4 court by any party either under this act or at common law, provided  
5 that the Commissioner of Health of the State of New Jersey or the  
6 local board of health may bring an action against the owner, man-  
7 ager or person in charge of the restaurant or any agent thereof for  
8 failure to meet the provisions of this act.

1 7. The Judiciary, Law, Public Safety and Defense Committee  
2 of the General Assembly, and the Law, Public Safety and Defense  
3 Committee of the Senate, or their respective successors, are con-  
4 stituted a joint committee for the purposes of monitoring and  
5 evaluating the effectiveness of the implementation of this act.  
6 The Commissioner of Health of the State of New Jersey shall, one  
7 year from the effective date of this act, report to the joint committee,  
8 an evaluation of the effectiveness of this act and the committee

9 shall, upon receiving such report, issue as it may deem necessary  
10 and proper, recommendation for administrative or legislative  
11 changes affecting the implementation of this act.

1 8. This act shall take effect on the 180th day after enactment.

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#### STATEMENT

This bill requires that restaurants seating 50 or more persons choose whether to maintain a nonsmoking area. Restaurants which would choose to maintain a nonsmoking area would be required to notify the State Department of Health as to their choice. This choice would have to be communicated on or before the effective date of this act, and restaurants which would choose to maintain a nonsmoking area would have to post signs as specified in section 3 which would state "This restaurant maintains a nonsmoking section." Conversely, restaurants which would not choose to maintain a nonsmoking section would be required to post a sign as specified in section 3 which would state "This restaurant does not maintain a nonsmoking section." This requirement would not apply to any portion of a restaurant or bar while it is being used for a privately sponsored social affair, which is outdoors or which is equipped with electronic air cleaners or air recirculating systems approved by the Department of Health as adequate in removing smoke or cleaning the air of smoke pollutants pursuant to standards which the department would adopt.

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**ASSEMBLY, No. 548**  
**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen HERMAN, PELLY, GILL, MILLER, SCHWARTZ,  
FLYNN, WEIDEL, PATERNITI, Assemblywoman PERUN,  
Assemblymen HAYTAIAN, DORIA, ALBOHN and DEVERIN

**AN ACT** controlling smoking in government buildings and supplementing Title 26 of the Revised Statutes.

1    *BE IT ENACTED by the Senate and General Assembly of the State*  
2    *of New Jersey:*

1    1. The Legislature finds and declares that the resolution of the  
2    conflict between the right of the smoker to smoke and the right of  
3    the nonsmoker to breathe clean air involves a determination of  
4    when and where, rather than whether, a smoker may legally smoke.  
5    It is not the public policy of this State to deny anyone the right to  
6    smoke. However, the Legislature finds that in those government  
7    buildings affected by this act the right of the nonsmoker to breathe  
8    clean air should supersede the right of the smoker to smoke. In  
9    addition to the deleterious effects upon smokers, tobacco smoke  
10   is (1) at least an annoyance and a nuisance to a substantial per-  
11   centage of the nonsmoking public, and (2) a substantial health  
12   hazard to a smaller segment of the nonsmoking public. The pur-  
13   pose of this act, therefore, is to protect the interest of nonsmokers  
14   in government buildings and allow smokers the right to smoke in  
15   designated areas in government buildings.

1    2. As used in this act:

2    a. "Government building" means a building or portion of a  
3    building owned or leased by a government entity, exclusive of  
4    school, college, university and professional training buildings and  
5    health care facilities. Facilities owned or leased by a government

6 entity and used for the holding of sports events, such as football,  
7 baseball, basketball and horse racing, or providing ambulatory  
8 recreation, such as ice and roller skating are excluded from this  
9 definition.

10 b. "Smoking" means the burning of a lighted cigar, cigarette,  
11 pipe or any other matter or substance which contains tobacco.

12 c. "Supervisor" means the person who ultimately controls,  
13 governs or directs the activities and conduct of employees.

1 3. a. (1) Except for areas occupied by the Legislature, its com-  
2 mittees and personnel, the supervisor of each unit of government  
3 located in a government building shall establish written rules  
4 governing smoking in the building or that portion of the building  
5 for which he is responsible, except where smoking is prohibited  
6 by municipal ordinance under authority of R. S. 40:48-1 and R. S.  
7 40:48-2 or any other statute or regulation adopted pursuant to  
8 law for purposes of protecting life and property from fire or in  
9 subsection b. of this section. The rules shall contain a written  
10 policy and procedure to protect the health, welfare and comfort of  
11 employees from the detrimental effects of tobacco smoke which  
12 policy shall include designated nonsmoking areas but may include  
13 designated smoking areas. Nothing in this act shall prevent any  
14 rule, regulation or procedure, which is not contrary to the pro-  
15 visions of this act, from being established by an employer or  
16 negotiated as a term or condition of any agreement or contract of  
17 employment. Employees shall be provided with a copy of the  
18 written rules upon request.

19 (2) The Senate and General Assembly separately shall adopt  
20 rules governing smoking in their respective chambers, committee  
21 rooms and other areas occupied by their personnel, and shall adopt  
22 joint rules governing smoking in those areas occupied by the  
23 committees and personnel of both Houses.

24 b. Smoking is prohibited in the following government buildings:

25 (1) A room, chamber, place of meeting or public assembly while  
26 a public meeting held under the auspices of a governmental entity  
27 and to which the public is invited, solicited or legally entitled to  
28 attend is in progress.

29 (2) Those areas open to the general public including, but not  
30 limited to: tax offices, vital records offices, motor vehicles offices  
31 and unemployment insurance offices.

32 (3) Libraries, indoor theatres, museums, lecture or concert halls,  
33 gymnasiums, or other similar facilities open to the public, except  
34 that smoking may be permitted therein on special occasions by

35 persons seated at tables provided for the purpose of consuming  
36 food or beverages served or provided on the premises, in areas  
37 adjacent to these facilities within the same building where the  
38 words "Smoking Permitted" are posted, and in such areas when  
39 in use for private functions or under specified private lease.

40 c. In restaurants in government buildings with an occupied  
41 capacity of 50 or more persons a nonsmoking area shall be desig-  
42 nated and posted prohibiting smoking therein. The size and loca-  
43 tion of the nonsmoking area shall be determined by the person in  
44 charge in accordance with patron needs, provided the entire estab-  
45 lishment is not designated "Smoking Permitted." Where feasible  
46 the section designated "Smoking Permitted" shall be one contigu-  
47 ous area.

1 4. The provisions of this act shall supersede any other statute,  
2 municipal ordinance, and rule or regulation adopted pursuant to  
3 law concerning smoking in public places except where smoking is  
4 prohibited by any statute or regulation adopted pursuant to statute  
5 or ordinance under authority of R. S. 40:48-1 and 40:48-2 or any  
6 other statute or regulation adopted pursuant to law for purposes  
7 of protecting life and property from fire.

1 5. All places affected by this act shall be identified by the signs  
2 posted by the supervisors thereof with letters at least one inch in  
3 height stating "Smoking Permitted" or "Smoking Prohibited" or  
4 designated by the appropriate "Smoking Permitted" or "Smoking  
5 Prohibited" international symbol. The letters or symbol shall con-  
6 trast in color with the sign. The sign may also indicate that vio-  
7 lators are subject to a fine. Every sign required by this section  
8 shall be located so as to be clearly visible to the public and em-  
9 ployees.

1 6. a. Any municipal or county health official or other public  
2 servant engaged in executing or enforcing this act shall order any  
3 person smoking in violation of this act to comply with the pro-  
4 visions of this act. Thereupon any such person who smokes in a  
5 government building in violation of this act is subject to a fine not  
6 to exceed \$25.00. The supervisor or any agent thereof shall only  
7 be responsible for establishing rules governing smoking pursuant  
8 to section 3 of this act and shall in no event be responsible for the  
9 enforcement of such rules.

10 b. The State Department of Health or the local board of health  
11 or such board, body or officers exercising the functions of the local  
12 board of health according to law, having reason to suspect that any  
13 government building is or may be in violation of the provisions of

14 this act shall by written notification, advise the supervisor thereof  
15 accordingly and other appropriate action to be taken. Thereupon,  
16 any person receiving such notice who knowingly fails or refuses  
17 to comply with the order is subject to a fine not to exceed \$25.00.

18 c. Any penalty recovered under the provisions of this act shall  
19 be recovered by and in the name of the Commissioner of Health  
20 of the State of New Jersey or by and in the name of the local board  
21 of health. When the plaintiff is the Commissioner of Health, the  
22 penalty recovered shall be paid by the commissioner into the  
23 treasury of the State. When the plaintiff is a local board of health,  
24 the penalty recovered shall be paid by the local board into the  
25 treasury of the municipality where the violation occurred.

26 d. Every municipal court shall have jurisdiction over proceedings  
27 to enforce and collect any penalty imposed because of a violation  
28 of any provision of this act, if the violation has occurred within  
29 the territorial jurisdiction of the court. The proceedings shall be  
30 summary and in accordance with "the penalty enforcement law"  
31 (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of a  
32 summons or warrant and shall issue only at the suit of the Com-  
33 missioner of Health of the State of New Jersey, or the local board  
34 of health, as the case may be, as plaintiff.

1 7. No supervisor or any agent thereof *who has established rules*  
2 *governing smoking pursuant to section 3 of this act* shall be subject  
3 to any action in any court by any party *either under this act or at*  
4 *common law, provided that* the Commissioner of Health of the  
5 State of New Jersey or the local board of health *may bring an*  
6 *action against the supervisor or any agent thereof* for failure to  
7 meet the provisions of this act.

1 8. The Judiciary, Law, Public Safety and Defense Committee  
2 of the General Assembly and the Law, Public Safety and Defense  
3 Committee of the Senate, or their respective successors, are con-  
4 stituted a joint committee for the purposes of monitoring and  
5 evaluating the effectiveness of the implementation of this act. The  
6 Commissioner of Health of the State of New Jersey shall, *one*  
7 *year* from the effective date of this act, report to the joint com-  
8 mittee, an evaluation of the effectiveness of this act and the com-  
9 mittee shall, upon receiving such report, issue as it may deem  
10 necessary and proper, recommendations for administrative or  
11 legislative changes affecting the implementation of this act.

1 9. This act shall take effect on the one hundred eightieth day  
2 after enactment.

## STATEMENT

This bill controls smoking in government buildings. Government employees who are nonsmokers should be accorded protection from the annoyance and health hazard of tobacco smoke. It is left to their supervisors to balance the rights of smokers with the rights of nonsmokers to breathe clean air. Exempted from this bill are certain government owned or leased facilities used for sporting events or providing ambulatory recreation. Smoking is totally prohibited in those areas of government buildings open to the public and which the public must enter or is invited, solicited or legally entitled to enter.

The bill provides that county and municipal health officials would be required to order a person not complying with the law to stop smoking and comply with the provisions of the law.

Additionally, it provides that a person smoking in violation of this act would be subject to a fine not to exceed \$25.00. Failure to establish nonsmoking areas when required and to post such areas after being notified of noncompliance by the Department of Health or local board of health would possibly result in a fine not to exceed \$25.00.

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**ASSEMBLY, No. 639**

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**STATE OF NEW JERSEY**

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PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblyman HERMAN

AN Act prohibiting smoking in enclosed retail food and marketing stores and supplementing Title 26 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. The Legislature finds and declares that the resolution of the  
2 conflict between the right of the smoker to smoke and the right  
3 of the nonsmoker to breathe clear air involves a determination of  
4 when and where, rather than whether, a smoker may legally smoke.  
5 It is not the public policy of this State to deny anyone the right to  
6 smoke. However, the Legislature finds that in those enclosed areas  
7 affected by this act the right of the nonsmoker to breathe clean  
8 air should supersede the right of the smoker to smoke. In addition  
9 to the deleterious effects upon smokers, tobacco smoke is (1) at  
10 lease an annoyance and a nuisance to a substantial percentage of  
11 the nonsmoking public, and (2) a substantial health hazard to a  
12 smaller segment of the nonsmoking public. The purpose of this  
13 act, therefore, is to prohibit smoking in enclosed retail food and  
14 marketing stores.

1 2. As used in this act:

2 a. "Enclosed retail food and marketing stores" means any  
3 establishment where food is sold primarily for off-premises con-  
4 sumption and in which the selling area open to the public exceeds  
5 2,500 square feet.

6 b. "Smoking" means the burning of a lighted cigar, cigarette,  
7 pipe or any other matter or substance which contains tobacco.

1 3. All enclosed retail food and marketing stores shall be areas  
2 where smoking is prohibited and shall be so designated by the

3 owner, manager, proprietor or other person who has control of the  
4 store with a sign containing lettering not less than one inch in  
5 height stating "Smoking Prohibited" or designated by the "Smoking  
6 Prohibited" international symbol. The letters or symbol shall  
7 contrast in color with the sign. The sign may also indicate that  
8 violators are subject to a fine. Every sign required by this section  
9 shall be located so as to be clearly visible to the public.

1 4. a. Any municipal or county health official or other public  
2 servant engaged in executing or enforcing this act shall order any  
3 person smoking in violation of this act to comply with the pro-  
4 visions of this act. Thereupon any such person who smokes in  
5 an enclosed retail food and marketing store in violation of this act  
6 after the provisions of section 3 of this act are complied with is  
7 subject to a fine not to exceed \$25.00. The owner, manager, pro-  
8 prietor, or any other person having control of the indoor place or  
9 any agent thereof, shall only be responsible for providing signs  
10 governing smoking pursuant to section 3 of this act and shall in  
11 no event be responsible for the enforcement of the provisions of  
12 this act.

13 b. The Department of Health or the local board of health or such  
14 board, body or officers exercising the functions of the local board  
15 of health according to law, upon written complaint and having  
16 reason to suspect that any indoor public place is or may be in  
17 violation of the provisions of this act shall, by written notification,  
18 advise the owner, manager, proprietor or other person having  
19 control of the enclosed retail food or marketing store place accord-  
20 ingly and order appropriate action to be taken. Thereupon any  
21 person receiving such notice who knowingly fails or refuses to  
22 comply with the order is subject to a fine not to exceed \$25.00.

23 c. Any penalty recovered under the provisions of this act shall  
24 be recovered by and in the name of the State Commissioner of  
25 Health of the State of New Jersey or by and in the name of the  
26 local board of health. When the plaintiff is the Commissioner of  
27 Health the penalty recovered shall be paid by the commissioner  
28 into the treasury of the State. When the plaintiff is a local board  
29 of health, the penalty recovered shall be paid by the local board  
30 into the treasury of the municipality where the violation occurred.

31 d. Every municipal court shall have jurisdiction over proceedings  
32 to enforce and collect any penalty imposed because of a violation  
33 of any provision of this act, if the violation has occurred within  
34 the territorial jurisdiction of the court. The proceedings shall be  
35 summary and in accordance with "the penalty enforcement law"  
36 (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of a

37 summons or warrant and shall issue only at the suit of the State  
38 Commissioner of Health, or the local board of health, as the case  
39 may be, as plaintiff.

1 5. No owner, manager, proprietor or other person having control  
2 of the enclosed retail food or marketing store or any agent thereof  
3 shall be subject to any action in any court by any party either  
4 under this act or at common law, provided that the Commissioner  
5 of Health of the State of New Jersey or the local board of health  
6 may bring an action against the owner, manager, proprietor or  
7 other person having control of the enclosed retail food or marketing  
8 store or any agent thereof for failure to meet the provisions of  
9 this act.

1 6. The Judiciary, Law, Public Safety and Defense Committee  
2 of the General Assembly, and the Law, Public Safety and Defense  
3 Committee of the Senate, or their respective successors, are con-  
4 stituted a joint committee for the purposes of monitoring and  
5 evaluating the effectiveness of the implementation of this act.  
6 The Commissioner of Health shall, one year from the effective date  
7 of this act, report to the joint committee an evaluation of the  
8 effectiveness of this act and the committee shall, upon receiving  
9 such report, issue as it may deem necessary and proper, recom-  
10 mendations for administrative or legislative changes affecting the  
11 implementation of this act.

1 7. This act shall take effect on the one hundredth and eightieth  
2 day after enactment.

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#### STATEMENT

The purpose of this bill, as well as its companion bills, is to protect and preserve in a reasonable manner the health and comfort of the people of this State by establishing areas that are free from the toxic and annoying effects of tobacco smoke. This bill is intended to establish a social policy without providing complex or onerous administrative or enforcement procedures.

Scientific testimony offered at hearings held on these bills in 1980 clearly demonstrates that tobacco smoke is detrimental to nonsmokers' health, welfare, and comfort, especially to those who have allergies or cardiovascular or respiratory diseases. The regulation of smoking in certain confined places, i.e., determining when and where, rather than whether, a smoker may legally smoke is, therefore, necessary for the public health. This bill is even more important in our industrial State where tobacco smoke acts to exacerbate the effects of our existing air quality.

This bill completely prohibits smoking in enclosed retail food and marketing stores in which the selling area exceeds 2,500 square feet.

Specifically, this bill requires that persons in control of enclosed retail food and marketing stores establish these stores as non-smoking areas and post signs to so indicate.

This bill also provides that county and municipal health officials would be required to order a person not complying with the law to stop smoking and comply with the provisions of the law.

Additionally, a person smoking in violation of this act would be subject to a fine not to exceed \$25.00. Failure to establish non-smoking areas as required and to post such areas after being notified of noncompliance by the Department of Health or local board of health would possibly result in a fine not to exceed \$25.00.

The Department of Health or local board of health would collect the fines resulting from any violations. No suit could be brought to enforce this act except by the Department of Health or local boards of health. Finally, this bill contains a section requiring that the Commissioner of Health report to the Senate Law, Public Safety and Defense Committee and the Assembly Judiciary, Law, Public Safety and Defense Committee after one year on the effectiveness of this legislation.

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ASSEMBLY, No. 640

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblyman HERMAN

AN ACT controlling smoking in certain indoor public places and supplementing Title 26 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. The Legislature finds and declares that the resolution of the  
2 conflict between the right of the smoker to smoke and the right of  
3 the nonsmoker to breathe clean air involves a determination of when  
4 and where, rather than whether a smoker may legally smoke. It is  
5 not the public policy of this State to deny anyone the right to smoke.  
6 However, the Legislature finds that in those enclosed areas affected  
7 by this act the right of the nonsmoker to breathe clean air should  
8 supersede the right of the smoker to smoke. In addition to the  
9 deleterious effects upon smokers, tobacco smoke is (1) at least an  
10 annoyance and a nuisance to a substantial percentage of the non-  
11 smoking public, and (2) a substantial health hazard to a smaller  
12 segment of the nonsmoking public. The purpose of this act, there-  
13 fore, is to control smoking in certain indoor public places.

1 2. As used in this act:

2 a. "Indoor public place" means a structurally enclosed area  
3 generally accessible to the public in department stores, retail  
4 stores, banks and savings and loan establishments, theatres, gym-  
5 nasiums, libraries, museums, concert halls, auditoriums, or other  
6 similar facilities which are neither owned or leased by a govern-  
7 mental entity or qualify as a health care facility or the waiting room  
8 of a person licensed to practice the healing arts. Race track facili-  
9 ties, casinos licensed under the "Casino Control Act," P. L. 1977,

10 c. 110 (C. 5:12-1 et seq.), facilities used for the holding of boxing  
11 and wrestling exhibitions or performances, football, baseball, and  
12 other sporting event facilities, bowling alleys, dance halls, ice and  
13 roller skating rinks and other establishments providing ambulatory  
14 recreation are excluded from this definition.

15 b. "Smoking" means the burning of a lighted cigar, cigarette,  
16 pipe or any other matter or substance which contains tobacco.

1 3. a. The owner, manager, proprietor, or other person who has  
2 control of an indoor public place, other than a department store,  
3 retail store, nonenclosed retail area within the public portion of a  
4 shopping center or mall, bank or savings and loan establishment  
5 shall, and the owner, manager, proprietor, or other person who  
6 has control of a department store, retail store, nonenclosed retail  
7 area within the public portion of a shopping center or mall, bank  
8 or savings and loan establishment may, establish nonsmoking areas  
9 in those places for which he is responsible. In establishing non-  
10 smoking areas, the owner, manager, proprietor, or other person in  
11 charge shall provide areas for nonsmokers to enter, pass through  
12 or use to conduct business or participate in activities free from  
13 the annoyance and health hazard of smoke.

14 b. Smoking is prohibited in pharmacies, drug stores, or areas  
15 registered with the board of pharmacy of the State of New Jersey  
16 and to which permits have been issued for the dispensing of pre-  
17 scription drugs, and in any areas where optical supplies, medical  
18 supplies, dental supplies and hearing aids are sold at retail.

19 c. Smoking areas for employees may be permitted in any indoor  
20 public place covered under this act as long as they are separate  
21 areas and not generally accessible to the public except where smok-  
22 ing is prohibited by municipal ordinance under authority of R. S.  
23 40:48-1 and R. S. 40:48-2 for the purposes of protecting life and  
24 property from fire.

1 4. a. The State or any agency or political subdivision thereof  
2 may suggest guidelines for establishing nonsmoking areas in indoor  
3 public places which may be followed by the owner, manager, pro-  
4 prietor or other person in charge of an indoor public place but in  
5 no case shall the guidelines be mandatory.

6 b. The provisions of this act shall supersede any other statute,  
7 municipal ordinance, and rule or regulation adopted pursuant to  
8 law concerning smoking in indoor public places except where smok-  
9 ing is prohibited by municipal ordinance under authority of R. S.  
10 40:48-1 and R. S. 40:48-2 for purposes of protecting life and prop-  
11 erty from fire.

1 5. Every area in an indoor public place where smoking is pro-  
2 hibited or specifically permitted shall be so designated by the owner,  
3 manager, proprietor or other person who has control of the indoor  
4 public place with a sign containing lettering not less than one inch  
5 in height stating "Smoking Permitted" or "Smoking Prohibited"  
6 or designated by the appropriate "Smoking Permitted" or "Smok-  
7 ing Prohibited" international symbol. The letters or symbol shall  
8 contrast in color with the sign. The sign may also indicate that  
9 violators are subject to a fine. Every sign required by this sub-  
10 section shall be located so as to be clearly visible to the public.

1 6. a. Any municipal or county health official or other public  
2 servant engaged in executing or enforcing this act shall order any  
3 person smoking in violation of this act to comply with the provi-  
4 sions of this act. Thereupon any such person who smokes in an  
5 indoor public place in violation of this act after the provisions of  
6 section 5 are complied with is subject to a fine not to exceed \$25.00.  
7 The owner, manager, proprietor, or any other person having con-  
8 trol of the indoor place or any agent thereof, shall only be responsi-  
9 ble for providing signs governing smoking pursuant to section 5  
10 of this act and shall in no event be responsible for the enforcement  
11 of the provisions of this act.

12 b. The Department of Health or the local board of health or such  
13 board, body or officers exercising the functions of the local board of  
14 health according to law, upon written complaint and having reasons  
15 to suspect that any indoor public place is or may be in violation of  
16 the provisions of this act shall, by written notification, advise the  
17 owner, manager, proprietor or other person having control of the  
18 indoor public place accordingly and order appropriate action to be  
19 taken. Thereupon any person receiving such notice who knowingly  
20 fails or refuses to comply with the order is subject to a fine not to  
21 exceed \$25.00.

22 c. Any penalty recovered under the provisions of this act shall  
23 be recovered by and in the name of the State Commissioner of  
24 Health of the State of New Jersey or by and in the name of the  
25 local board of health. When the plaintiff is the Commissioner of  
26 Health the penalty recovered shall be paid by the commissioner into  
27 the treasury of the State. When the plaintiff is a local board of  
28 health, the penalty recovered shall be paid by the local board into  
29 the treasury of the municipality where the violation occurred.

30 d. Every municipal court shall have jurisdiction over proceed-  
31 ings to enforce and collect any penalty imposed because of a viola-  
32 tion of any provision of this act, if the violation has occurred

33 within the territorial jurisdiction of the court. The proceedings  
34 shall be summary and in accordance with "the penalty enforcement  
35 law" (N. J. S. 2A :58-1 et seq.). Process shall be in the nature of a  
36 summons or warrant and shall issue only at the suit of the State  
37 Commissioner of Health of the State of New Jersey, or the local  
38 board of health, as the case may be, as plaintiff.

1 7. No owner, manager, proprietor or other person having control  
2 of the indoor public place or any agent thereof shall be subject to  
3 any action in any court by any party either under this act or at  
4 common law, provided that the Commissioner of Health of the  
5 State of New Jersey or the local board of health may bring an  
6 action against the owner, manager, proprietor or other person  
7 having control of the indoor public place or any agent thereof for  
8 failure to meet the provisions of this act.

1 8. The Judiciary, Law, Public Safety and Defense Committee of  
2 the General Assembly, and the Law, Public Safety and Defense  
3 Committee of the Senate, or their respective successors, are consti-  
4 tuted a joint committee for the purposes of monitoring and evaluat-  
5 ing the effectiveness of the implementation of this act. The Com-  
6 missioner of Health of the State of New Jersey shall, one year  
7 from the effective date of this act, report to the joint committee  
8 an evaluation of the effectiveness of this act and the committee  
9 shall, upon receiving such report, issue as it may deem necessary  
10 and proper, recommendations for administrative or legislative  
11 changes affecting the implementation of this act.

1 9. This act shall take effect on the one hundred eightieth day  
2 after enactment.

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#### STATEMENT

This bill would authorize the regulation of smoking in certain indoor public places.

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**ASSEMBLY, No. 864**  
**STATE OF NEW JERSEY**

INTRODUCED JANUARY 30, 1984

By Assemblyman HERMAN

AN ACT concerning smoking in buses or other public conveyances  
and amending N. J. S. 2C:33-13.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. N. J. S. 2C:33-13 is amended to read as follows:

2 2C:33-13. Smoking in Public. a. Any person who smokes or  
3 carries lighted tobacco in or upon any bus or other public convey-  
4 ance~~],~~ other than in the places provided,] is a petty disorderly  
5 person.

6 b. Any person who smokes or carries lighted tobacco in any  
7 public place, including but not limited to places of public accom-  
8 modation, where such smoking is prohibited by municipal ordinance  
9 under authority of R. S. 40:48-1 and 40:48-2 or by the owner or  
10 person responsible for the operation of the public place, and when  
11 adequate notice of such prohibition has been conspicuously posted,  
12 is guilty of a petty disorderly persons offense. Notwithstanding the  
13 provisions of 2C:43-3, the maximum fine which can be imposed for  
14 violation of this section is \$200.00.

15 c. The provisions of this section shall supersede any other statute  
16 and any rule or regulation adopted pursuant to law.

1 2. This act shall take effect on the 30th day after enactment.

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**STATEMENT**

This bill prohibits as a petty disorderly persons offense the smoking or the carrying of lighted tobacco in or upon any bus or other public conveyance. Presently it is a petty disorderly persons

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.  
Matter printed in italics *thus* is new matter.

offense for any person to smoke on buses or public conveyances other than in the places provided.

It has become increasingly apparent, however, that the smoking area which was to be a limited area on the bus often predominates, creating an uncomfortable atmosphere for the majority of the persons on the bus. As a result, many persons who would want to use public transport are discouraged from doing so. This bill would remedy this situation and assure that public transport would be comfortable to all persons.

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**ASSEMBLYMAN MARTIN A. HERMAN (Chairman):** I would like to welcome all of you here this morning. I do not have an extensive opening statement. As you know, there are a number of witnesses, mostly pro, a few con, and a few with concerns who would like to see some amendments so that maybe they could be supportive.

I would like to make a couple of general observations. These bills have been around before. I have been asked the general question: "We have not received a great deal of support for them in the past, why are you just bringing them back again and again?" I would like to indicate that in the past, these bills have received a balance of approximately 18 to 20 votes. They have not received many "no" votes, maybe four, five, or six. You don't have to be too great a mathematician to understand that there were a lot of people who were going to the boys' room, the ladies' room, frozen at their switches, or whatever, or else they have just not made up their minds as to how they would like to vote. In order to encourage them to make up their minds, there are a number of groups very concerned with the passage of this legislation, and I would indicate such groups -- not exclusively, but just briefly -- as the American Lung Association, the American Cancer Society, the American Heart Association, the New Jersey Medical Society, the Thoracic Physicians of New Jersey, New Jersey PTA, New Jersey Senior Citizens, and a whole host of other groups. They believe this legislation would have a substantial impact on providing clean air in New Jersey, because we certainly do not encourage pumping in our cars' carbon monoxide, and cigarettes do the same thing.

Those who believe that these bills are pro-business, pro-health, and pro-consumer have banded together as the New Jersey Indoor Clean Air Coalition and have pledged to lobby each and every legislator in the Assembly and in the Senate on a one-on-one basis to encourage them to support this legislation. They recognize that they do not have the financial resources of the American tobacco companies. They cannot invite them to the Metropolitan Museum. They cannot invite them to host luncheons and dinners. What they perhaps can invite them to is a recognition of the facts, facts which indicate that over 300,000 people in the United States lose their lives each and every

year, prematurely, to cigarettes, a fact which I can personally attest to since I lost my mother some years ago at the age of 49.

We do not need those types of tragedies, and I think it is time for the citizens of New Jersey to profit, not for the tobacco industry to profit.

I am not going to have much more to say as an opening statement. However, I would indicate to my colleagues from industry and business here today, that I make you this challenge. I have made it before, and I made it publicly, that if anyone can demonstrate to me -- other than the tobacco industry, which I hope does lose business -- that these bills are anti-business or anti-industry, I will withdraw them and never introduce them again. I think I can change your mind; I think I have facts to substantiate, on a national basis and on a local basis, that these bills are not only pro-consumer, not only pro-employee, but these bills are good business, these bills can lower workers' compensation rates, these bills can encourage people to attend work more often, and these bills do have a substantial impact on the health of employees in both the public and private sectors. If that isn't pro-business, I don't know what is. So, I issue that challenge.

These bills do something more. They insulate New Jersey industries from lawsuits by employees if they establish a smoking policy. If whoever testifies on behalf of New Jersey industry and business, and the restaurants, can prove to me that these bills are anti-business, anti-industry, I will withdraw them. On the other hand, if I can demonstrate to you that they are pro-New Jersey business and industry, I expect you to have the courage of the facts and to support them, because I don't know of too many tobacco growers in New Jersey who need your support.

With that, I will open the hearing. The first witness today will be Dr. Lee Reichman. Dr. Reichman is President of the American Lung Association, New Jersey Chapter. Dr. Reichman, thank you for being with us today. Will you come right up here, sir? Doctor, if you have copies of your statement, you may hand them out if you wish and we will be able to follow along with you.

**DR. LEE B. REICHMAN:** Assemblyman Herman, members of the Committee, other attendees, and guests: My name is Lee Reichman. I am Professor of Medicine at the University of Medicine and Dentistry of New Jersey, the New Jersey Medical School, and the University Hospital in Newark. I am currently President of the American Lung Association of New Jersey; I am a National Board Member of the American Lung Association; I am immediate past President of the New Jersey Thoracic Society and the New Jersey Chapter of the American College of Chest Physicians; and, I am Governor Elect from the State of New Jersey for the National American College of Chest Physicians.

As a pulmonary physician, I am sure my experience is not unique when an asthmatic or allergic patient tells me that he or she can't go to a sports event or dine out because of fear of reaction to cigarette smoke.

The fact that this response is so common is second nature to physicians, but most non-physicians don't realize that 70% of people find involuntary smoking irritating, and that is what I call it, "involuntary smoking." There is also mounting and compelling scientific evidence that involuntary smoking is indeed harmful to the health of nonsmokers, with strong associations to small airways disease, lung development in children, childhood respiratory infection, and, most frightening, lung cancer. Recent Gallup polls have shown that most smokers and nonsmokers believe that involuntary smoking is harmful to the nonsmoker and that smokers should be segregated in public places. Granted, this evidence and these opinions are not accepted by the tobacco industry, but the tobacco folks do not yet accept the fact that smoking is harmful to the smoker.

Two years ago, Assemblyman Herman, in an effort to do something about sensitive people exposed to involuntary smoking, introduced several bills in the Legislature. Three of the more innocuous ones -- doctors' offices and hospitals, schools and universities, and elevators -- were passed and signed by Governor Byrne. Last year, Assemblyman Herman introduced several other bills. Amid a wave of abstentions by several State legislators, possibly related to massive lobbying by the tobacco interests, the first bill of

the series -- no smoking in supermarkets, which I would also consider innocuous -- was defeated, and the rest were withdrawn.

This year, after much consultation and bending over backwards to change the legislation to make it acceptable to most concerned groups, Assemblyman Herman has reintroduced the modified legislation, and most of the same legislators, who rejected the similar bills, will be voting on them later in this session.

The bills are: A-546, places of employment; A-547, certain restaurants; A-548, government buildings; A-639, certain food and marketing stores; and, A-640, certain indoor public places. Most importantly, each bill contains a statement that, "The purpose of the bill, as well as the companion bills, is to protect and preserve, in a reasonable manner, the health and comfort of the people of this State by establishing areas that are free from the toxic and annoying effects of tobacco smoke. This bill is intended to establish a social policy without providing complex or onerous administrative or law enforcement procedures."

As one might suspect, the tobacco industry is violently opposed to such proposed legislation. When far more stringent bills were introduced in San Francisco, the Tobacco Institute spent \$1.2 million in an effort to defeat the required referendum. However, cadres of dedicated volunteers and about \$60,000 won the referendum for nonsmokers' rights. The changes in that City on March 1 of this year were widely reported and apparently have been very well accepted by all. San Francisco is now one of 36 states or localities which have passed such legislation. A similar experience with successful passage of legislation recently occurred in Suffolk County, New York.

Tobacco industry opposition to such legislative initiatives usually takes the guise of concern over conflict of medical evidence, difficulty of enforcement, and/or lack of personal freedom to smoke. Apparently legislators often accept these arguments at face value and defeat the legislation without thinking too much about them.

As a practicing academic pulmonary physician, I can honestly state that the medical evidence of harm to the involuntary smoker is strong and getting stronger. It is not a potential problem, but a real

problem. There is more and stronger evidence of harm from involuntary smoking to human nonsmokers than there is of harm from most air pollutants, most food dyes, most insecticides, cyclamates, cassharine, and the like. Of even more concern is the fact that the evidence of the harm of involuntary smoking to children is far stronger than any suggestion of potential harm to children exposed to asbestos in school buildings, yet we see the concern and attention that that situation has brought about.

As an example, one of the most potent carcinogens known is Nitrosodimethylamine, abbreviated NDMA. This substance produces cancer in all animals tested, even by single dose inhalation. It is present in side-stream cigarette smoke in doses 50 times greater than the smoke inhaled by the smoker. The involuntary smoker inhales as much of this chemical in one hour as a smoker inhales in 15 to 30 cigarettes.

As to difficulty in enforcement, as I mentioned, Assemblyman Herman has pointed out that these bills are for social consciousness and public policy, not to create onerous, complex, administrative, or law enforcement problems.

As to the concern of personal freedom, I think that when the legislators consider this legislation, they should think of two issues, even if some of them are heavy smokers themselves. First, cigarette smoking is very dangerous to the smoker. Cigarettes are directly responsible for 360,000 deaths each year, plus untold health care costs, illnesses, and suffering. Because of these facts, several smokers probably would like to stop. Recent data has shown that nine out of ten smokers would really like to give up the habit. One of the most difficult problems in stopping -- my patients tell me -- is that after all the resolve, and working up to finally not taking a cigarette, one goes out to dine. After a sumptuous meal, when so many people around them are smoking, the smell of the cigarette wafts over to the table, they are tempted, and they finally break down and have a cigarette. Thus, any and all previous progress made is destroyed by the ubiquity of smoking exemplars. Common sense suggests that the real reason the tobacco industry is so strongly against such legislation as is being considered here, is that they know that without the constant

reinforcement of smoking behavior in restaurants and in the workplace, more people might find it easier to break the habit.

As to the second point, as stated, there is strong evidence that secondhand smoking is more harmful than most other environmental pollutants that do not have such a strong and well-organized lobby. But even so, why should the medical community have to prove involuntary smoking is harmful? We know that it is irritating and unpleasant, and there is very strong evidence that it is harmful, but why not put the onus on the tobacco industry and let them prove that it's harmless, that it is not irritating, and that it is pleasant to the nonsmoker? It took the medical community 60 years to get grudging acceptance of the fact that asbestos was harmful to asbestos workers. Haven't we learned anything from that experience?

I would hope that legislators would consider when voting for this legislation, amid all of the other factors mentioned, its acceptability. The Gallup Poll has shown that smokers and nonsmokers alike want clean air and believe that secondhand smoke is harmful. In another Gallup Poll, when asked why they didn't dine out more often, the third most common reason was the unpleasantness of cigarette smoking in the area. Most high technology plants do not allow smoking around their expensive equipment because they feel the smoke might damage it. Do humans deserve any less?

It seems that an important issue in advocacy should be one's vestedness. One might suspect the tobacco industry may have a vested interest in keeping as many smoking exemplars smoking in public places as possible. Pulmonary physicians, on the other hand, would appear to be as unvested as they can be. The less smoking that goes on, the fewer the patients who will ultimately need to consult us. The fact that the American Lung Association of New Jersey, the New Jersey Thoracic Society, and the New Jersey Chapter of the American College of Chest Physicians have joined to strongly endorse this proposed legislation speaks directly to this point. But, last year, such an innocuous bill as limiting smoking in supermarkets was defeated by our State Assembly. Hopefully, the facts and the bias of the advocates will be considered and the legislation will finally be passed to the benefit of smokers and nonsmokers alike. Thank you.

ASSEMBLYMAN HERMAN: Thank you, Doctor. I have a couple of questions for you, if I may. The cigarette industry seems bent on trying to demonstrate their point, I believe, in some ads, such as: "Smoking in Public," "Let's Separate Fact from Fiction," "Secondhand Smoke," and "Let's Clear the Air," saying that there is another side of the coin. What is your position? What is your observation?

DR. REICHMAN: Assemblyman Herman, may I borrow those ads? I'll give them back to you. These are some of the ads from the R.J. Reynolds Company which came out, probably, about a year ago, and which have been commented upon. The lung associations and cancer societies say they are not true, and the R.J. Reynolds people say, "Well, they are. Give us a chance to be heard." However, I would like to do something now -- it will only take a couple of minutes -- that I think is very important to all of the people here, not only the volunteers, but I think the press should hear it too. I know that the Assembly should hear it. I would like to read the ad, and then I would like to go to the quotes and read the quotes that the ads were taken from. I am going to say now that I am currently, right here, accusing the tobacco industry, R.J. Reynolds, of gross deception. If you listen, you will hear exactly why. Remember, these are the people who are lobbying some of the State legislators, and I don't know if I would trust them.

The first ad says, "There has always been some friction between smokers and nonsmokers, but lately this friction has grown more heated. The controversy has been fueled by questionable reports that claim that secondhand smoke is the cause of serious diseases among nonsmokers. But, in fact, there is little evidence, and certainly nothing that proves scientifically that cigarette smoke causes disease in nonsmokers. Skeptics might call this wishful thinking of a tobacco company, but consider the scientific judgment of some of the leading authorities in the field, including outspoken critics of smoking.

"For example, in 1983, the organizer of an international conference on environmental tobacco smoke -- ETS -- summarized the evidence on lung cancer as follows: 'An overall evaluation based on available scientific data leads to the conclusion that an increased

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risk for nonsmokers from ETS exposure has not been established.' Even the chief statistician of the American Cancer Society, Lawrence Garfinkel, has gone on record as saying, 'Passive smoking may be a political matter, but it is not a main issue in terms of health policy,' which brings us back to our original point, that cigarette smoke can be very annoying to nonsmokers. But how shall we as a society deal with this problem -- confrontation, segregation, legislation? No, we think that annoyance is neither a governmental problem nor a medical problem. It is a people problem. Smokers and nonsmokers have to talk to one another, not yell, preach, threaten, badger, or bully -- talk. Smokers can help by being more considerate and responsible; nonsmokers can help by being more tolerant; and, both groups can help by showing more respect for others' rights and feelings. But, eliminating rumor and rhetoric will help most of all, because when you stick to the facts it is a lot easier to deal with the friction."

Now, they quote two studies in this ad. The first is a quote from a conference which was held, I believe, in Geneva, sponsored by the University of Goteborg, Sweden, which was fully funded and run by the Tobacco Institute. As a matter of fact, we found them at the American Lung Association's annual meeting in Miami, hiding in a booth selling booklets of the results of the conference. These results have not been published in refereed scientific journals for \$20.00 each.

I think even more important than that--

ASSEMBLYMAN HERMAN: (interrupting) What you're saying is, there was a phony conference.

DR. REICHMAN: Well, I think there were a few people who got a trip to Geneva out of it. They may have been respected scientists, but most of the data we use in deciding whether or not involuntary smoking is harmful comes in peer-reviewed journals. It passes the muster of people who are unvested. I think that if someone gets a free trip to Geneva, he may be a little more vested. However, I think even more telling than that, is that the chief statistician of the American Cancer Society has gone on record as saying, "Passive smoking may be a political matter, but it is not a main issue in terms of health policy." That is in the ad, as anyone knows who has seen it.

I would like to read Lawrence Garfinkel's letter to The New York Times dated May 18, 1984. "To the Editor: In a recent advertisement in The Times, March 12 and May 14, the R.J. Reynolds Tobacco Company quoted me in order to make points to which I do not agree, in support of arguments I vigorously oppose. It accomplished this by taking my words out of context and by distorting their meaning. The March 12 ad quoted me as saying that 'Passive smoking may be a political matter, but it is not a main issue in terms of health policy.' Carefully omitted was the very next sentence of the original text. 'Attention should not be diverted from the issue of cigarette smoking by debating the potential cancer hazards of passive smoking.' By quoting me selectively, Reynolds tried to create exactly this kind of diversion. Adding insult to injury, it put my statement into the context of generalized disease, when, in fact, I had only been speaking about cancer.

"The second artfully contrived Reynolds ad quoted me as saying, in 1981, that: 'Passive smoking had very little, if any, effect on lung cancer rates in nonsmokers.' The quotation was taken from a report on the lung cancer risks encountered by nonsmoking wives of smoking husbands, in which I stipulated that it may be misleading to classify a woman as a passive smoker or not a passive smoker on the basis of her husband's smoking habit, because some wives of nonsmokers may be more exposed to cigarette smoke of others than wives of smoking men. The advertisement also ignored this statement in my report: 'Nonsmokers exposed to smoke from cigarettes in a poorly ventilated room will show increased levels of carbon monoxide in their blood. These higher levels of carbon monoxide can result in deterioration of psychomotor performance. Many nonsmokers have acute eye and throat irritation responses in the environment of cigarette smokers. One paper reported changes in lung function tests.' He continues, but that is the quote.

"Furthermore, the article from which my word was taken is now three years old, and much has happened since it was published. The American Cancer Society has two new studies underway on the health effects of passive smoking, in which direct exposure to the smoke of

others is being evaluated in nonsmokers with lung cancer. Other major cancer centers are working on the problem too. Documentation of the adverse affect of passive smoking is steadily building. It is irresponsible of Reynolds to attempt to create a false sense of security about the potential dangers of passive smoking, especially at a time when incriminating evidence continues to accumulate.

"Incidentally, it is gratifying to see the tobacco industry now citing the American Cancer Society as an authority, where in the past it always tried to downplay the Society's reports of overwhelming evidence that cigarette smoking shortens human life."

Now, just very briefly, I would like to give the pertinent parts of the second ad, which is even more misleading and more taken out of context. I was shocked. The way I got to do this-- It was on Friday, when I said I was coming down here. One of the secretaries said, "But, look, this ad just came out in Newsweek. Look at what it says. How can you testify against smoking in public places?" So, I went back to pull out the direct quotes. This was in Newsweek last week: "Secondhand Smoke, Let's Clear the Air" -- again, the R.J. Reynolds Tobacco Company. "Can cigarette smoke in the air cause disease in nonsmokers? That is an emotional question for smokers and nonsmokers alike, so we will try to set the record straight in the most direct way we know. There is little evidence, and certainly nothing was proved scientifically, that cigarette smoke causes disease among nonsmokers. You don't have to take our word for it. U.S. Surgeon General Julius B. Richmond, who is no friend of smoking, said in his 1979 report: 'Healthy nonsmokers exposed to cigarette smoke have little or no physiologic response to the smoke, and what response does occur may be due to psychological factors.' And, in the 1982 report, Surgeon General C. Everett Koop could not conclude that passive smoking is a cause of cancer in nonsmokers. The Director of the National Heart, Lung, and Blood Institute, Dr. Claude Lenfant, has been one of the tobacco industry's sharpest critics, yet Dr. Lenfant stated in 1980, and we believe it remains true today, that: 'The evidence that passive smoking in a general environment has health effects remains sparse, incomplete, and sometimes, unconvincing.'

"We decided to speak out on passive smoking because there is so much rumor and rhetoric on the subject today, and we intend to continue from time to time to speak out on other topics of concern to you and to us. Our critics might try to discredit these messages as self-serving. In a sense, they may be right. We will challenge allegations that are unproven and attacks we think are unfounded. If that is self-serving, so be it. The questions that surround smoking raise many important issues. We believe you are entitled to hear all sides of these controversies." It is signed, "R.J. Reynolds Tobacco."

Let's go back and see what U.S. Surgeon General Julius Richmond said in his 1979 report. You will remember they quoted him as saying: "Healthy nonsmokers exposed to cigarette smoke have little or no physiologic response to the smoke, and what response does occur may be due to psychological factors." Okay? This is the book, and you can see it has the bottom of one page and most of another page. What the Surgeon General's report said -- and I think it would help to read it, because one little piece, Point 6, was taken out and put in the R.J. Reynolds ad -- was: "The effects of involuntary smoking, passive or secondhand smoking, on the nonsmoker were not examined or appraised in the 1964 Surgeon General's report, but were initially discussed in the 1972 report" -- the health consequences of smoking -- "and updated in the 1975 edition. The current report's findings in this area are summarized below. It should be understood that the literature is of recent vintage" -- this was published in 1979, remember -- "and only a limited amount of systematic information regarding the health effects of involuntary smoking on the nonsmoker is available.

"One, sidestream smoke which comes from the lighted tips of cigarettes between puffs has higher concentrations of some of the irritating and hazardous substances than does mainstream smoke, that is, smoke inhaled by the smoker.

"Two, children of parents who smoke are more likely to have bronchitis and pneumonia during the first year of life. This effect is independent of social class, birth weight, and parental cough and phlegm production.

"Three, simple extrapolation of dose/response relationships which are traditionally used in assessing the hazards of smoking to the smoker cannot be employed in assessing the hazards to nonsmokers.

"Four, cigarette smoking in enclosed spaces can produce carbon monoxide levels well above the ambient air quality standard, even when ventilation is adequate.

"Five, substantial proportions of the population experience irritation and annoyance when exposed to tobacco smoke. The eyes and nose are most sensitive to irritation, and such irritation increases with increasing levels of smoke contamination. Unrestricted smoking on buses and planes annoys the majority of nonsmoking passengers, even under conditions of adequate ventilation.

"Six" -- and this is the one they took out -- "little or no physiologic response to smoke was detected in healthy nonsmokers exposed to cigarette smoke. Higher heart rates detected may be due to psychological factors." Actually, they changed it to say, "What response does occur may be due to psychological factors," so the quote wasn't even accurate.

"Seven, a slight reduction in maximum exercise capacity was noted in older nonsmokers exposed to levels of carbon monoxide occasionally found in involuntary smoking situations.

"Eight, changes in psychomotor function, especially the attentiveness and cognitive function, at levels of carbon monoxide found in involuntary smoking conditions, have been noted, but these effects are measurable only at the threshold of stimuli perception.

"Nine, levels of carboxyhemoglobin produced in involuntary smoking situations are functionally insignificant in healthy individuals.

"Ten, levels of carbon monoxide which can be reached in cigarette smoke-filled environments have been shown to decrease the exercise duration required to induce angina pectoris in patients with coronary artery disease. The levels of carbon monoxide have also been shown to reduce the exercise time until the offset of dysmimia."

The last one is, you recall they quoted a 1982 report of Surgeon General C. Everett Koop. They said, "could not conclude that

passive smoking is a cause of cancer in nonsmokers" and, indeed, that is what Everett Koop said, but they left out the last line of his statement. This is what he said: "Although the currently available evidence" -- this is 1982 -- "is not sufficient to conclude that passive or involuntary smoking causes lung cancer in nonsmokers, the evidence does raise concern about a possible serious public health problem." They left those last words off. The words they quote were in a two-page editorial in the New England Journal of Medicine in 1980, but Dr. Lenfant also said, "They faultlessly demonstrated reduction in the measures of small airways of healthy nonsmokers exposed to cigarette smoke in the workplace." He said, "In the uterine environment in which the fetus is biologically dependent on the mother, the deleterious effects of maternal smoking on the fetus are well-documented. In the home environment, the adverse effects of parental smoking on children have also been demonstrated. In the third environment, the general environment, in which people are exposed by occupation, or by being part of a society, the health effects of passive smoking involve us all."

So, by taking things out of context, the R.J. Reynolds Company, and I suspect the other tobacco companies, are raising a false sense of security that is really making it hard for we, the lung physician community and other concerned volunteers, to get our patients to give up smoking and to get legislation like this strongly considered.

So, I sincerely hope that your Committee, Assemblyman Herman, will consider the legislation very strongly and will vote it out so it can be passed. I hope the people here will remember that the R.J. Reynolds Company is guilty of deception in trying to turn this thing around. Thank you.

ASSEMBLYMAN HERMAN: Thank you, Doctor. We appreciate it.

ASSEMBLYMAN SHUSTED: Doctor, may I ask a question?

DR. REICHMAN: Sure.

ASSEMBLYMAN SHUSTED: In your statement, I notice that you support all of these bills. Would I be correct in concluding that you unequivocally oppose cigarette smoking, or smoking in any form?

DR. REICHMAN: Well, yes, I do oppose cigarette smoking and smoking in any form, Assemblyman Shusted. I know that people who smoke have a difficult time giving it up, and I know that smoking is lawful. I just think smoking should be done at home, among consenting adults perhaps, but not where it either bothers or can harm other people. I mean, I have patients who have a very hard time giving up smoking. They say, "Gee, I'm going to smoke; I can harm myself." Fine, I have no problem with that. I try to get them to give up smoking. I have no problem with them harming themselves if they realize that is what they are doing, but I do have a problem with them endangering the rest of us. People with a respiratory disease, or even the rest of us, do very poorly when around smokers. If there is a chance -- and I think it is far more than a chance -- that secondhand smoking, involuntary smoking, causes cancer, I don't really want to be exposed to it, and I don't want my children to be exposed to it.

ASSEMBLYMAN HERMAN: Thank you very much. We appreciate your testimony; it was excellent.

DR. REICHMAN: Thank you, Assemblyman Herman, and my thanks to your Committee.

ASSEMBLYMAN HERMAN: I would like to indicate for the record-- I'll hold this until a little bit later. We do have a study back from the Administrative Director of the Court concerning the absence of problems with enforcement, but we are going to hold that until later. Let's call Matt Martin. Matt, please.

**MATTHEW MARTIN:** Good morning, Mr. Chairman, members of the Committee, and all those present here. My name is Matt Martin. I am Chief of Drug Treatment for the New Jersey State Department of Health, Division of Alcohol and Drugs. Therefore, I deal with problems of dependency and addiction, whether you are talking about alcohol, nicotine, marijuana, heroin, or other addictive substances that are public health hazards in our community. I also deal with young people, peer-group influence advertising, and how they are influenced to get into addictive behaviors in our society.

I was formerly Director of the Governor's Smoking and Health Project and, out of that, I have been chairing the Interagency Council

on Smoking and Health for the last four years. Recently, I was appointed to chair the Department of Health's Task Force on Smoking to take a major initiative in the area of smoking.

Today, I am really speaking with two hats. I am going to speak in the name of that Task Force and, also, speak in the name of the Interagency Council on Smoking and Health.

I would like to make one initial comment, Marty. Yesterday, I spoke on juvenile justice legislation and I realize the major steps we have taken in this State, thanks to you. This morning, listening to the radio while coming here, I heard our President supporting generic drug legislation. So, things are moving nationally; I hope we move the same way in the area of smoking and health.

ASSEMBLYMAN HERMAN: I know the sponsor intimately.

MR. MARTIN: I will not read the total statement here because you have it in front of you. I just want to highlight some things. When we talk about the number of deaths in the country here, we are saying that 30% of the deaths from cancer can be attributed to smoking. It has been established that 20% of early deaths could be prevented if there was an elimination of smoking. I would like to translate this down to New Jersey, where the elimination of over 10,000 deaths per year could be accomplished here in the State if we had no smoking in New Jersey.

The State Department of Health is taking some initiative. Basically, they have set up a LIFE Committee which has made major recommendations--

ASSEMBLYMAN HERMAN: (interrupting) Before you go on, we talk about the crisis of drunk driving, but when you compare the crisis of drunk driving, and the deaths on the highway related to drunk driving, as serious as that is, it is miniscule compared to smoking, isn't it?

MR. MARTIN: We are talking about 340,000 deaths from smoking in this country. The direct relationship between drunk driving and auto deaths-- Of the 55,000 auto deaths, roughly 25,000 are caused by alcohol and, possibly, a small percentage is caused by marijuana. Yes, relative to public health as an issue, and morbidity and mortality, you

are talking about a much more serious problem because of the amount of abuse of nicotine in our society.

ASSEMBLYMAN HERMAN: In New Jersey, the number of deaths related to alcohol are under 1,000, aren't they?

MR. MARTIN: The number of total deaths?

ASSEMBLYMAN HERMAN: Yes. So, really, it is a ten-to-one ratio.

MR. MARTIN: Correct. I would also like to mention that the Department of Education has taken a major initiative -- not only in the area of drugs and alcohol, but also in the area of nicotine -- to have major training of teachers and to review major curriculum. The feeling is that a young person who becomes addicted to cigarette smoke is going to stay on cigarettes, but if that person does not become addicted by the age of 21, there is a good chance that that person will remain off the drug. By the way, that is not a corollary with other drugs, including alcohol, where young people may take it up at a later age. So, prevention and policies to prevent smoking are extremely important. I think, as adults, we also have to talk about modeling when it comes to offering example.

I would also like to mention that the State of New Jersey took a major step in the area of public health with the passage of the original three bills on December 3, 1981. I would like to make the comment that the Department of Health and the Department of Education went through a process of informing all insitutions in relationship to public health facilities and education facilities regarding these bills. Let me just cover the next paragraph, Marty. The implementation of the law proceeded very smoothly, with only minor verbal reports of violations. I think it went over extremely well. I talked to people in the Department of Education and in the Department of Health. At the present time, the Department of Health is proceeding with a thorough analysis of the impact of that legislation.

ASSEMBLYMAN HERMAN: So, maybe your opinion would differ somewhat from Dr. Reichman's. Rather than minimal, you would review these bills as substantial.

MR. MARTIN: I would say so, yes.

ASSEMBLYMAN HERMAN: And, the Departments had no problem with the enforcement mechanism?

MR. MARTIN: None; a few verbal reports, but that is about it. By the way, I do not often disagree with Lee Reichman.

ASSEMBLYMAN HERMAN: Okay. Please continue.

MR. MARTIN: In order not to take up too much of your time, I would like to switch to the statement from the Interagency Council, because the Council has some thoughts I would also like to express. Quoting further from the Surgeon General, I think we have to talk about health care expenses. The estimate is that we are talking about billions of dollars in health care expenses because of cigarette smoking in our society -- \$13 billion plus in our society. That does not include \$25 billion in lost production and wages.

ASSEMBLYMAN HERMAN: Or, the \$60 billion that Americans spend for cigarettes themselves.

MR. MARTIN: Correct. I would like to go to the last page -- I will skip some of the things on the bills -- and highlight some statements I want to make. We have laws in New Jersey which restrict smoking in educational facilities, health facilities, and elevators. I guess I am asking an open question. We singled out these areas, but there are other crucial areas which I do not think we can neglect, such as food facilities, whether markets or restaurants, and work facilities, whether private or government. I should state that our former Governor, Governor Byrne, had, and our present Governor, Governor Kean, has, a policy applying to all State employees in the State, and I think the same largess should be extended to all employees in the State of New Jersey. There are work environments where secondhand smoke can be a danger.

I would also like to underline, speaking here for many people who are handicapped because of allergies and breathing problems, that they are really restricted in their freedom to work in a healthy environment. These people basically cannot work because of allergies and breathing difficulties, and I think we should underline their deprivation of a right to work and a right to a healthy environment.

Also, we are trying to educate the children in our schools about the dangers of smoking, while the media advertises the glamour of smoking. In fact, John Henry Martin, who did one of the definitive studies on adolescent education in this State, said, "The last time health education really worked in this country was when we told the children to brush their teeth twice a day and see the dentist twice a year." Who said that? The schools said it and the media said it. If you look today, we talk about health education in the schools, but the kids go home and watch drama or see advertising promoting other substances of abuse. The conclusion is that someone has to be lying if our two largest educational systems -- the schools and the media -- are in contradiction. I think that is a serious problem.

ASSEMBLYMAN HERMAN: The one difference is that the schools are not being paid to promote cigarettes; the media is. Right?

MR. MARTIN: Correct. One other statement I would like to make, and I underline my position as Chief of Drug Treatment, is that I saw a magazine article which talked about the report of the Surgeon General on smoking, and right next to it was an article on marijuana smoking entitled, "Another Sort of Smoke." I think we have a strange public policy in this country where we spend hundreds of millions of dollars to promote one cigarette, called tobacco, and spend hundreds of millions of dollars to control another cigarette, called marijuana. Both are major public health issues that are destroying the life in this country. I think we owe some compliments to the Lung Association and, also, to Nancy Reagan, because they have made a major effort to look at marijuana and lungs. The Lung Association took the initiative in that area.

Finally, I would like to say that the State government in New Jersey has had a policy on smoking since 1980. The Governors promoted that policy to try to protect the rights of nonsmokers, who are three-quarters of our population.

The members of the Interagency Council want to go on record as supporting these bills as public health necessities.

ASSEMBLYMAN HERMAN: For the purpose of the record, why don't you tell us who the members of the Interagency Council are?

MR. MARTIN: Okay. The members of the Interagency Council are: The American Cancer Society, the American Heart Association, and the American Lung Association. We also have some people from the Medical Department of AT&T, the Central Jersey Health Planning Council, and the Central New Jersey Lung Association. We have the Department of Education, New Jersey GASP, the March of Dimes, the Medical Society of New Jersey, the Department of Health, and the Seventh Day Adventist Church.

ASSEMBLYMAN HERMAN: Thank you very kindly.

ASSEMBLYMAN SHUSTED: Mr. Martin, may I ask you a question?

MR. MARTIN: Sure.

ASSEMBLYMAN SHUSTED: Are you opposed to cigarette smoking in any form?

MR. MARTIN: I think you are talking about freedom of choice. Ultimately, you are looking at people's--

ASSEMBLYMAN SHUSTED: (interrupting) No, I am just asking you whether you are opposed to cigarette smoking in any form?

MR. MARTIN: Personally, yes; professionally, I allow freedom of choice.

ASSEMBLYMAN HERMAN: What you are saying, basically, is that if someone else wishes to exercise the freedom to smoke, they have that right.

MR. MARTIN: Correct.

ASSEMBLYMAN HERMAN: People have the right to kill themselves, but they do not have the right to impact on others.

MR. MARTIN: Right. We're talking about suicide, slow suicide, and I have to face that as a larger issue involved. However, I allow people to take care of their own agendas.

ASSEMBLYMAN SHUSTED: Where would they smoke then?

MR. MARTIN: In the privacy of their own homes.

ASSEMBLYMAN HERMAN: For instance, let me give you an example. We say people have the right to drink, right? They have the right to consume alcohol, but certainly there is a public policy that says you shouldn't be drunk and drive an automobile because you could hurt other people.

MR. MARTIN: Correct.

ASSEMBLYMAN HERMAN: So, the bottom line is, if you want to indulge in a substance which is harmful, whether it be liquid or tobacco, you should do so in a way that will not be injurious to others, even though it may be injurious to yourself. Isn't that the bottom line?

MR. MARTIN: Correct, but with alcohol we do control it, even when it doesn't involve auto accidents. We do control public drinking, say, on stoops, streets, and so forth.

ASSEMBLYMAN HERMAN: That is because it may have an impact on others in the sense of social consciousness. We are not saying you can't get drunk in your own house.

MR. MARTIN: Right. I think historically one of the best examples has been spitting. You know, you look at spitting, and spittoons, and TB, and now we are talking about smoking, and cancer, and lungs.

ASSEMBLYMAN HERMAN: We say you have freedom of speech, but you don't have a right to holler "Fire" in a movie theatre. Right? You have a right to have a driver's license, but you don't have a right to drive in such a reckless way so as to injure others. There is a balance.

MR. MARTIN: It is an individual good against a common good. That is the way I feel about it.

ASSEMBLYMAN HERMAN: So, if you want to do something which may be harmful to yourself, you have to balance the use of that commodity, or whatever you're doing, to the extent that you will not injure others.

MR. MARTIN: Correct.

ASSEMBLYMAN HERMAN: We all know that we have an obligation to use our freedoms in a way that will not injure others.

MR. MARTIN: Correct.

ASSEMBLYMAN SHUSTED: Mr. Martin, how about if I were standing on a street corner smoking a cigarette? Do you feel that would be injurious to the health of others?

MR. MARTIN: On a street corner?

ASSEMBLYMAN SHUSTED: Say, waiting for a bus, out in public, in front of the State House.

MR. MARTIN: It would be somewhat distant. I mean, it would mix in with all the other pollutants found on a street corner.

ASSEMBLYMAN SHUSTED: But, in and of itself? I think that is a very direct question. You would have to be fair and say that that in itself--

MR. MARTIN: (interrupting) I do not have a public policy on that, in and of itself, right now.

ASSEMBLYMAN HERMAN: It would not be the same situation as an indoor environment or an enclosed environment, right?

MR. MARTIN: Correct.

ASSEMBLYMAN HERMAN: You raised the point that cars give off carbon monoxide. They mix a certain amount of carbon monoxide in the air. We would not suggest that we would accept as a social policy allowing that carbon monoxide to be pumped into a closed area because we know that carbon monoxide, when not mixed with wide-open air, has deadly effects, just as we know that large amounts of smoking which give off carbon monoxide in closed settings also have a deleterious effect. Correct?

MR. MARTIN: Right.

ASSEMBLYMAN HERMAN: So, you made a good point. It makes a difference where you do it.

MR. MARTIN: Thank you for your time.

ASSEMBLYMAN HERMAN: Thank you, sir. Next we will have Mr. Bob Rosner. I would like the people here, especially from business and industry, and, also, the members of the Committee, to listen to Mr. Rosner's testimony. Mr. Rosner has a very interesting perspective which I believe can be beneficial to New Jersey industry and business, maybe not to the tobacco business, but New Jersey industry and business per se. Mr. Rosner?

**BOB ROSNER:** It is an honor for me to appear today on behalf of Assembly Bill 546. I would like to thank New Jersey GASP and the Assembly Judiciary Committee for inviting me to be here. I would also like to single out Regina Carlson and the distinguished chair of this Committee for their exemplary work on the subject.

ASSEMBLYMAN HERMAN: No wonder I said nice things about you.

MR. ROSNER: Well, this is a mutual admiration society. My name is Bob Rosner. Although born and raised in the Garden State, I now live in Seattle, Washington. Based on my work on the subject of corporate clean indoor air policies--

ASSEMBLYMAN HERMAN: (interrupting) Why don't you identify what you do before you read your statement?

MR. ROSNER: I will be doing that in a second.

ASSEMBLYMAN HERMAN: Okay.

MR. ROSNER: (continuing) including designing and implementing one of the toughest clean indoor air policies in the nation at one of Washington State's largest employers, I am here with a simple message. No smoking policies, even total bans, are successful in the workplace. In addition to clearing the air of smoke, they can successfully resolve long-simmering conflicts between smokers and nonsmokers, and can actually pull people closer together. But, you don't have to listen to me on this subject. I would like to quote my favorite observation on this subject from the Vice President of Personnel for Uniguard Insurance, a Seattle-based company with a very strong no smoking policy. He remarked to me once, "I wish I could have all the time and all the nights that I worried about implementing this no smoking ban back, because the policy was implemented very successfully."

Before I review some of the no smoking policies I have seen around the nation, I would like to briefly review a few of the motivations behind the surge of companies which are now developing and implementing tough clean indoor air policies. But, rather than taking my word for it, once again I would like to quote another chief executive of a major Fortune 500 company, Malcolm Stamper, from the Boeing Company. He wrote these observations in a personal correspondence with one of my partners, Dr. William Weiss, and I quote: "When we provide a better operating atmosphere for our high tech machinery than we do for the people who operate it, then it is time to reassess policies, and that is what has been done. It is the responsibility of management in any company to provide the cleanest, safest, and most helpful environment possible for its employees.

Boeing is continually striving to meet these objectives and developing a smoke-free environment is an essential ingredient."

The president of this 83,000 employee company made this announcement when he announced to the world that Boeing would have a totally smoke-free work environment and that they were proceeding toward that goal. His final quote, I think, is very succinct: "The individual's choice of whether to smoke or not has not been infringed upon. That choice is still there. The choice of whether to smoke within the confines of the Boeing Company, however, will no longer be available."

In addition to these reasons, my distinguished colleagues who will be testifying today will review the legal, health costs, morale, safety, and a variety of other reasons for restrictions. I would like to limit my testimony specifically to issues around implementation in a corporate environment. First, let me get to what Assemblyman Herman asked me for earlier. Group Health Cooperative hired me as a consultant to design a program to eliminate smoking from their facilities. What is Group Health Cooperative? It is an organization based in Seattle, Washington, with 6,000 employees, 325,000 members, 23 facilities, including two hospitals, clinics, warehouses, and administration buildings, and 13 labor unions -- 13 separate bargaining units. The result of my work there is that in 22 of 23 facilities, smoking is not allowed by employees under any circumstances. They need to go outside if they choose to smoke. There is one designated smoking room in the largest facility, mainly because it is located in a high crime area and the organization did not relish the thought of nurses standing out on street corners smoking at three o'clock in the morning. So, for safety reasons, one designated room was set aside for employees. You might be interested to know that patients, with their physicians' approval, may use a designated smoking room. There is one per most patient care floors, and those rooms are separately ventilated.

Although I am no longer consultant with Group Health -- I have moved on to work with a number of other companies -- I did check in with Group Health just before coming back to New Jersey to find out

where their policy was. You might be interested to know that the policy is exceeding all expectations and, even with a policy tougher than most companies would ever embark upon, they have had very few examples of bathroom or stairwell smoking, and high level acceptance among both smoking and nonsmoking employees. In fact, when you come up with this sort of policy, unfortunately, as in the State bill, you have to have a punishment, or people realize you are just not taking it seriously. At Group Health, the situation was four smokes and you're fired. It is progressive discipline -- a verbal warning, a written warning, suspension, and termination.

ASSEMBLYMAN HERMAN: We have a policy like that at one of our major employers in New Jersey, Johns Manville.

MR. ROSNER: It is interesting to note that in Seattle at Group Health, not one employee has even hit the first level -- the verbal warning level of progressive discipline. Compliance with that policy has been that successful.

The key to success in the Group Health situation was the education effort. It was an ambitious effort to educate both smokers and nonsmokers as to the need of the policy. I have a brief story. At a Christmas party which was held at a non-Group Health facility, a hotel downtown, there were 350 people. There were two ashtrays on every table. This was about a month after the policy went into effect. A woman turned to her husband and said -- he later recounted this to me -- "Why isn't anyone smoking here? The room is full of people; there are ashtrays. People should be smoking." The husband related that to me as an interesting example of how the corporate culture has changed at this organization. It is not that anyone has a vendetta against smokers; it is simply that the organization realizes that it is not appropriate to smoke around other people.

If you will indulge me, I have one more brief story. I bumped into a woman in the hallway recently, who gave me a very interesting anecdote. She said, "When this policy first came into effect, I was smoking about a pack and a half a day. When we went to a designated room, I went down to a pack a day. When we totally banned it from the facility, I went down to a half a pack a day. I want to

tell you, I am going to continue to smoke, but it is exciting to gain control over something that has controlled me for so long." That is the sort of reaction we see.

ASSEMBLYMAN HERMAN: People are able to do that everyday, only they don't think about it. When they go to a movie, they can't smoke there. When they see a double feature, they are not smoking for three or four hours. Right?

MR. ROSNER: Exactly -- movie theatres, buses, there are many places we accept not smoking. I think the workplace is the next place where smokers are going to realize it is to their best interest not to smoke around other people.

Now, I have often heard people say that they think common courtesy should be the way we should handle this; that we really do not want to get into legislation. Why can't people just get along? Well, I hate to tell you, but if common courtesy was working, my partners and I would not have so much work to do. Just to show you the depth of interest on this subject, in the next few weeks, my partners and I will either be consulting directly with corporations or giving presentations to business leaders in the States of New Jersey, Nebraska, Washington, Texas, Oregon, and Arizona, and in Canada. That is just in the next few weeks.

ASSEMBLYMAN HERMAN: You're bragging, right?

MR. ROSNER: What?

ASSEMBLYMAN HERMAN: I'm only joshing.

MR. ROSNER: I would like to address something from a Star-Ledger article, and I believe Lester Kurtz is in the audience. Is Lester Kurtz here?

ASSEMBLYMAN HERMAN: Lester Kurtz is not here, but there is a member of that association here who will bring the message to him.

MR. ROSNER: Okay. I would like to specifically give them a present. Just to refer to this article in today's Star-Ledger, he says: "Requiring businesses to establish separate smoking and nonsmoking work areas could be exorbitant. I would like to make a presentation to that association. This is a letter from the Uniguard Insurance Company and, as I described earlier, they have a policy which

limits smoking to one room in their facility. This letter specifically addresses a 500-person facility in Redman, Washington. A month after the smoking policy went into effect, they received a letter from their janitorial service. The janitorial service, unsolicited, unnegotiated, rebated this company \$500 a month because they had so much less work to do because of the new nonsmoking policy. To quote directly: "Because the work units were easier and took less time, Aetna was able to reduce the monthly service charge by \$500 a month due to the nonsmoking policy alone."

So, I would like to tell Mr. Kurtz that not only are the prices for implementing tough smoking policies not exorbitant, but actually the savings from these policies can, in fact, be exorbitant.

ASSEMBLYMAN HERMAN: In fact, companies like Johns Manville, Campbell's, the telephone company, and a lot of other people would disagree with Mr. Kurtz, wouldn't they?

MR. ROSNER: They would, and the track record is building. Dr. Weiss, who is one of my partners--

ASSEMBLYMAN HERMAN: (interrupting) Signs are expensive.

MR. ROSNER: Dr. Weiss has determined that it costs a company \$4,600 per year per smoking employee when you look at absenteeism, health care costs, and a variety of other costs.

What I would like to share with you are some clippings. These are from the Group Health smoking policy. One is a lead editorial from a Seattle newspaper, "Ban on Smoking Makes Good Sense." Because we are talking about legislation, I have an article from the Wall Street Journal from about six weeks ago. It is entitled, "San Francisco Anti-Smoking Law a Success." I have also enclosed a letter from another state that has a very tough smoking law, Minnesota. This is a letter from a person who enforces the Minnesota Clean Indoor Air Act. His experience is that the policy has been very successful. In fact, it recently received, in a statewide poll, a 92% approval rating from the citizens of Minnesota. I would like to also include a clip and a resume from some of the work I have been doing, just so you can see what sort of things are happening. I also have my address and phone number in case anyone would like to contact me for more information.

ASSEMBLYMAN HERMAN: We will send all referrals on. If you see Mr. Gonzalez on the way out, you can leave your card with him as well.

MR. ROSNER: I have two other quick observations, though. The only problem I have with the bill as developed is the 50-person rule. I would like to tell you why I have a concern about that. The small companies which have below 50 people are the types of companies which stand to be sued, because they would not be protected from being sued by the employees.

ASSEMBLYMAN HERMAN: What you're saying is, in this particular bill, what we are giving as a matter of public policy-- We are encouraging in the larger companies the right to be insulated from lawsuits, and companies which are not as large--

MR. ROSNER: (interrupting) The companies which most need that protection would be exempted. So, I think that the small businesses which stand to lose the most from a long lawsuit by their employees, in terms of costs and morale issues, need that protection.

ASSEMBLYMAN HERMAN: So, what you are really saying is, we are being unfair to the smaller companies, and fair to the larger companies.

MR. ROSNER: Yes, I believe that is so.

ASSEMBLYMAN HERMAN: Mr. Kurtz would not agree with you.

MR. ROSNER: I would like to ask you to reconsider that, because litigation to a small company could have a very profound effect.

I would like to finish my testimony with an observation. As you can well imagine, R.J. Reynolds and I have a few disagreements. However, there is one subject on which we totally agree. That is the need for people to have fresh air to breathe. I would like to quote a passage from one of their recent advertisements. You may have seen it; it is entitled, "A Message From Those Who Don't to Whose Who Do." This is R.J. Reynolds Tobacco Company speaking, folks, not Bob Rosner: "We are not fanatics. We are not out to deprive you of something you enjoy. We don't want to be your enemies. We just wish you would be more considerate and responsible about how, when, and where you smoke.

We know you have rights and feelings. We just want you to respect our rights and feelings as well." I don't think I could have summed it up any better.

Are there any questions?

ASSEMBLYMAN HERMAN: Does anyone have any questions for Mr. Rosner? (no response) Mr. Rosner, I want to thank you. I know you changed your plane reservations in order to stay. Is Mr. Morford still here? Again, I would indicate to you, sir, the same thing I indicated to Mr. Gonzalez earlier in the hearing, and the same thing I would indicate to Mr. Kurtz if he were here -- if you can demonstrate to me that these bills are not good business and will not benefit New Jersey's industries-- What I said was, "If you can demonstrate to me" -- Mr. Morford, and I said it earlier so I will repeat it for you as well -- "that these bills are not good business, will not promote New Jersey industry, will not help workers' comp costs, will not improve employee attendance, as is the national norm, I will withdraw the bills. On the other hand, if I can demonstrate that to you, I would expect you, as a matter of intelligence and grace, and conforming to the facts, to take that message back and to support the bills." We will provide you the opportunity in the forum here this morning to discuss it.

MR. ROSNER: Assemblyman Herman, on behalf of these industries, I would like to present you with the letter from the janitorial service showing the \$500 a month, \$6,000 a year savings from the smoking policy alone.

ASSEMBLYMAN HERMAN: The Legislature is always suspect of anyone who gives anything back. However, we accept it anyway with many thanks. Assemblyman Kern?

ASSEMBLYMAN KERN: You made a suggestion about the scope of the legislation. You said that we shouldn't just limit it to certain size companies. With respect to the experience in other states, did they initially start out with any kind of limitation as to size, or exemption as to size?

MR. ROSNER: The San Francisco bill has no size requirements. The Minnesota Clean Indoor Air Act, which is the

strongest of the 36 bills in the various state legislatures, also makes no comment about the size of the businesses. I think it is unfortunate that you're putting small business people in a position where they might be sued, and you're neglecting something approaching 50% of the workers in the State in terms of a need to breathe clean indoor air. So, no, that has not tended to be an aspect of legislation.

ASSEMBLYMAN KERN: Let's assume that we follow your recommendation and take that out, do you think that would generate more opposition or more support for the proposal?

MR. ROSNER: I think the unfortunate situation here is that there is a lot of misinformation. I think when small business people are presented with the facts they will be supportive of this legislation. I am distressed that the industry and business groups are fighting this with no basis of knowledge on the subject. In fact, I would like to extend an invitation to Mr. Kurtz, or anyone from his organization, to come out to Seattle, Washington, to look at Boeing, to look at Uniguard, to look at Group Health, so that at least when they make comments like this they can base it on reality.

ASSEMBLYMAN HERMAN: They don't have to go that far. All they have to do is go as far as Johns Manville.

MR. ROSNER: And, Kessler-Ellis in the State of New Jersey. Unfortunately, I just think there is too much misinformation on this subject. I am excited about coming all the way out from Seattle, Washington, to simply get information out so that you, the Legislature, and, hopefully, small business people can deal with real information, not guesses and hip-shooting.

ASSEMBLYMAN HERMAN: Thank you again. We will let you catch your plane now. Thank you very much. May we have Dr. Santora, please? Good morning, Doctor.

**DR. ELISSA SANTORA:** Good morning. It is a privilege to be here to represent the American Cancer Society; I am President of the New Jersey Division. I am also a Clinical Chief of Surgical Oncology at St. Barnabas Medical Center in Livingston, New Jersey. Probably a personal reason for being here is that what doctors are seeing in cancer treatment is that women, now in 11 states, have cancer of the lung as

the number one killer, whereas prior to recent years, it has been cancer of the breast. In fact, in a few years, probably cancer of the lung will be the leading killer of women in their prime of life. This is a very personal thing when you take care of these patients on a daily basis.

ASSEMBLYMAN HERMAN: Would you please repeat that one more time about cancer of the lung?

DR. SANTORA: Cancer of the lung, in a few years, will be the leading killer of women, whereas breast cancer had been the leading killer prior to this. Eleven states now show cancer of the lung the number one killer of women.

ASSEMBLYMAN HERMAN: So, the cigarette company which promotes, "You've Come a Long Way, Baby," as a means of their quality -- I guess we could say that women have come a long way. We've allowed them to have an equal rate of lung cancer to breast cancer.

DR. SANTORA: Not only that, on surveys the daughters of women will follow the example of cigarette smoking or nonsmoking based on their mother. The book My Mother, Myself is true. The daughter will role model on the cigarette issue, not after the father, but after the mother. Our concern is that women are smoking more than men. That's different. Women smoke more cigarettes now than a man does, in general, and the myth that weight gain will take place if they stop smoking is incorrect, because studies show that one out of four women actually loses weight after stopping cigarette smoking. So, there are many myths.

ASSEMBLYMAN HERMAN: Isn't one of the problems, Doctor, that the cigarette industry has aggressively gone after advertising in the so-called women's magazines?

DR. SANTORA: Yes, in connection with women's rights, etc. What I am going to try to do is anchor--

ASSEMBLYMAN KERN: (interrupting) "You've Come a Long Way," and the rest of it?

DR. SANTORA: Yes. I am going to try to anchor briefly, because there have been such excellent presentations this morning by the previous speakers, but, number one, we in the American Cancer

Society feel that the legislation is fair and it is very courteous legislation. It is very, very fair. I think the point brought up about the 50 employees is very, very important because it is the small businesses that tend to have less air space, or breathing space -- never mind litigation -- but just health habits. All persons have these rights.

Number two, the intent of the legislation is really not punitive. It doesn't seem to be punitive to the smoker at all. It is actually going to help business. We heard a beautiful presentation of actual facts just now from the State of Washington, where businesses are profiting. Five thousand dollars per employee is the money spent for anyone who employs a smoker, not counting all the other benefits.

The public mood is to support the businesses that care about the people who support those businesses. Everyone has a right to the sensitivity we all have. Two-thirds of the people of New Jersey do not smoke. So, business is looking at this statistically. Two-thirds of the people who would be their consumers in one way or another do not smoke in the State of New Jersey. These people's rights have to be championed.

The State of Connecticut, which is close by, has already passed similar legislation. In doctors' offices, we see many nonsmokers who complain daily about acute eye, ear, nose, and throat problems. The children in families of smokers are seen with bronchitis and diseases, as you have heard.

Studies now show that carbon monoxide -- and, we talked about the car fumes-- We would not expose ourselves to carbon monoxide from our cars in a closed garage. We would not put our children or our loved ones in a closed garage with a car running. The carbon monoxide from cigarette smoking in an enclosed environment -- and, those are the key words, in an enclosed environment -- will show higher blood levels in the non-voluntary smoker, the passive smoker, if they are sampled. If you are in an airplane for two hours, that plane will fill with smoke after a two-hour ride. If you take many trips to Europe, you pretty well know that you have been smoking, even if involuntarily, because of the eye, ear, nose, and throat irritations. That is among all people.

The American Cancer Society has two new studies. They are studying the problem of the involuntary smoker who now has lung cancer. We are trying to establish the relationship between their exposure and cancer of the lung, because this is a rising problem in the country.

ASSEMBLYMAN HERMAN: There is a rising problem in the country of nonsmokers getting lung cancer?

DR. SANTORA: Yes.

ASSEMBLYMAN HERMAN: What about the argument that they are probably more substantially impacted by the other carcinogenic environmental factors, such as exhaust, industry pollutants, and such?

DR. SANTORA: The facts seem to point to cigarette smoking in an enclosed environment as practiced in each state in the United States.

ASSEMBLYMAN HERMAN: I beg your pardon?

DR. SANTORA: In other words, the facts show that it is cigarette smoking, as has been brought out by the testimony today. We feel that cigarette smoking is the problem, more than any other carcinogen we have.

ASSEMBLYMAN HERMAN: If I understand you correctly, it is a recent development by way of scientific proof and data collection that carcinoma of the lungs is on the rise as a result of involuntary smoking.

DR. SANTORA: We are investigating that now. We do not have the conclusion, but the data is enough to make a very serious study and that will be forthcoming.

ASSEMBLYMAN HERMAN: When do you predict that study will be completed?

DR. SANTORA: I do not know when it will be out. It takes time to collect such data. But, clean air is more important with cigarettes than with any other environmental problem, because of the fact that it is in the home, it is in work, and it is all around us. So, it is something that is preventable.

ASSEMBLYMAN HERMAN: All right. Please continue, Doctor.

DR. SANTORA: Again, documentation will be coming on the mounting evidence that is building. This is from true epidemiology and scientific studies. Not only is the carbon monoxide elevated, but, also, studies of tests of the nonsmoker in an enclosed environment are starting to show that these people have less pulmonary function values. In other words, the pulmonary function values are not at full efficiency. So, as we start to study and look into these problems, the hard facts will be there.

The other thing is, what is our responsibility as human beings to each other? This is a very important thing. We're thinking about our unborn children. Women who are working, are pregnant, and who are not smoking -- and, many women are in small businesses -- are exposed to the hazard of an enclosed environment, plus smoke.

ASSEMBLYMAN HERMAN: Can't we break this down just as a matter of basic rights, that you have a right to smoke, but you don't have a right to smoke in such a way as to harm others?

DR. SANTORA: That's right.

ASSEMBLYMAN HERMAN: You have a right to drink, but you don't have a right to drink in a way that will harm others.

DR. SANTORA: Not only that, but I think that we who do not smoke have a right to help the smoker to try to stop smoking by providing the opportunity in the environment, because our patients who smoke -- and you heard the testimony today -- will tell you, "I'd love to stop; I try to stop."

ASSEMBLYMAN HERMAN: Let me ask you this, if I may, and I would like to get off your given text because I have heard you before. We all recognize your expertise in this particular field, having attended a dinner where you were an awardee. I thought that was just splendid. What do you think, as a scientist, as a doctor in this field of cancer research, will be the potential impact of adopting a broad public policy in New Jersey which will foster controlled smoking, or no smoking in certain situations? How do you think that will impact on smokers?

DR. SANTORA: One can envision that in newborns the birth weight would rise because premature, stillborn, and involuntary

abortions are related to smoking mothers, and will probably be documented in nonsmoking mothers. The quality of the health of employees will rise. That \$5,000 they are talking about now that it costs to hire a smoker will probably be found to be even higher, because the quality and effectiveness of the worker will be improved.

ASSEMBLYMAN HERMAN: Then why do you think my colleagues out here are fighting us so about getting this legislation? These bills are so pro-industry and pro-business, can you give me some indication why you feel they are really putting up a fight against us, when the bills should be in their favor?

DR. SANTORA: Statistics show that less people are smoking in general and the rate of the purchase of cigarettes has dropped dramatically. When your business starts hurting, you have to look for some way to market it.

ASSEMBLYMAN HERMAN: I am talking about New Jersey businesses. Perhaps just to summarize your testimony, what would you tell me to tell the members of the New Jersey Business and Industry Association, who seem to be anti these bills, or at least concerned about these bills, that would help me to help them support these bills?

DR. SANTORA: The smokers will thank you for helping them to have a clean environment. The nonsmokers will thank you for helping them to have their rights supported and championed. People will support health-conscience businesses. It is the best policy any business can have, and it is documented in this country.

ASSEMBLYMAN HERMAN: Does anyone have any questions for the Doctor?

ASSEMBLYMAN KERN: Yes, but not specifically on the legislation. Much of your testimony has been of a general nature, not on the specific pieces of legislation. I am curious to know something about what is going on in our society because, obviously, the bills are going to be reflective of societal concerns as we try to approach a problem that is a threat to society. You mentioned that women are reaching a point where the incidence of lung cancer is going to be the same as it is for men.

DR. SANTORA: No, it is going to be the number one killer of women, surpassing cancer of the breast.

ASSEMBLYMAN KERN: The number one killer? At the present time, is cancer of the lung the number one killer of men?

DR. SANTORA: Yes.

ASSEMBLYMAN KERN: So, it means the same thing.

DR. SANTORA: Well, okay.

ASSEMBLYMAN KERN: What do you see as the reason for this increased incidence of smoking among women?

DR. SANTORA: During World War II, women went into the workplace as the men went to war. Women were then socially allowed to adopt smoking as a habit. Women started smoking in the 1940's, that is, public smoking. It became adopted more and more as it became the "in" thing to do, the popular thing to do. It was no longer a disgraceful thing for a woman to smoke a cigarette. "You've Come a Long Way, Baby" is what it is all about. It takes about 15 or 20 years for us to see the effects of cigarette smoking in relation to cancer, which is really a chronic build-up of disease, unrelated to the chronic lung conditions of emphysema and bronchitis, or having their children underweight at birth, premature, stillborn, with birth deformities, or poor carbon monoxide levels. These things were not known. So, unrelated to even the children they were bearing was the chronic effect on their health. As they continued to smoke in the home, their daughters, who imitated their mothers whether they wanted to or not, followed the role model of the woman, the mother. They picked up the habit even more intently. Then, the image became that women should be thinner in this country, and, of course, now we have the problem of anorexia nervosa, where thinness is an obsession and people are dying of it. Thinness is not health. The cigarette was an easy way to control weight. You don't eat; you put something in your mouth -- you smoke. And, daughters smoked even more. Now, the next generation is coming along. The quantity of cigarettes that a woman smokes, compared to a man, has increased dramatically.

ASSEMBLYMAN KERN: Statistically, has the percentage of women smokers per generation increased, or did it just start in the 1940's and remain the same?

DR. SANTORA: It started in about the 1940's and it has remained the same, whereas with men, smoking has dropped dramatically.

ASSEMBLYMAN KERN: I see.

DR. SANTORA: See, men smokers have dropped dramatically; women started late but have kept relatively the same pattern.

ASSEMBLYMAN KERN: Is it not true -- if I'm wrong, correct me -- that among our older population, people who are over, say, 40 years of age, that the percentage of smokers has declined?

DR. SANTORA: There has been some drop, but the overall statistics for women, unfortunately, do not break down as well. The older persons are attempting to stop smoking, but the patient will tell you, as other speakers have reported, "I go to dinner, I go here, I go there; I smell the smoke, and it starts all over again." We are not helping those who are trying to get rid of the addiction, and that is what it is. It is no longer a right or a choice; it has become an addiction.

ASSEMBLYMAN KERN: How do you account for the high percentage of smoking in younger people as opposed to, say, older people?

DR. SANTORA: It is a result of the media showing very healthy, strong, macho males and beautiful women, for instance, "You've Come a Long Way, Baby," and the Marlboro country ads. They don't show the Marlboro country I see in the hospital. They show beautiful clear air, mountaintops, a handsome man, with the cigarette package coming at you. It is all very subtle, but that is the identification. We all want to be among the beautiful people. We all want to be the girl in the Virginia Slim ad, slim by name, and also beautiful, free, independent, and having rights. It plays on our need for what we think is freedom, but like all seduction, it is addictive and it becomes a monkey on our backs.

ASSEMBLYMAN HERMAN: Assemblyman Thompson?

ASSEMBLYMAN THOMPSON: Doctor, I have one question. Is there a physical or psychological connection between a person who stops smoking and becomes a compulsive eater and gains a lot of weight? That is one of the arguments I hear people talking about. They state that when they go off cigarettes, all of a sudden they blow up because they eat all day.

DR. SANTORA: There is known to be what they call the "oral fixation habit," that they must put something into their mouths. When people are being monitored and guided in programs to stop smoking, part of it is to break the motor habit of putting something in the mouth. Some people put alcohol in instead, but food is more common. That is to break the habit, but it is a habit of oral fixation. It is not the cigarette that keeps you thin; it is just that you are putting something into your mouth. It is really teaching the addicted person how to break the addiction of nurturing something in their mouths. They call it "an oral need." But, one out of four people lose weight after they stop smoking. That is even without counseling. So, there is more myth being presented than there is fact.

ASSEMBLYMAN KERN: Have you been involved in any programs in the workplace, or have you instituted any programs in the workplace with respect to the reduction of the incidence of smoking?

DR. SANTORA: When I opened a practice in New Jersey back in November, 1971, after coming in from New York, as an oncologist I did not want anyone to smoke in the office. I made the first mistake in my own small business of having ashtrays available to put out the cigarettes. I did a lot of damage in the office, etc., so I took away the ashtrays and I didn't even need a sign. My own employees are forbidden to smoke. None of them do smoke, except one, who has cut down dramatically from two packs a day to a half a pack a day, and this employee goes outside to smoke.

So, in my small business, I do not have absenteeism from bronchitis or the usual problems you get. I see that my smoking patients coming in welcome the fact that they can go someplace where they do not have the temptation. It is reenforcing. I have a small business; I have had a small business since 1970. The staff and the patients both thank me for being so strict. I have enforced it, but with joy. I think any small business person really wants to see that people have this quality of life.

ASSEMBLYMAN KERN: Pursuing that aspect, if we were to change these bills and amend them so that they just didn't impact on larger installations, would you be supportive of that type of a move?

DR. SANTORA: Absolutely.

ASSEMBLYMAN KERN: Thank you very much for coming. We appreciate your testimony.

DR. SANTORA: Thank you very much.

ASSEMBLYMAN KERN: Is Anne Tripp, American Council for Healthful Living, here? (affirmative response)

ANNE TRIPP: Good morning.

ASSEMBLYMAN KERN: Good morning. For the record, please give us your name and tell us who you represent.

MS. TRIPP: I am Anne Tripp, Executive Director for the American Council for Healthful Living, a private, nonprofit, health promotion agency in Orange, New Jersey.

We are involved in activities that promote good health and positive life styles for all age groups. One of our programs is called Better Than Normal, which is a wellness program taught in the Newark and Montclair schools. This is what the curriculum looks like. We teach students that a cigarette contains 1,200 toxic chemicals and 50,000 times as many particles as the typical polluted urban environment.

One eye-opener for the children was an activity in which they were asked to take questionnaires to a busy intersection or shopping area and ask shoppers about their smoking habits. They asked questions such as, "At what age did you start smoking?" and "Why did you start smoking?" as well as questions concerning who had influenced them to start and what might cause them to stop. The students were surprised to find that almost every smoker they encountered really wanted to quit and wished they had never started.

The reason children start to smoke is often because there is a grown-up image they want to project. Since many children in today's society do not have role models at home, society as a whole has a great influence. This is one of the reasons the American Council for Healthful Living is so solidly behind the six bills that limit or prohibit smoking in certain places where children are likely to be influenced, as well as exposed to the toxic fumes.

Another reason we support these bills, of course, is the pollution factor. There are persons who will not even attend public

meetings where their input would be beneficial to the community. Smoke-filled rooms keep these people away. It is becoming more and more apparent that sidestream, or secondhand smoke, is very damaging to the nonsmoker who is involuntarily exposed to the smoke.

ACHL has also been involved in anti-smoking seminars in the workplace. Many employers have become aware of the cost of a smoking employee and are eager to provide avenues and incentives for their employees to quit. They prefer to hire nonsmokers, and our experience shows that they welcome the new laws so that they can legally cut down on smoking areas. Statistics show that while the unemployment rate for nonsmoking men was 7.7% at the end of 1983, it was 17.4% for their smoking counterparts. That is a difference of 10%. For female smokers, the rate was 14.2% unemployed, while their nonsmoking sisters had an unemployment rate of 8.7%.

There are enough pollutants in our air already without adding cigarette smoke. We feel it is the duty of government to see to it that the environment is made as clean as possible for the welfare of all citizens.

Therefore, we insist that smoking be banned from any area to which a person must go for business or public activities. Smoking should be permitted only in designated areas so that one can go shopping without choking, ride a bus or an elevator without fear of getting burned, enjoy a nice meal in a restaurant without having the meal spoiled by the smell of smoke, and avoid having one's clothes impregnated with cigarette smoke after a public meeting. The time has come for government to provide legislation to ensure a healthy environment.

Thank you very much.

ASSEMBLYMAN KERN: Your organization, by your testimony, has instituted a program within the Newark and Montclair school systems. How did that come about?

MS. TRIPP: Through grants from private foundations. We are health educators. We also run a VD hot line. We have been working closely with schools since we were founded in 1969. Different foundations have said, "Okay, you have done a super job with VD; let's

take on and promote wellness." Part of wellness is not having VD, or STD's as they are now called. It is also not smoking. It is very discouraging for us to go into a school system and have other people smoking in the cafeteria. The teacher comes back from her break and you can smell the smoke on her hands. Now, I must confess I was a smoker. I learned to smoke when I was in high school because it was the "in" thing to do, women's lib, or whatever you want to call it. I have long since given it up. Also, I do not hire smokers. I'm sorry to be prejudice.

ASSEMBLYMAN KERN: Now, with respect to the school systems you deal with, I know there is a bad problem with smoking in high schools, and maybe even junior high schools.

MS. TRIPP: Yes, absolutely, junior high schools.

ASSEMBLYMAN KERN: All right. The two school systems you are dealing with are urban and suburban, generally speaking. Has there been any reduction in the amount of smoking done by the populace in those school systems as a result of your program?

MS. TRIPP: That is a very hard thing to measure. The students we teach -- fifth, sixth, seventh, and eighth graders -- are reluctant to start smoking. We are trying to catch them before they start. We do not have those statistics. We have statistics that show a percentage of our students have stopped, or they are not with friends who are smoking. In other words, peer pressure is so heavy for kids of that age. We are trying to give them an alternative, and tell them why. We do not want to preach; preaching does not work. However, they need all the support they can get. One of the things working with corporations-- Many employers will say, "Gee, I don't want smoking in my place of business, but how can I legally stop it?"

ASSEMBLYMAN KERN: I have noticed a change in the last three years because I have had to do some employing during that time. Now, employment agencies and schools which train personnel are asking employers, "Do you want someone who is a nonsmoker? Is there any regulation in your business prohibiting smoking?" I am just curious to know, is that a common development?

MS. TRIPP: I think that is a coming trend. I think it depends on where it is and what the situation is. I find education is so much harder to deal with in the urban inter-city. I have also noticed that in my own community the boys are smoking less in high school than the girls. It's a real problem. It's self-image; it's fighting Madison Avenue, frankly.

I also represent the New Jersey Health Education Council. I'm sorry, did you have any further questions?

ASSEMBLYMAN KERN: Well, that's all I have at the moment. Do you have another statement, or do you want to leave us a statement?

MS. TRIPP: Yes. I have both statements. May I read this into the record?

ASSEMBLYMAN KERN: Sure.

MS. TRIPP: Okay. This is from the New Jersey Health Education Council, which is dedicated to promoting effective living through better health education.

"On behalf of the New Jersey Health Education Council, I would like to express strong support for the legislation banning smoking. The bills I am specifically referring to are: A-546, in the workplace, A-547, A-548, A-639, A-640, in public places, and A-864, on buses. To do otherwise, as health educators, would be totally undefensible.

"If the public is to truly believe that smoking is, in fact, hazardous to your health, those in positions to make positive contributions must act responsibly. That is why we urgently ask you to support legislation which will assist in reducing the shocking total of 350,000 smoking-related deaths per year. Failure to do so can only be interpreted as a callous neglect of your public responsibility to preserve the health of our citizens." It is signed "Sincerely, Dr. Christopher Gussi, President, New Jersey Health Education Council."

Thank you.

ASSEMBLYMAN HERMAN: I wish to thank you very much for being here today. Assemblyman Thompson?

ASSEMBLYMAN THOMPSON: Ms. Tripp, I did not quite understand the correlation you drew between male and female nonsmokers versus smokers with reference to unemployment.

MS. TRIPP: Do you want me to go back over that?

ASSEMBLYMAN THOMPSON: If you will, please.

MS. TRIPP: Okay. The female smokers rate was 14.2% unemployed, while their nonsmoking sisters had an unemployment rate of 8.7%. The first one for females was 14.2% smokers; nonsmokers was 8.7%.

ASSEMBLYMAN THOMPSON: What does that have to do with this legislation?

MS. TRIPP: With the legislation?

ASSEMBLYMAN THOMPSON: Yes.

MS. TRIPP: It is the overall movement trying to curtail smoking.

ASSEMBLYMAN HERMAN: What you are basically saying is, that as a matter of public policy if we encourage this legislation, there will be a greater public awareness as there is in Minnesota and other states, where it was indicated -- and that is why the cigarette industry is so bananas about these bills -- that in such places the rate of smoking goes down where there is a public policy to discourage smoking and, therefore, there will be less sales. If there are less sales, obviously there will be a greater impact on public health. Right?

MS. TRIPP: That's right. You've got it.

ASSEMBLYMAN HERMAN: See, I knew that was the answer, Gene.

MS. TRIPP: You said it so well. I thank you.

ASSEMBLYMAN HERMAN: Assemblyman Shusted?

ASSEMBLYMAN SHUSTED: Ms. Tripp, is the American Council for Healthful Living opposed to smoking per se under any circumstances?

MS. TRIPP: Yes. We feel that every individual has a right to do with his or her life as they so wish. We try to build awareness for a healthy life style, which includes taking responsibility for what you do. If you wish to smoke, it's your funeral.

ASSEMBLYMAN SHUSTED: But, that doesn't answer my question.

MS. TRIPP: I'm sorry.

ASSEMBLYMAN SHUSTED: Is the American Council for Healthful Living opposed to smoking per se?

MS. TRIPP: In general, yes. We agree with the Surgeon General.

ASSEMBLYMAN HERMAN: But, you don't think we ought to ban people's right to smoke if they want to, do you? You are not saying that.

MS. TRIPP: No. If they wish to smoke, okay, as long as they are not polluting my air. I mean, if you want to go outside and smoke, okay, but don't do it in my automobile, or in my office.

ASSEMBLYMAN SHUSTED: How about on my street corner or your street corner?

MS. TRIPP: Well, street corners are public areas. But now, in the grocery store, it is very disconcerting to be behind a man with a cigar or a woman with a cigar in fact -- a woman with a cigarette.

ASSEMBLYMAN HERMAN: Or a woman with a cigar?

MS. TRIPP: Yes, how about that?

ASSEMBLYMAN SHUSTED: That's my 89-year-old mother-in-law. She smokes cigars.

MS. TRIPP: Why not?

ASSEMBLYMAN HERMAN: On behalf of your 89-year-old mother-in-law, I would like to read the following letter from the Medical Society of New Jersey into the record. I do not believe the Society has a representative here today. The letter directed to me dated September 11:

"Thank you for sharing your letter of September 4, 1984 regarding the smoking bills. The Medical Society of New Jersey shares your concern in this regard and clearly supports the legislation.

"There is another reason to support these bills. Everyone is concerned about the costs of health care. Smoking is a terrific causative factor in illness and injury and in the aggravation of illness and injury. Burns, heart disease, vascular disease, lung disease, birth defects, cancer, and stroke would be greatly reduced if smoking disappeared. The money spent on these self-inflicted diseases is incredible. The money to be saved far outdistances any form of legislative cost containment and/or fee depression.

"I hope this is of some assistance. Sincerely yours, Vincent A. Maressa, Executive Director."

I might add, for the purpose of the record, that Martin Johnson from the Medical Society of New Jersey was here earlier and would have presented this as part of the public record and would probably have expanded on it, but I told him that if he could not stay that I would certainly indicate to you, the members of this Committee, his support and the support of the Society he represents.

Again, thank you for appearing, Ms. Tripp. I very much appreciate it.

MS. TRIPP: I will leave you seven copies of everything.

ASSEMBLYMAN HERMAN: Thank you very much. At this time, I would like to call Regina Carlson.

**REGINA CARLSON:** Thank you, Assemblyman Herman and members of the Committee. I am Regina Carlson, Executive Director of the New Jersey Group Against Smoking Pollution, an educational organization designed to protect nonsmokers.

I would like to quickly give you the reasons we support these bills today. I am going to suggest one amendment, and then I have been asked to briefly present testimony from three people who could not be here: a restaurant chain owner, a citizen, and the Surgeon General of the United States, who has asked me to then conclude with a presentation to you from him.

ASSEMBLYMAN HERMAN: That is a pretty heavy list you have there, Regina. Please go ahead.

MS. CARLSON: New Jersey GASP supports all of these bills for a number of reasons. The first body of reasons, obviously, is medical. Smoking hurts nonsmokers. We know that most people feel immediate responses, such as headaches, coughing, or sore throat. We know that spouses of smokers may be at risk for lung cancer from their smoking spouses. You know, Dr. Reichman was just talking about the Geneva ETS symposium which was sponsored by the Tobacco Institute. However, I have read the 150-page report that was issued by that Institute, and even that conference included a number of studies -- among them a new one -- linking secondhand smoke to lung cancer in husbands. The new study was done in Glasgow, in the western part of Scotland.

So, we have evidence that smoking hurts nonsmokers. We know, for instance, that White and Thrope published an article in the New England Journal of Medicine. They are a researcher and a physician. If you work in a smoke-filled office, your lungs will be as bad as the smoker who sits next to you who smokes a half a pack a day.

I would also like to talk about how smoking affects smokers. We are not an anti-smoker organization, and I suggest to you that this is not a struggle between smokers and nonsmokers. This is a struggle between the health of all Americans and the greed of the tobacco industry to protect their profits. What is happening now is that smokers are seeing that they are really the victims. They are recognizing what a monumental disease factor smoking is.

Smoking kills 1,000 Americans everyday. That is like three jumbo jets crashing in midair day after day after day. In New Jersey, which has 1/30 of the United States population, we know there are 30 New Jersey citizens dying everyday from smoking. I would compare that to a classroom full of children. I would defend that parallel because almost every new smoker is a kid. So, if we do not discourage smoking, we are encouraging 30 children a day to start smoking and to kill themselves.

ASSEMBLYMAN HERMAN: Can you imagine the headlines if we lost 30 kids per day to drunk driving?

MS. CARLSON: Dr. Reichman mentioned the asbestos thing, where we are closing down schools and libraries and sending people in spacesuits in to take out the asbestos, when people are still smoking around kids, which is a much more potent health problem.

One in ten smokers will get lung cancer. Those are odds like Russian roulette. The National Institute on Drug Abuse has said, "Smoking is America's number one drug problem." So, I submit to you that medically, smoking is a monumental problem for the health of everyone.

Another major area of concern is safety. Of course, the first thing you think about is fire, especially since cigarettes are chemically adulterated to keep burning. Almost a million cigarettes are lighted every minute in this country. We know that 14,000 people

will die in fires caused by smoking and that 2,000 of them will be children. We know that 38% of the people who die in fires caused by smoking are nonsmokers. Many of them are old people, sick people, and children. We know that smoking is the cause of fires in 15% to 33% of the fires in public places such as restaurants, hotels, motels, and clubs. However, smoking restrictions can reduce these fires.

We also know that people who smoke have two and a half times more auto accidents and twice as many on-the-job accidents. So, smoking is a monumental safety hazard, as well as a health hazard.

The next area where we support these bills is the area of public support. Seventy-five percent of all Americans are nonsmokers, but the majority of smokers, too, support these bills. I have prepared for the Committee today a list of about 30 public polls. They have been done in New Jersey; they have been done nationwide. They have been done by the Gallop organization; they have been done by the Tobacco Institute again and again and again. I will read you a few of these: 91% of nonsmokers want to see restaurant smoking controlled, and so do 80% of smokers. We know that six years ago, 75% of the passengers on airlines were requesting nonsmoking sections, and that had doubled from two years earlier. We know that 87% of nonsmokers want workplace controls. We know that at Pacific Telephone -- they surveyed their employees -- they found that 87% of the employees were bothered by smoke at work, that is, the nonsmokers, and 60% of all employees were bothered.

In Minnesota, where for ten years now they have had a comprehensive Clean Indoor Air Act, a survey made only four years after the Act went into effect found that 92% of the citizens favored it, including 87% of the people who smoked two packs a day. So, the data is there that people -- smokers and nonsmokers -- support smoking restrictions. In fact, nine out of ten smokers say they want to quit.

Then, there is the body of economic evidence. Dr. Marvin Kristein is a health economist at the State University of New York over at Stony Brook, and he is also Chief of the Division of Health Economics of the American Health Foundation. He says that a smoker goes into a store and buys a pack of cigarettes, or he goes to a

discount store. He pays a dollar for that pack of cigarettes, and those cigarettes produce illness, accidents, maintenance costs, ventilation costs, and fires. For every dollar that a smoker spends for a pack of cigarettes, we, as a society, spend two dollars trying to take care of the costs inflicted upon all of us by those cigarettes.

Dr. Weiss has calculated that a smoking worker costs \$5,000 a year, although his colleague, Mr. Rosner, said this morning that the tab is now up to \$6,400 a year. If we take the conservative figure of \$5,000 a year and apply it to the New Jersey State payroll-- New Jersey has 80,000 State employees. If we calculate that one-third of them are smokers, and if we accept the figure that they are costing us \$5,000 extra per year to employ compared to a nonsmoker, the smoking State employees of New Jersey are ringing up a price tag for this State of \$120 million.

Another area is the area of feasibility. I have already told you why it is feasible in theory, now let me tell you how it works. We know that many other states, cities, and counties have laws restricting smoking. Here is a list of ten states that have restaurant regulations in effect now, along with about 50 cities and counties. These places are doing it. They have been doing it for over ten years. Minnesota State Senator Stan Turley, who gave me a letter for this very Committee over six years ago, said they have not had one single arrest. The person in Minnesota who is in charge of enforcing it said, "We haven't had a problem. People are not going to jail. People are obeying the law. People are supportive of the law."

ASSEMBLYMAN HERMAN: Would you be interested to know, Regina, that I have a letter from the Administrative Director of the Courts saying that the three laws we have on the books-- They checked about 10 or 12 major areas, and out of 15,000 complaints that have been reviewed, there is only one for smoking.

MS. CARLSON: Is this my chance to say, "I told you so?" I have prepared a list of state statutes and county and city ordinances controlling smoking in the workplace for the Committee. You will see that there are eight states that are doing it already. The widely-publicized California law in San Francisco is not the most

extensive. It was only the one that got the most media coverage. They apparently don't know how to get to smaller cities. We know it is being done by law in many other jurisdictions. We also know that it has been done voluntarily by farsighted citizens and business people. Here is a list of 200 restaurants in New Jersey which have voluntarily adopted no smoking sections, and five which are entirely smoke-free and are still doing a very nice business.

Now, I will anticipate your question and say I still think we need State law, because not all businesses are responding, and the right to breathe is a basic right. This is a list I have compiled. This list may be unique in the country. This is a list of 200 businesses that have smoking restrictions in the workplace. The businesses vary from companies which just have no smoking sections in the cafeteria, to companies that have separate sections, to companies that ban smoking entirely. They include some companies which refuse to hire smokers. They are all across the board in terms of size; they are all across the board in terms of policy; and, they are all across the board in terms of locality. I made a point of calling a couple of New Jersey employers. David Friedman is President of New Brunswick Scientific in Edison. They make shakers, or agitators, which biological specimens are put into for research. They are going smoke-free. They have just announced their new policy that the company will be smoke-free next year. He is sorry he is not free to be here today. He wanted me to tell you that he supports the bills.

I talked to Plant Manager Douglas Bruce at Kessler-Ellis Products in Atlantic City. They went smoke-free a year ago in January. He says the restrictions are working very well. Cindy Todd is an electronics supervisor there. She was one of the people on the Employee Committee which helped to get the policy through. She used to smoke three packs a day; she is down to one now. I asked Mr. Bruce what I could tell the Committee from him. He said, "Tell them it is working fine. We support the law, and I am a smoker myself." So, here is a list of hundreds of companies you can call.

ASSEMBLYMAN HERMAN: I assume you will be talking to the rest of our legislators on a one-to-one basis with all this information -- at least we hope you will.

MS. CARLSON: Thank you for the suggestion. I also thought I would do a little historical stuff. I just talked to Victoria Station Restaurant. I talked to the local restaurant up in Whippany; I talked to the Eastern Regional Manager; and, I talked to the headquarters out in Lark Spur near San Francisco. But, I decided I would do something. I brought you a letter Victoria Station Restaurant prepared for the New Jersey Assembly six years ago, in 1978. I want to show you that this is not a crashingly new idea. Six years ago, they wrote to New Jersey GASP, for a presentation to State Assembly members, that they had had a nonsmoking policy for years in their restaurants, and their biggest problem was underestimating the demand. They spoke specifically of their East Brunswick restaurant. When this letter was written, the restaurant was only four months old. They said, "Many of our repeat customers are phoning for reservations. They are preempting the conversation with the statement, 'Nonsmoking please.'" So, we know that it works. We know that it saves money. I could quote you many stories about employers who are finding they have lower maintenance costs, they have lower absenteeism, and they have lower insurance.

I would like to mention the final body of evidence, which I think is common sense. Sometimes we get these Tobacco Institute experts coming and telling us that there isn't enough scientific evidence, the volatile end nitrous, times six to the tenth power, means that you don't have enough proof, and besides we want to keep selling our stuff. It isn't that complicated. Let's just apply a little common sense. For instance, is it really fair that nonsmokers should have smoke imposed upon them against their will? These regulations would extend freedom to everybody. I would like to quote Jackie Rogers, President and Founder of Smoke Enders. She says, "Smoking certainly is compulsive, but breathing is involuntary. A person who smokes can choose to postpone a cigarette or step into a smoking section. A nonsmoker cannot hold her breath eight hours a day at work. A nonsmoker cannot hold her breath throughout the course of a restaurant meal or a public meeting. Smokers who are so terribly addicted to nicotine that they are really uncomfortable without it, can have their doctors prescribe nicotine chewing gum for them if they really need their nicotine that much."

Another common sense argument is, since we control other annoyances, such as loud radio playing, why can't we at least adopt the same sensible attitude toward cigarette smoking, which is at least as annoying as the loud playing of radios in public, and certainly more harmful?

When I see special facilities -- ramps and special toilets -- for handicapped people, I think that is a very nice idea. However, I wonder where the special clean-air facilities in public are for the 75% of Americans who do not smoke. I would like to quote Assemblyman Herman from The Star-Ledger last week. When you, along with other Assembly members, introduced legislation to help protect crime victims, you said, "A right without a remedy is no right." I suggest we apply the same standards to the right to breathe clean air and not to be polluted. We do need a remedy.

ASSEMBLYMAN HERMAN: I knew we were going to be able to use that line again sometime, Regina.

MS. CARLSON: The final common sense argument is, why are we bending over backwards to make it easy for smokers to kill themselves and gas everyone else in the vicinity? Is that really a sensible thing to do?

Those are the arguments I would advance. I ask for one amendment. The workplace bill, as it is written, exempts employers of fewer than 50 employees. This leaves 38% of New Jersey employees unprotected, because 38% of the work force is now working for small companies. Those people are often the people who need more protection because they may be in a more confined physical space.

I will conclude my part of the testimony -- I just have a few brief comments -- and will then present the testimony of the other people briefly. I suggest to you that there are three constituencies asking you to pass these bills on to the Assembly with a recommendation for passage. The first constituency is the health experts. Last summer in Winnipeg, Canada, the Fifth World Conference on Smoking and Health convened. It was a meeting of 1,000 experts on smoking and health from 100 countries. One of the Japanese delegates said, "It is like the Olympics because we meet only every four years." The

unanimous number one recommendation of those 1,000 anti-smoking health experts worldwide was that the most important thing to do to reduce smoking was to protect nonsmokers, including social, legal, and political actions to make nonsmoking the norm. They are joined by the U.S. Surgeon General, Dr. Everett Koop, who has asked all citizens to join him in the kind of actions that will make our society smoke-free by the year 2000.

The second special constituency I would like to present to you is our children. Our children are getting good education in schools about smoking, but when they go out they say, "My mom is getting sick from the smoking at work," or "We went to a restaurant and it was smoky," or "The teachers were smoking in the teachers' lounge," or "There are a lot of people smoking in the movies." They ask, "If smoking is really so bad, how come they're doing it all over the place?" The most important education we can give our children is example, and it is time we started to set a better example for our children.

Finally, I suggest to you that citizens want to see the tobacco industry face up to some muscle from the citizens. The tobacco industry has targeted nonsmokers' protection as their number one enemy. I would like to quote William Hobbs, who is President of R.J. Reynolds Tobacco Company. He said of nonsmokers' rights protection, "If they cause every smoker to smoke just one less cigarette a day, our company will stand to lose \$92 million in sales annually. I assure you that we do not intend to let that happen without a fight." And, that is what you're seeing now. You're seeing the fight of the tobacco industry to protect its profits. They know that in Minnesota per capita consumption is down. They know that in San Francisco one of the supervisors said, "When the no smoking laws went into effect in the workplace, all of a sudden all of the stop smoking courses filled up. They know people will smoke less if we have policies supporting nonsmoking as the norm."

ASSEMBLYMAN HERMAN: What you are saying is, if we pass these laws here as a matter of public pressure -- not public pressure -- but public information, it is going to encourage people to try to stop smoking.

MS. CARLSON: Yes, it is. I have brief testimony I will present from three other organizations. First, George Callas was not able to be here this morning. He is the director of a federally-funded program, but he is also president of a restaurant chain with 25 restaurants -- the Perkins Pancake restaurants -- here in New Jersey. He writes: "The decision to have nonsmoking sections ten years ago was the best business decision we ever made." He says they have people coming from much further than usual to eat at their restaurants. They have more people bringing children to their restaurants. They have more older people coming into their restaurants. Furthermore, he said, "Smokers are commending us for our policy." Mr. Callas is a member of the New Jersey Restaurant Association and the National Restaurant Association. He thinks his fellow members have been remiss, but he concludes by saying: "I'm laughing all the way to the bank."

ASSEMBLYMAN HERMAN: I assume we have a statement from him also.

MS. CARLSON: I have made copies of his statement for you. I also have copies of a statement from an individual citizen, Hugh Mulvaine, from Plainfield. He writes: "There is an old saying that reformed drunks are the worst kind," i.e., they don't want anyone else to drink. He says that he is a reformed smoker, but he considers that the best kind. He has written to this Assembly Committee to tell you that he was forced out of his job because he was sickened by tobacco smoke. This was a very grave problem for him, especially since he had three children in college. He now has a new job. He has only been there for five months, and that is why he couldn't be here today. He doesn't have any vacation time yet. He is very concerned that, once again, while his employer is saying he values health, he is doing nothing about smoking in the workplace. Mr. Mulvaine is getting sick. He can't quit his job, and yet he is losing his health. This is an example of the kind of complaints which come to New Jersey GASP. I estimate that we get 1,000 citizens a year coming to our organization for help, and most of them are complaining about smoking in the workplace.

Finally, Dr. Everett Koop, the Surgeon General of the United States, sent me a letter yesterday which he asked me to present to this Committee. He says, "I regret that I cannot be in New Jersey to talk to you about the importance of severely restricting indoor air pollution due to smoking. As you know, last May I challenged the nation through voluntary organizations -- social, political, and economic institutions -- to set a goal for a smoke-free society by the year 2000. On that occasion, I reported that more than 30 states and hundreds of local communities have enacted ordinances to prohibit or severely restrict smoking in places like restaurants, government offices, theatres, indoor sports' arenas, waiting rooms, public transportation, retail stores, and so on." That was his Julia Jones lecture at the annual meeting of the American Lung Association this spring in Florida.

He says, "The response to my challenge has been very gratifying." He says, to Assemblyman Herman: "Because of the efforts of concerned citizens such as yourself, we will be able to reach our goal for a smoke-free society by the year 2000. Best wishes for your continued efforts in this direction. Sincerely yours, C. Everett Koop, M.D., Surgeon General of the United States."

ASSEMBLYMAN HERMAN: I think that's wonderful. I will certainly accept a motion that we send the Surgeon General a thank you for his letter, as well as print it in the transcript of this hearing. Seconded?

ASSEMBLYMAN KERN: I second.

ASSEMBLYMAN HERMAN: I think we are going to withhold questions at the moment. I think the point has been made. We still have a number of witnesses. I would like to again take the roll. I have already read the letter submitted by Mr. Martin Johnson from the Medical Society of New Jersey. I didn't know whether he would be able to come back. Now, I would like to do this. Let me just go through the list, if I may. Is Lee Gaglioti from New Jersey PTA here? (affirmative response) I am going to try to handle Lee and Joe Katz from the team of Katz and Martin, or Martin and Katz, or whatever, before we break. We hope to be able to break around one o'clock. It

is only going to be a 15 or 20-minute break -- the snack bar may do some business here today -- because we are going to try to accelerate where we are going with the rest of the program. I thank you all for being patient. Unfortunately, everyone can't be first. We have tried to schedule things to give everyone a fair shot at being heard.

Would you move in, please? Thank you very much for coming, Lee.

**LEE GAGLIOTI:** Mr. Chairman and Committee members: I, Lee Gaglioti, Safety Chairman, New Jersey PTA, submit the following testimony for our organization.

On April 10, 1984, the Executive Committee of the New Jersey PTA voted to have the organization become a part of the Coalition to Control Smoking in Public Places for the following reasons:

A survey of children in households where one or both parents smoke, compared with nonsmoking households, revealed that there is double the amount of bronchitis or pneumonia during the first year of life, and children have more adenoid and tonsil operations.

Babies and children breathe more rapidly than adults and inhale more pollutant per body weight than adults. This assault happens when young lungs are growing and developing.

A survey of children five to nine showed an adverse reaction in the small airways of children who had smoking parents, as compared to those with nonsmoking parents. This condition can aggravate symptoms of asthma, and can even trigger asthmatic episodes.

More cadmium drifts off the burning end of a cigarette than in the drag the smoker takes. Cadmium has been identified with hypertension, chronic bronchitis, and emphysema, as well as learning and behavioral difficulties in children.

A recent Gallup survey conducted for the American Lung Association revealed that 92% of those polled -- both smokers and nonsmokers -- believe smoking is harmful to health. The survey also found that 84% of nonsmokers and a staggering 64% of smokers want restricted smoking in workplaces, restaurants, public transportation, hotels, and motels.

In 1976, the New Jersey PTA convention delegates adopted a resolution entitled, "Hazards of Active and Passive Smoking," and worked for the passage of Assemblyman Herman's three bills prohibiting smoking in health care facilities and offices, elevators, and schools, colleges, universities, and professional training schools, until they were signed into law in December, 1981 and became effective June 1, 1982.

In view of the new research which has been recorded since that time, the 1984 convention delegates will be asked to reaffirm the 1976 resolution and to work for the passage of the current bills being supported by the Coalition, as they relate to our continuing efforts to maintain and improve conditions which affect the health and welfare of our children and our youth. Thank you.

ASSEMBLYMAN HERMAN: Before you leave, for everyone here and for the public record, can you tell us approximately how many members belong to New Jersey PTA?

MS. GAGLIOTI: I believe it is about 60,000.

ASSEMBLYMAN HERMAN: About 60,000? So, your statement is on behalf of 60,000 concerned parents with regard to this particular issue?

MS. GAGLIOTI: That's right.

ASSEMBLYMAN HERMAN: I personally want to thank the PTA for becoming involved. Does anyone have any questions or comments? (negative response) We certainly thank you very much. We appreciate your coming.

The next speaker will be -- is it going to be Mr. Katz and Mr. Martin jointly, separately, or what?

FROM AUDIENCE: No, I am going to speak.

ASSEMBLYMAN HERMAN: You're going to speak for both of you?

FROM AUDIENCE: I believe so.

ASSEMBLYMAN HERMAN: I don't know -- you represent different associations. I know it is the same firm, and I don't want to be accused of tailoring the time.

**JOSEPH KATZ:** Thank you, Mr. Chairman. My name is Joseph Katz, and I am appearing here today as the legislative agent for the Tobacco

Institute. I can't say it is good to be back, but I appreciate the courtesies you have shown me.

ASSEMBLYMAN HERMAN: You know, I refer to these bills as the Joe Katz Social Security Act. (laughter) Please go ahead.

MR. KATZ: As I said, I appreciate the courtesy you have shown me in the past, and which you are showing me today. However, I cannot agree with you on the legislation. The main reason I would like to advance to this Committee is that we have a fine body of law today that can take care of the problems which have been raised here. I think some of the testimony that has preceded me will emphasize this point.

I think that everything these bills propose can be accomplished under the existing law. Indeed, I think that law provides for a more systematic and stringent enforcement, particularly I refer to the criminal code -- to the language which you, Mr. Chairman, inserted in the criminal code giving the power of that code, of the police, to the enforcement of nonsmoking regulations in any public place where the owner publishes adequate notice, 2c. 33-13.

What is different about these bills and the existing law is the factor of coercion.

ASSEMBLYMAN HERMAN: Could you be specific about what you mean by "coercion," Mr. Katz?

MR. KATZ: Coercion -- requiring people in charge of various stores, buildings, offices, and facilities to institute smoking restrictions.

ASSEMBLYMAN HERMAN: Under these bills -- let's just stop there. We agree, for the purposes of dialogue, since we are not going to have too many witnesses who are opposed to the bills today, and I think it is important that both sides have a fair opportunity to be heard. Just so that I understand your position, you're basically saying that the laws on the books can do the job, and that they are good laws.

MR. KATZ: Right.

ASSEMBLYMAN HERMAN: All right. Let me just try to follow that line of thinking. So, I would assume if they are good laws, at

the same time that would mean they are for a good purpose. It would not be a good law if it did not serve a valid purpose. Right?

MR. KATZ: They serve the purpose of allowing people in charge of facilities used by the public--

ASSEMBLYMAN HERMAN: (interrupting) Okay, but the point--

MR. KATZ: (interrupting) May I answer the question, sir?

ASSEMBLYMAN HERMAN: Sure; you sure may.

MR. KATZ: They serve the purpose of allowing the people in charge of the operations of very important places to make a determination that no smoking is desirable there, or that smoking is desirable here, or a section is a no smoking section, or it isn't. When you make that determination on that set of circumstances -- and it is generally in a business and you're thinking of enhancing your business and enhancing the comfort of your patrons -- you take into account the special circumstances there. When you do make that determination, this law gives you the power to enforce the determination.

ASSEMBLYMAN HERMAN: All right. Let's just stop there. Let's assume that I live in a particular municipality, whether it be Princeton Borough or Township, or wherever, and there is such a law. Okay? It gives me the right as a businessman to do it. You're saying that that is a valid public purpose, and you said it was a good law. So, I assume you are agreeing with me that allowing municipalities to enact ordinances which permit their business people to set up a smoking or no smoking policy is a good law.

MR. KATZ: That is not what I said, sir. It is not a local ordinance, it's if a businessman decides that there should be smoking restrictions in his business, this law backs him up.

ASSEMBLYMAN HERMAN: That's right. Isn't there ability to enforce it?

MR. KATZ: I think the--

ASSEMBLYMAN HERMAN: (interrupting) Wait, let's stop here, okay? I mean, Mr. Katz, whether it is a local ordinance or a State statute, if it's good, it's good.

MR. KATZ: I'm not supporting a local ordinance. This does not-- This law I'm talking about supersedes local ordinances. The provisions of this section--

ASSEMBLYMAN HERMAN: (interrupting) No, no, let's just talk about the law that you said was good, Mr. Katz. Let's just stick to your own words. You opened up with comments, sir, and said that the existing statute on the books was good. It was good because it allowed local municipalities to adopt local ordinances.

MR. KATZ: I did not say that, sir.

ASSEMBLYMAN HERMAN: What does it do then?

MR. KATZ: It allows--

ASSEMBLYMAN HERMAN: (interrupting) Tell me what my own law does, sir.

MR. KATZ: Yes, sir, I will try to tell you. It does not speak to local ordinances. It says that when an owner or a person responsible for the operation of a public place-- Well, let me read the whole thing. "Any person who smokes or carries lighted tobacco in any public place, including but not limited to places of public accommodation where such smoking is prohibited by municipal ordinance under--

ASSEMBLYMAN HERMAN: (interrupting) Huh, huh, Mr. Katz.

MR. KATZ: Wait a second, may I continue?

ASSEMBLYMAN HERMAN: Yes.

MR. KATZ: (continuing) "under R.S. 4048-1 and 4048-2, which are existing ordinances" -- fire protection ordinances which deal with fire protection -- "or by the owner or person" -- this is what was added -- "responsible for the operation of the public place and when adequate notice of such prohibition has been conspicuously posted, is guilty of a petty disorderly person offense. Notwithstanding the provisions of this section, the maximum fine is \$200."

ASSEMBLYMAN HERMAN: Do you think owners who do that are fostering a positive public policy, Mr. Katz?

MR. KATZ: When an owner decides it is suitable for his patrons, he is fostering a positive public policy. When an owner decides it is not suitable to his patrons, he is fostering a positive

free public policy -- the freedom of choice. That is my position, Mr. Chairman.

ASSEMBLYMAN HERMAN: Okay. So, your position is-- You believe in the rule of the majority, don't you, protecting the rights of the majority, Mr. Katz?

MR. KATZ: I also believe in protecting the rights of the minority when something is not injurious to the majority.

ASSEMBLYMAN HERMAN: Okay, that's fair. We would agree with the following statements, would we not, Mr. Katz, that we have a right to free speech, but we do not have a right to holler "Fire" in a movie theatre? You would agree with that, wouldn't you?

MR. KATZ: Sure.

ASSEMBLYMAN HERMAN: You would agree with the fact that we have a right to drive an automobile, but we don't have a right to drive it when drunk, or in a reckless way?

MR. KATZ: Certainly.

ASSEMBLYMAN HERMAN: Because that causes injury to others, right?

MR. KATZ: Yes.

ASSEMBLYMAN HERMAN: You would agree with the fact that we basically have a right to do most anything, as long as our actions do not harm others, wouldn't you?

MR. KATZ: I don't know what "most anything" means.

ASSEMBLYMAN HERMAN: Okay. Let's take smoking. That is a legal activity; you can smoke a cigarette, can't you?

MR. KATZ: Sure.

ASSEMBLYMAN HERMAN: Do you think you ought to smoke a cigarette and be able to smoke it in such a way where we can demonstrate that smoking that cigarette harms others -- that you ought to have a right to do that?

MR. KATZ: No, I don't agree with--

ASSEMBLYMAN HERMAN: (interrupting) No, no, I'm asking you for an example. Give me the benefit of my hypothesis. Let's assume, Mr. Katz, for the purpose of the record, that I just happen to agree with the American Lung Association, the American Cancer Society, and

all the medical experts who have testified here today, that smoking is harmful to others. If I believe, as a legislator, that smoking is harmful to others and I have medical proof to back that up, don't you think that under those circumstances, if you were in my position, if you believed just that -- that smoking is harmful to others -- you would be obligated to pass a law to control that harm?

MR. KATZ: Assemblyman Herman, I would not challenge your right to sponsor, advocate, support, and speak for a law that purports your beliefs. I don't happen to share those beliefs.

ASSEMBLYMAN HERMAN: Please respond to my question. You're doing a good job at ducking the question, Joe. I am asking you very directly-- Drinking is legal, is it not, Joe? We don't have prohibition in this State.

MR. KATZ: No, sir, we do not.

ASSEMBLYMAN HERMAN: But, we are not allowed to drink in such a way so as to impact on the health of others, are we? And, free speech is certainly free speech, but we can't do it in such a way as to harm others, can we?

MR. KATZ: Each of them has a gray area, when it harms others, and when it doesn't harm others.

ASSEMBLYMAN HERMAN: There is not a gray area, Joe.

MR. KATZ: I mean, you can drink. Does one drink harm others? Do two drinks, or three?

ASSEMBLYMAN HERMAN: Do we lock up drunk drivers, Joe? Is there a reason why we say you can't drive while you are drunk?

MR. KATZ: Of course.

ASSEMBLYMAN HERMAN: Is there a reason why we say you can't holler "Fire" in a movie theatre?

MR. KATZ: Yes, sir.

ASSEMBLYMAN HERMAN: Well, if it can be demonstrated, Joe-- You're not a doctor, are you, Joe?

MR. KATZ: No, sir.

ASSEMBLYMAN HERMAN: You heard some pretty strong opinions expressed today by some pretty well-known and recognized experts, including the Surgeon General of the United States. Giving those

so-called experts, Joe, the benefit of the doubt that smoking is harmful to others, wouldn't you say that if it can be demonstrated that smoking is harmful to others, that as a matter of public policy we ought to control that smoking in places where nonsmokers are?

MR. KATZ: I am not going to concede the point.

ASSEMBLYMAN HERMAN: Answer the question, if you will. Forgetting the point whether you concede, if it can be demonstrated that smoking is harmful?

MR. KATZ: I think that has been a discussion among people much more--

ASSEMBLYMAN HERMAN: (interrupting) The point is, you don't want to answer the question, Joe.

MR. KATZ: I don't think I am qualified. I don't want to answer that question.

ASSEMBLYMAN HERMAN: You're damned right you don't want to answer that question because you know it impacts on hundreds of thousands of lives. Do you have grandchildren?

MR. KATZ: I wish I did.

ASSEMBLYMAN HERMAN: If you had them, would you encourage them to smoke?

MR. KATZ: I don't know--

ASSEMBLYMAN HERMAN: (interrupting) Answer my question, would you encourage them to smoke?

MR. KATZ: Mr. Chairman, I think you, as a skilled lawyer, have ripped me apart under cross-examination.

ASSEMBLYMAN HERMAN: You're nobody's fool, Joe. You are a very skilled lobbyist. I am asking you a very one-on-one question. Would you encourage your grandchildren to smoke today?

MR. KATZ: If I have grandchildren, and I hope I will be alive to see them when they are old enough to make that decision, I think they should make their own decision.

ASSEMBLYMAN HERMAN: Would you encourage them not to smoke, Joe?

MR. KATZ: I don't know what I would do with them.

ASSEMBLYMAN HERMAN: By the way, do you believe, Joe, based on the evidence -- and I know you smoke, you have a pack of cigarettes in your pocket -- the warning on that pack of cigarettes?

MR. KATZ: I don't have a pack of cigarettes in my pocket.

ASSEMBLYMAN HERMAN: Do you believe that?

MR. KATZ: Mr. Chairman, are you leading to the point that smoking should be outlawed?

ASSEMBLYMAN HERMAN: No. I'm asking you whether you think smoking is harmful.

MR. KATZ: I think there is good evidence that there are no problems from direct smoking.

ASSEMBLYMAN HERMAN: Okay. Do we agree that one of the by-products of smoking is carbon monoxide?

MR. KATZ: I do not know the scientific aspects of that, Mr. Chairman.

ASSEMBLYMAN HERMAN: So really what you're saying here today is that you appear on behalf of the American Tobacco Institute, but you don't appear here today with any witnesses -- if you have them, please produce them -- who would indicate that smoking is not harmful to others. Are you prepared with any testimony to indicate that?

MR. KATZ: I am not prepared with scientific testimony, but I have it and I will submit it to you and to the Legislature.

ASSEMBLYMAN HERMAN: I'll tell you what, Joe. You name the day and you name the place. You bring your expert back in and we will give that expert a special hearing.

MR. KATZ: I know.

ASSEMBLYMAN HERMAN: Yes, we demonstrated it the last time. Your expert the last time around, if I remember-- The so-called expert said that he taught at the New Jersey Medical College. He said he was a member of the staff when he wasn't. That so-called expert testified before this Committee a couple of years ago -- I'll never forget it -- that smoking was not harmful to anyone, including smokers. Right? You were here.

MR. KATZ: I didn't write his testimony.

ASSEMBLYMAN HERMAN: You remember the testimony, don't you?

MR. KATZ: He was one of our medical--

ASSEMBLYMAN HERMAN: (interrupting) Yes, you remember that testimony.

MR. KATZ: I think there was another witness who was better equipped.

ASSEMBLYMAN HERMAN: Who basically said it was just a matter of courtesy, right?

MR. KATZ: Sure.

ASSEMBLYMAN HERMAN: Do we have a right to breathe clean air in this State?

ASSEMBLYMAN SHUSTED: Mr. Chairman, may I object? I think you are badgering this witness. I think he ought to have an opportunity to make his statement. It is not a matter of cross-examination; I would like to hear what he has to say.

ASSEMBLYMAN HERMAN: Fine. I will allow him to complete his statement. If you want to be on his side, you are more than welcome to do so. However, I think that as the Chairman I have the right to--

ASSEMBLYMAN SHUSTED: Yes, but you are challenging a man to answer questions that maybe he is not qualified to answer.

ASSEMBLYMAN HERMAN: Well, then maybe his testimony will be taken in that fashion.

ASSEMBLYMAN SHUSTED: Well, let him give the testimony.

ASSEMBLYMAN HERMAN: I will be more than happy to allow him to finish. Go ahead, Mr. Katz. You have a savior on the Committee.

MR. KATZ: Thank you.

ASSEMBLYMAN HERMAN: The votes have been so reflected in the past. Go ahead.

MR. KATZ: I am just trying to catch my breath. (laughter)

ASSEMBLYMAN HERMAN: Is that because of smoking, or is that because of the interrogation?

MR. KATZ: No, I haven't smoked today, and I wouldn't presume to smoke in this room. I am just trying to catch my breath and my thoughts.

As I said, the difference between the existing law and these bills is the factor of coercion. Now, we have had testimony here today that the existing law works. I think Ms. Carlson's testimony was most

to the point. I think she read a letter from George Callas, who used to work around here, which points out that as a restaurateur, he is able to establish a no smoking section because his clientele is looking for that and he is prospering thereby. He is taking advantage of this law to enforce it. I contend that we have the laws and we do not need coercion there.

Now, I think the objective of the coercion is not so much to provide clean air for the people around smokers, but it is to get at the smokers. I guess the prohibitionists with regard to smoking feel it is too much to ask to outlaw smoking. Therefore, the objective is to make it uncomfortable or worse for those who smoke. It was said here, and if that is your objective, fine. But, I just wanted to point it out.

As we have noted, the bills cover the workplaces; we have discussed the restaurants. This is a mild bill for a restaurant. All it does is ask a restaurateur to stigmatize himself.

ASSEMBLYMAN HERMAN: How does he do that?

MR. KATZ: By saying, "I feel that I don't need a formally-established smoking section." A number of restaurants have determined that; a number haven't. "I must put up a sign and antagonize people."

ASSEMBLYMAN HERMAN: Tell me why that antagonizes people.

MR. KATZ: I think it is psychologically clear, in my opinion; you may not see it the same way, Mr. Chairman. I know you recognize that people can have contrary opinions. This restaurant does not have a nonsmoking section.

ASSEMBLYMAN HERMAN: How does that antagonize people? That is what I am trying to understand.

MR. KATZ: I think that some people who might not otherwise give it a second thought will be antagonized. I might ask you why you put it in there.

ASSEMBLYMAN HERMAN: Let me tell you why I put it in. It was a recommendation of staff some time ago. It says, "Hey, that will give the public an opportunity to decide whether they want to go into the restaurant in the first place." You are a man who believes in the free

enterprise system, aren't you, Joe? You're a man who believes that -- and I hope I am not badgering the witness, Assemblyman Shusted -- the public should have the best information, aren't you?

MR. KATZ: Certainly.

ASSEMBLYMAN HERMAN: Well, shouldn't the public have the right to know in advance whether a restaurant has a smoking or a no smoking section?

MR. KATZ: I think anyone who wants to know can ask a restaurateur. I have done it. I've been in parties which have done it. You can ask a restaurateur, "May I sit where there is no smoking?" or "No one here smokes; can you take care of us?" and you will be accommodated.

ASSEMBLYMAN HERMAN: How about if the restaurant says "No," because it does not have a no smoking section?

MR. KATZ: Then the restaurateur who is interested in free enterprise himself may lose a customer, and he may decide to institute such a section.

ASSEMBLYMAN HERMAN: Tell me how the bill stigmatizes a restaurant, because stigmatize to me means, in essence, showing that they are doing something wrong.

MR. KATZ: Because it is asking him to put up a sign saying, "I say that to you, nonsmoker."

ASSEMBLYMAN HERMAN: Doesn't the bill also say that if you do have a no smoking section that you have to-- You have to make a choice. You put up one of two signs, either "This restaurant has a no smoking section"-- By the way, the bill says you have to put up a sign saying "This restaurant has a no smoking section." Does that also stigmatize the restaurant?

MR. KATZ: No, it doesn't; I don't think it does.

ASSEMBLYMAN HERMAN: Why does putting up a sign saying "This restaurant does not have a no smoking section" stigmatize, and the sign that the restaurateur is obligated to put up which says "This restaurant does have a no smoking section" not stigmatize?

MR. KATZ: Because I don't think it takes into account the gray area I referred to before. You don't need a formal no smoking

section to accommodate people who want to sit in an area where there is no smoking.

ASSEMBLYMAN HERMAN: Joe, I'm only asking you -- again, I hope I am not badgering -- to demonstrate your own words. You said -- and I sat here and listened to you, as every member of the Committee has -- that if you have a sign which says "This restaurant has a no smoking section," that does not stigmatize the restaurant, and the other does. Now, tell me.

MR. KATZ: Because I think the zeal of the nonsmokers is much greater than the zeal of the smokers, as witnessed by those who have preceded me.

ASSEMBLYMAN HERMAN: In other words, the 70% of the population who do not smoke in New Jersey are more zealous than those who do smoke.

MR. KATZ: I would say that the 3% who are organized are that way.

ASSEMBLYMAN HERMAN: I still do not understand.

MR. KATZ: I'm sorry that I can't--

ASSEMBLYMAN HERMAN: (interrupting) I am trying to understand you and to be fair to you; my colleague asked me to be fair to you. I am trying to understand how putting up that sign stigmatizes a restaurant.

MR. KATZ: Mr. Chairman, nothing I can say is going to make you agree with my points.

ASSEMBLYMAN HERMAN: No, but I have a right to understand what your points are, and I am trying to understand why you say it will stigmatize a restaurant.

MR. KATZ: Well, maybe because I believe they do. With my knowledge of psychology I think they do.

ASSEMBLYMAN HERMAN: Maybe because you believe that most people think that smoking is wrong and that it is harmful to others.

MR. KATZ: Many people do believe that, and many people don't.

ASSEMBLYMAN HERMAN: Okay. Do you agree with the results of the Gallup Polls of smokers and nonsmokers alike which show that 92% believe that smoking is harmful to others?

MR. KATZ: I have not studied those polls. I have seen referendums which have gone both ways.

ASSEMBLYMAN HERMAN: Well, I guess you could say then if 92% of the public in New Jersey, as well as nationally, believe that smoking harms others, I can see where you would believe that if I saw a sign that a restaurant did not have a no smoking section that that would stigmatize a restaurant, because 92% of the people do not want to be harmed.

MR. KATZ: Mr. Chairman, you're trying to get me to say that these are good bills and that you should pass them. I am trying to get you to say these are bad bills and that you should drop them. Neither of us is going to succeed.

ASSEMBLYMAN HERMAN: I understand whom you represent and I understand whom I represent. I like to think I represent the seven million people of this State, and I understand whom you represent. You are entitled to be paid to represent them. Please continue.

MR. KATZ: I have announced whom I represent, and they are entitled to have somebody make a statement for them.

ASSEMBLYMAN HERMAN: They sure are.

MR. KATZ: I don't seem to be getting very far in my statement.

ASSEMBLYMAN HERMAN: Even people who are accused of murder in our country are entitled to representation. I believe in that.

MR. KATZ: Whether they are guilty or not.

ASSEMBLYMAN HERMAN: Please continue.

MR. KATZ: Thank you. Again, I have to see where I was. I think one of the most interesting bills in the entire package is that which goes beyond a very good law we have today, which says, "Any person who smokes or carries lighted tobacco on any bus or other public conveyance, other than places provided, is a petty disorderly person." One of your bills would outlaw smoking on any public conveyance. What you do, in short, is knock out smoking cars on the railroads. This is to torture the commuter, I guess. That seems to be the objective of all this. I don't know that there are any smoking sections on buses, but I understand there may be a few where special provision is made.

ASSEMBLYMAN HERMAN: I think you make a point, and you and I agree here today, Mr. Katz. If this bill was not intended to outlaw all smoking sections, we can certainly exempt smoking cars on railroads. Staff can make that amendment on my behalf. I thank you for bringing that to my attention.

MR. KATZ: I think it makes my point that you already have a law that covers public conveyances.

ASSEMBLYMAN HERMAN: The reason for the amendment -- because you always want to know my reasons and I am happy to explain them -- is that I have received a number of complaints from people who ride buses, especially interstate between New Jersey and New York, that the bus drivers just do not enforce it and that there is a lot of smoking on the buses. It isn't segregated and it bothers the hell out of most people on the bus, but the bus drivers do not want to enforce it. So, the easiest thing to do on a bus is to ban it.

MR. KATZ: Pass another law and it won't be enforced, as was alluded to here before, which I will talk about if I am permitted to.

ASSEMBLYMAN HERMAN: Then we ought to tear down all the stop signs and red lights too, you know.

MR. KATZ: I think they are more enforced. In some ways the bills appear to be reasonable, but I don't think they are. For instance--

ASSEMBLYMAN HERMAN: (interrupting) Say that again, will you, Joe?

MR. KATZ: They appear to be reasonable. Assembly Bill 640, Mr. Chairman, indoor public places -- it says you can have both smoking and nonsmoking in such an establishment, but the nonsmoker has to be able to enter, transact his business, and leave, without being subjected to smoke. Short of having twin facilities -- a twin dry goods store, a twin this, a twin that -- how can this be accomplished?

ASSEMBLYMAN HERMAN: Let me ask you this. Just stop there for a moment. I think you raise a good point. Would you agree that in our society people have a right to breathe clean air, whether it is indoors or outdoors?

MR. KATZ: I think there is a limit to every right. There is a limit to the right not to hear pornography, to speak, to shout, to breathe. You are never going to have perfectly clean air from other sources than cigarettes.

ASSEMBLYMAN HERMAN: You would generally agree with the statement that people have a right to breathe clean air, wouldn't you?

MR. KATZ: Generally, yes.

ASSEMBLYMAN HERMAN: Generally. And, that is the background of New Jersey having gone through all the machinations we did with the motor vehicle bills and getting our SIP -- our State Implementation Plan -- improved to lower the levels of carbon monoxide by way of industry and by way of automobiles. We have had that obligation; that is a Federal obligation, right?

MR. KATZ: Yes, sir.

ASSEMBLYMAN HERMAN: Because people generally recognize that clean air and a clean environment are something we want to encourage. If it can be demonstrated that smoking pollutes the air, and that smoking affects people, wouldn't you say that people have the right to breathe clean air -- more right to breathe clean air than the smoker has a right to pollute that air?

MR. KATZ: Mr. Chairman, I don't think smoking pollutes the air more, or annoys people more than a lot of other conditions in this State. I drove down the Turnpike last night from Newark to Trenton, and there is nothing-- Smoking never compared with some of the situations there.

ASSEMBLYMAN HERMAN: Could you name some of them, please, while you are making a comparison? Are you just taking that off the cuff?

MR. KATZ: Name what? I don't know what the smells were that I noticed.

ASSEMBLYMAN HERMAN: Oh, no, no. Hey, Joe, you've been in--

MR. KATZ: (interrupting) You've driven up and down the Turnpike.

ASSEMBLYMAN HERMAN: Tell me. In other words, are you telling me that driving on the Turnpike is worse than a roomful of smoke?

MR. KATZ: Absolutely.

ASSEMBLYMAN HERMAN: Well, should we encourage-- Isn't that one of the reasons we're--

MR. KATZ: (interrupting) No. I think there are some annoyances that you make due with. You ask people not to smoke.

ASSEMBLYMAN HERMAN: So, what you are basically saying is--

MR. KATZ: (interrupting) May I finish my answer?

ASSEMBLYMAN HERMAN: Yes, finish that answer.

MR. KATZ: All right. I think there must be adjustments in situations, not just smoking, everything -- talking loudly, breathing closely to people, especially after you have eaten--

ASSEMBLYMAN HERMAN: (interrupting) Are you comparing talking loudly, Joe, with smoking?

MR. KATZ: I am comparing many annoyances, but the secondhand smoking, yes, sir.

ASSEMBLYMAN HERMAN: It is only an annoyance. So, you don't agree with the people who say that nonsmokers suffer eye irritation as a result of smoking.

MR. KATZ: Some people do.

ASSEMBLYMAN HERMAN: Do you agree that some people get headaches as a result of smoking?

MR. KATZ: I don't know.

ASSEMBLYMAN HERMAN: Would you agree with the medical people who say that people can have difficulty breathing, heart patients for instance?

MR. KATZ: Then they ask people, "Please don't smoke. I just had a heart attack."

ASSEMBLYMAN HERMAN: In other words, they will go into a restaurant, or go into a public theatre, and walk over to people and say there is no smoking.

MR. KATZ: Or they won't go into a restaurant, and the restaurateur takes that risk. He must balance the equities there.

ASSEMBLYMAN HERMAN: Isn't it the law of New Jersey by way of case law as far as the workplace -- Shimp vs. Bell Telephone -- where judges found after extensive hearings that secondhand smoke does, in fact, impact--

MR. KATZ: We have case law. We have statutory law and we have case law in New Jersey. I contend that that covers it.

ASSEMBLYMAN HERMAN: Do you agree with the case law, Mr. Katz?

MR. KATZ: I am not a lawyer and I am not familiar with the case. I have read about it in general terms. But, there is case law, and there is statutory law. I think it has worked out. I do not see any demand from labor or management in its organized form for this. I see individual letters.

ASSEMBLYMAN HERMAN: Isn't it interesting, Joe, that you would raise that, because right in my hand I have a letter from 5,400 people from the CWA supporting this bill. Hey, you better go get Mr. Rosenthal. It's not the entire group. I notice you looked at him.

MR. KATZ: I don't even know where he is.

ASSEMBLYMAN HERMAN: Okay. It is not the entire group, but it is one of their locals. You say there is no support for the bills, Joe. I just want to show you a letter I have here. I will share it with you. Maybe you can change the person's mind. I believe I will get testimony from Mr. Rosenthal, will I not? Perhaps if we can change some of the enforcement mechanisms you can support the concept of the bills. Am I correct, sir? (inaudible response from audience) So, that's the CWA. (again there is an inaudible response from the audience) That's right. So, here we go. Here is a major union, and if we give them a couple of amendments and work out a problem for them, they will support it. Now continue, sir. I am just trying to educate you.

MR. KATZ: Thank you, sir. I wonder how far I will get this time. We just talked about smoking in the workplace, yet for years and years and years we have had literally millions of situations where I think they have been worked out to the satisfaction of the employees and the employers. I think it has been done without the coerciveness of these bills.

There has been reference made to the three anti-smoking bills which you sponsored and which were enacted in 1981. We did not object to those bills. I was interested to hear Ms. Tripp -- if I heard her

correctly -- point out that there is a big problem with smoking in the schools. Now she has programs going. You passed one of these bills that was going to cure the problem of smoking in schools. I think Ms. Tripp shows you the efficacy of passing a law in this area. It is designed to make a point on the books, but I think you create chaos in enforcement. I do not think it enhances the respect of--

ASSEMBLYMAN HERMAN: (interrupting) How do you define chaos in enforcement, sir?

MR. KATZ: Chaos in enforcement is having a package of bills some of which are enforced by police, some by health officers, some by any other public servant who may be designated to do so. I'll be darned if I can figure out how these are going to work.

ASSEMBLYMAN HERMAN: What would you think if I were to tell you, sir, that we haven't had any enforcement problems in the entire State? I'll give you a copy of the letter, Mr. Katz, and you can take it back to your group. There was a study done by the Administrative Director of the Courts. Let me just get that for you.

MR. KATZ: I heard that before.

ASSEMBLYMAN HERMAN: Well, I'll just help you along. I'm sure you will want to take it back to your people. They did studies in Trenton, Hamilton Township, East Brunswick, Middletown Township, Ridgewood, Wayne, Newark, Morristown, Flemington, Dover Township in Ocean County, Cherry Hill, Camden, Hammonton, Vineland, and Hackensack. The survey covered the period June 1, 1982 -- the effective date of the statutes -- through June 15, 1984. They surveyed all those municipal courts that I have just read. "In each court, the docket books were examined to determine whether a complaint was filed pursuant to one of the no smoking statutes. The courts maintained chronological dockets of complaints which were listed by the statute allegedly involved. Approximately 15,000 docket book entries were examined during the course of the survey. The result was that only one complaint was discovered in Vineland Municipal Court alleging a violation of 26:3(d)-3, smoking in an elevator. The complaint only resulted in a fine being imposed by the Court. I trust this information will be of benefit to you. If you have any question

regarding the survey, please let me know. Very truly yours, Robert D. Lipscher, Administrative Director of the Courts." It was dated September 18, 1984. So, here is the tremendous problem we're having with enforcement.

MR. KATZ: Mr. Chairman, I submit that that makes the point we had in mind when we decided not to endorse those bills, because smoking is really not a factor in any of those three situations, except that in schools I question how much enforcement there has been. Since then, the Legislature has made several clear-cut decisions against trying to impose such rigid controls as are proposed here in situations where citizens have proved themselves very able to work out their own accommodations.

I suggest, even at the risk of not converting you, Mr. Chairman, that we continue this situation, instead of trying to impose a punishment for every situation which doesn't fit one group's personal beliefs about how other people should conduct themselves.

Thank you for letting me finish my statement.

ASSEMBLYMAN HERMAN: Would you say that 92% of the population, Mr. Katz, is a pretty sizeable sum?

MR. KATZ: Ninety-two percent, certainly.

ASSEMBLYMAN HERMAN: If 92% of the population of this State and nationwide believe that smoking is harmful to others, would you say that that is just a little bit of the majority coercing the minority, Mr. Katz?

MR. KATZ: I am not familiar with that study. I don't know if the question asked was whether it is harmful to themselves and/or others or what.

ASSEMBLYMAN HERMAN: Well, assuming that the representation--

MR. KATZ: (interrupting) I am not going to answer the question.

ASSEMBLYMAN HERMAN: (continuing) There are some very credible witnesses here today. You don't think that the members of the American Cancer Society, the Lung Association, and the doctors who testified here today would fudge that information, do you?

MR. KATZ: If I didn't feel there was another side of the story, I wouldn't be sitting here.

ASSEMBLYMAN HERMAN: As you said, Mr. Katz, everyone is entitled to be represented. However, the point is, one side is right and one side is wrong. We are just trying to develop which is which.

MR. KATZ: Sir, I believe my side is right and you believe your side is right.

ASSEMBLYMAN HERMAN: The point is, we are trying to deal with some facts. What I am trying to tell you, sir-- Let's not let facts get in the way; we don't want those to get in the way.

MR. KATZ: You're telling me, "I'm right and you're wrong." That is what you're saying. Fine, you're saying a lot of things--

ASSEMBLYMAN HERMAN: (interrupting) I am trying to raise some of the points, Mr. Katz. I am trying to ask you whether the viewpoint of 92% of the constituents of this State and this country ought to be given some efficacy.

MR. KATZ: I don't think 92% of the people in this State support these bills, and that is what we are talking about.

ASSEMBLYMAN HERMAN: Okay, that is your opinion, and that's fair. I certainly cannot disprove that at the moment. I certainly can say that 92% of the people in this State and in this country think that smoking is harmful to others.

MR. KATZ: You certainly can.

ASSEMBLYMAN HERMAN: Because there is proof for that. Okay? Let me ask you this, Mr. Katz. You talk about these bills being coercive. Isn't every statute that we pass that has a penalty coercive?

MR. KATZ: Yes, mostly; not everything.

ASSEMBLYMAN HERMAN: If I pass a bill that says, "You shall stop at a stop sign," isn't that coercive? If you don't stop we give you a penalty.

MR. KATZ: Yes.

ASSEMBLYMAN HERMAN: If we say you travel too fast, that is coercive because we penalize you.

MR. KATZ: But, if you put too many stop signs on, even where they are not needed, or too many signs saying you can't make a right turn on red, you are being unnecessarily coercive, and that is what I contend this package does.

ASSEMBLYMAN HERMAN: So, you're saying that I have a good idea but I'm going too far.

MR. KATZ: You had a good idea back in 1976 or 1977, whenever you sponsored this change in the criminal code.

ASSEMBLYMAN HERMAN: Haven't you testified before this Committee before that you think a good job could be done by municipal ordinance? Do you want me to go dig out your testimony, sir?

MR. KATZ: No, I am not sure that I did. I think it can be done by the existing statutory and case law.

ASSEMBLYMAN HERMAN: Well, it isn't statute, it says it can be done by ordinance, right?

MR. KATZ: No, this refers to specific ordinances. I don't have the book in front of me, Title 40, but if you have it there, they deal with special situations. They were on the books long before this.

ASSEMBLYMAN HERMAN: The members of the American Lung Association are here. Maybe they could help me out. If they would get me an extra copy of the New York State Journal of Medicine -- the December, 1983 edition -- I would like to give Mr. Katz a copy of that. I am like you, Mr. Katz, when it comes to medicine and health. I am just a layman; I am just a lawyer, and I have no special expertise. Yet it concerns me, sir, when I read a volume -- for my kids and my grandkids, one of these days, God bless, maybe -- which says that smoking is not only dangerous to the health of smokers, but says it is an anathema and a plague on all the people around the smokers. Mr. Johnson, can you get Mr. Katz a copy? (inaudible response)

I would like to have your honest opinion, Joe, notwithstanding who pays you, or who paid for your appearance here today -- as I said, everyone is entitled to his opinion -- as to what this means to you. If you were sitting in my chair reading this journal, what would it say to you when six or seven Surgeon Generals are quoted in here, each and every one saying what a plague smoking is and how it impacts on others?

MR. KATZ: When we get into talking about a plague if you are smoking yourself, or a plague on others, that is where the line grows fuzzy to me.

ASSEMBLYMAN HERMAN: I'm just saying with all these people in here saying it is all wrong, Joe, that it affects and impacts others, who am I to believe?

MR. KATZ: I would be very happy to read that.

ASSEMBLYMAN HERMAN: Joe, you have come here today as a witness, and you said you are not an expert. You are a hell of a good lobbyist; I have told you that before. Okay? I think there are very few people who are your peers or your equal. Okay? I think you are doing a great job on a hell of a difficult issue. I might say that you, Joe, and I are not experts in this area, and you didn't come with any medical testimony today. Let's assume that Joe Katz is sitting here as a legislator and Marty Herman is the advocate for the tobacco industry. Marty Herman has heard all this testimony, all the testimony produced here this morning from eminent scientists, physicians, and people involved with this particular issue, telling him that not only is smoking bad for the smoker, but it is a plague on others, that it has detrimental effects on others. Whom would you listen to this morning, Joe Katz, or if I put myself in your chair, Marty Herman, or all those other people who have come here to represent their point of view? Based on the expertise, whom would you believe here this morning, Mr. Katz?

MR. KATZ: You know what I would do if I were in your chair? I would say, "You know, this is all very well and good, we're hearing something here. But, I am a member of the Assembly, and I'm sitting here being asked to impose a lot of strong laws on people in their workplaces, where they go to buy something, where they live most of their lives. I am sitting here doing that, yet I do nothing when I am here on a legislative day in this chamber, where there is a rule which has the force of law which says there should be no smoking, and I see people all around me smoking." I see people get up to make speeches in favor of your bills, Mr. Chairman, sit down, and light up. I would ask myself, "Should we try to impose this on the civilians? What about us Assemblymen?"

ASSEMBLYMAN HERMAN: That is a point well taken, Mr. Katz, and I cannot disagree with you.

MR. KATZ: That is the question I would ask before I tried to move the bills.

ASSEMBLYMAN HERMAN: Now, can you answer the question I asked you? The question is, Mr. Katz, if I had people tell me -- forgetting these bills today, whether we ought to enact them or whether we ought not to enact them -- that cigarette smoking is dangerous and harmful to others, and Joe Katz telling me that it is not, whom should I believe here today, Mr. Katz?

MR. KATZ: I would base part of my decision on what I heard today, and I would base part of my decision on other material that will be presented to the individual legislators and for the record of this hearing.

ASSEMBLYMAN HERMAN: In other words, you are not willing to bring that witness before the Committee?

MR. KATZ: I could. It was a little difficult for me to do it this time. I will have to see about his availability.

ASSEMBLYMAN HERMAN: Mr. Katz, we will give that witness an opportunity to be heard. You know me, Mr. Katz, I like to hear from everyone. I like to give everyone a fair opportunity to be heard.

MR. KATZ: Yes, you give everyone an opportunity to be heard, sir.

ASSEMBLYMAN HERMAN: The point is, Joe, there has been notice of this public hearing, and those people have been heard before. If you want to produce a witness within the next couple of weeks, Joe, a medical expert, so that we can have a chat, we will be more than happy to give that person an opportunity to be heard.

MR. KATZ: I will be glad to look into it, Mr. Chairman.

ASSEMBLYMAN HERMAN: Wouldn't it be fair, Mr. Katz, to say that as of now, based on what we have before us, Joe Katz versus the doctors whose specialties are cancer and lung diseases, and all the other experts-- If you were sitting here, with all due respect to you being a fine gentleman, wouldn't you have to side with those experts?

MR. KATZ: Maybe, but I would weigh the other points made.

ASSEMBLYMAN HERMAN: What other points, sir?

MR. KATZ: I would weigh the point I made about our own house here.

ASSEMBLYMAN HERMAN: Tell me how it impacts. I am asking you one question, whether I can conclude as a matter of policy that it does impact on other people's health. Does it or doesn't it?

MR. KATZ: In general, I do not think it has been proven from what I have read.

ASSEMBLYMAN HERMAN: Okay, that is Joe Katz's statement. Fine. Now, let me ask you, Mr. Katz, and I will ask you one more time-- I hope I am not badgering our guest. We have heard from a number of people here this morning who are experts in their field. We had a letter from the Surgeon General. I read a letter from the Medical Society of New Jersey. They all say that these bills are necessary. They say that smokers do impact on nonsmokers. Then I heard from Joe Katz. Admittedly, he is no more an expert than Marty Herman, or anyone else sitting up here. Now, who do I believe?

MR. KATZ: I know who you believe.

ASSEMBLYMAN HERMAN: Well, who should any of us believe?

MR. KATZ: I am not going to make that determination.

ASSEMBLYMAN HERMAN: Why, Mr. Katz?

MR. KATZ: I think we have some very adult and intelligent members on this Committee, and in this Legislature, who will make a determination based on--

ASSEMBLYMAN HERMAN: (interrupting) Why are you afraid to tell me for the record who I should believe?

MR. KATZ: Because I don't--

ASSEMBLYMAN HERMAN: (interrupting) Should I believe Joe Katz or them? Who should I believe?

MR. KATZ: I would hope that they would believe what I have said.

ASSEMBLYMAN HERMAN: Okay.

MR. KATZ: I would hope that they would weigh the equities. I won't try to continue.

ASSEMBLYMAN HERMAN: Go ahead.

MR. KATZ: Based on what they have heard, I think they should pass a bill to outlaw smoking by everyone. I don't think they are going to make that determination; I don't think you are going to sponsor that bill. I think it is a function of the same logic.

ASSEMBLYMAN HERMAN: No, it isn't, no more than anyone here would sponsor a bill to outlaw liquor and establish prohibition. But, many of us sponsored bills to control drunk drivers and to control the amount of drink people can consume, because people who drink kill and injure other people. People who smoke, according only to the Surgeon General of the United States -- why should I say he is an expert -- harm other people. But then, when I have the word of Joe Katz against the word of the Surgeon General, obviously, we ought to come down in favor of Joe Katz. Is that it?

MR. KATZ: Thank you, Mr. Chairman.

ASSEMBLYMAN HERMAN: Thank you, Mr. Katz.

MR. KATZ: I take it I will not have your vote on this.

ASSEMBLYMAN HERMAN: That's true, nor the vote of my children and my grandchildren. Unfortunately, I wish you could have the vote of my mother, but she is not here. Your clients already got her some years ago.

We will break for 15 minutes. We will try to limit our break to 15 or 20 minutes.

**(RECESS)**

#### **AFTER RECESS**

ASSEMBLYMAN HERMAN: Ladies and gentlemen, thank you very much for being patient. What I would like to do now is get somewhat of an idea of where we are going and who is remaining. If anyone wishes to testify who is not on my list, we will accommodate you. One thing we do ask is, if there is testimony that was given this morning with which you primarily agree, please identify your group, say what you agree with, and then I would like you to supplement the record, not repeat the record. I know that is a difficult thing to ask people who have been patient and who have sat here all day, but I trust you will understand that we understand, because we think we have gotten a good New Jersey education and we can handle it.

Is Fred Schneeweiss here? (no response) Okay, I will cross him off my list. Mr. Jeff White? Is Jeff White here? (no response) Dr. Berger from the American Heart Association? (affirmative response) Doctor, you will be our first witness. I apologize for holding you up, ma'am. You may take a seat and I will just complete my list. Matt Bar and Dr. Douglas Chester? Has Jim Morford come back yet? (no response) Yolanda and Joel Campbell? (affirmative response) Thank you. Patricia and Irwin Cooper? (no response) David Malcolm? Jeff May? (affirmative response) Thank you, sir. David McRitchie? (no response) Carol Roberts? (no response) I believe Mr. Gonzales was here. I told him he was going to be our lead-off witness after lunch, but we will insert him into the program later.

Doctor, thank you very much. Are we ready to record? (affirmative response) Okay. Good afternoon.

**DR. MARY BERGER:** Good afternoon, Assemblyman Herman and members of the Committee. I was not able to be here this morning so, unfortunately, I do not know if I am going to embellish or if I am going to repeat the testimony that the others gave in your morning session.

I would like to tell you who I am. My name is Dr. Mary Berger. I am the President of the Metropolitan Chapter of the American Heart Association. I am also the Co-chairperson of the American Heart State Public Affairs Committee. I am here to represent the viewpoints of our organization.

We are a voluntary health agency supported by public contributions and we are the only voluntary agency in the United States devoted solely to reducing premature death and disability caused by heart and blood vessel diseases. Cigarette smoking is a major cause of heart attacks, sudden death, and vascular disease, and it greatly aggravates other forms of cardiovascular diseases.

Cigarette smokers are most likely -- more so than nonsmokers -- to suffer a heart attack. They are more likely to die from these heart attacks, and they are more likely to die suddenly. In the United States alone, one million Americans will be killed this year by heart diseases. In New Jersey, the 1983 statistics show an increase from our

1982 statistics and, let me tell you, the deaths from heart disease in 1983 were 34,504 people, and in 1982, 28,122 people. This accounts for two years of 50% of all the deaths in New Jersey. Cancer is the second leading cause, accounting for 23.5% of all deaths. Fifty percent, heart disease.

Our leading Counties are Essex, Bergen, Hudson, Union, and Ocean. They have the majority of deaths in our State. Also in the State of New Jersey, 1,368,000 have one or more forms of cardiovascular diseases. Stroke afflicts approximately 60,000 New Jerseyans, and it is estimated that 1,195,000 adults in New Jersey have high blood pressure, which is aggravated by smoking.

The worst part is the economic cost of cardiovascular diseases in the State of New Jersey. This year, it is expected to reach over \$2 billion. Can we afford to allow these numbers to rise any higher? The Surgeon General has made very pointed statements since November, 1983 and May, 1984 that smoking affects the future of our nation. Does it not affect our State as well?

An idea of this is, although women have lower heart disease death rates than men, women who smoke heavily and inhale deeply have comparable death rates to men. It has been confirmed that smokers aggravate and accelerate the thickening of the arteries -- arteriosclerosis -- and smokers are two to four times more likely to die suddenly from cardiac death than nonsmokers.

The Surgeon General's report was very clear. Cigarette smoking should be considered the most important of the known, modifiable risk factors of coronary heart disease in the United States. I would add, also in our State of New Jersey. Some smokers think that smoking low tar, less nicotine cigarettes decreases the risk. This is not so. A study done by Benowitz, et al, has shown that smokers of low nicotine cigarettes do not consume less nicotine. Also, to show you that the measurements done by our so-called tobacco industry of nicotine and tar yields-- These measurements are done by a mechanical smoking machine. The Benowitz study shows that we cannot take what a smoking machine does and compare it to a human level. Therefore, he has examined the level in human subjects. We have found

that the low tar, low nicotine cigarettes are not safer. The blood levels are the same in both high nicotine and low nicotine cigarettes. We now have conclusive evidence that there is no safe cigarette.

We are also aware that the components in cigarettes play a role in heart disease, from increasing the heart rate and the diastolic pressure of the heart to decreasing the oxygenation so necessary to the other vital organs of our bodies. Smoking also enhances the susceptibility of the heart to serious rhythm disturbances -- irregular heartbeats -- and this is an important factor in the sudden death rate in our State.

Today, a new health hazard has developed which is just as hazardous as being around people who smoke. Scientific evidence supports this belief. Children of smoking parents have more bronchitis and pneumonia during the first year of life, and a higher number of sick days due to acute respiratory disease than children whose parents do not smoke. Several studies show aggravation of heart disease due to secondhand smoke. Exposure to smoke in the workplace significantly reduces the small airway function of the lungs in nonsmokers, similar to that observed in light smokers.

Cigarette smoking, therefore, in the opinion of the American Heart Association, the New Jersey affiliate, and all its chapters, is considered the most common form of air pollution in industry. Most nonsmokers cannot be around smokers. Some experience allergic reactions, such as eye-tearing or swollen eyes. Some experience the inability to breathe. It behooves us to educate the public on the importance of the fact that smoking and smokers are in grave danger of falling victim to the number one, number two, and number three killers in the State of New Jersey.

The American Heart Association affiliate in New Jersey supports all the anti-smoking bills on the Assembly floor. I thank you for the opportunity to express our opinion on this important national and State health hazard. Thank you.

ASSEMBLYMAN HERMAN: Thank you for taking the time to be with us today. It was very kind of you to be here. Now, we would like to hear from Mr. Gonzalez.

**JOSEPH GONZALEZ:** Mr. Chairman, members of the Assembly Judiciary Committee, and fellow nonsmokers: I am going to speak today basically on one bill, Assembly Bill 546.

**ASSEMBLYMAN HERMAN:** Joe, will you speak up just a little bit, please?

**MR. GONZALEZ:** Sure. By way of preface, two years ago, the Industrial Relations Committee of the Business and Industry Association reviewed a predecessor bill which varies in a very slight way from the current bill, and decided at that time not to support it. They have since taken a look at the new bill and, obviously, have come to the same conclusion.

Just to summarize in brief, our Association objects to this bill's creation of the employer as the central focus of the debate as it moves into the workplace. Rather than requiring complete designation of every place as a smoking or nonsmoking area, the posting of specified signs, and the development of written smoking policies to be enforced by the employer, the real resolution of the problem of secondhand smoke should be left to private negotiations in each workplace. We feel this very strongly. Plus, I should also say, the policing of it, which, of course, is part of what is required in the bill.

**ASSEMBLYMAN HERMAN:** A couple of years ago, to be fair about it, the organization -- before you were there -- was kind enough to allow me to address them, and they did suggest certain amendments which might have ameliorated their concerns, which do not have to be discussed here today.

I would like to enumerate your concerns, just so we can have a dialogue.

**MR. GONZALEZ:** Right.

**ASSEMBLYMAN HERMAN:** One is the question of labor negotiations.

**MR. GONZALEZ:** Which we think would best be left to collective bargaining, yes, sir.

**ASSEMBLYMAN HERMAN:** Okay, that's one. Two is the area of policing.

**MR. GONZALEZ:** Correct.

ASSEMBLYMAN HERMAN: Go ahead. Have I left anything out?

MR. GONZALEZ: Third would be the requirement relating to posting and the designation of various areas.

ASSEMBLYMAN HERMAN: Okay. I think in your formal statement-- By the way, I will instruct our reporter to include your entire statement in the record, unless you want to read it through, Joe. You are more than welcome to.

MR. GONZALEZ: No, I think I will just summarize again. First, we talked about the problems regarding enforcement. Secondly, we talked about a definition of a covered workplace, and that is an important one, Mr. Chairman. You know, you were talking before -- and members of the Committee, please bear with me for a second -- about the no smoking rule, which I think was passed by the Assembly back when Harold Martin from Bergen County was in the Legislature. As you know--

ASSEMBLYMAN HERMAN: (interrupting) Along with the pet rock, yes, I remember it well.

MR. GONZALEZ: Right. When you are smoking in the Assembly Chamber, because of the way this huge room is constructed, the smoke generally goes up and it doesn't bother people to any great extent. However--

ASSEMBLYMAN HERMAN: (interrupting) Excuse me, please. With some politeness, we--

MR. GONZALEZ: (interrupting) I am just trying to make a distinction between different kinds of rooms. The room downstairs -- I think it was the Appropriations Room in those days, the JAC Room -- was the real impetus for that rule. There, you had a closed room with a ceiling at about eight feet, where the smoke would just sit there and be very offensive to people. So, I think this is basically what we are saying; there is a tremendous difference in workplace environments. A number of the factories I have been through in New Jersey-- Let me just take a couple of examples. At Fisher Body, out there in Ewing Township, which is a former aircraft plant, there is a lot of openness in the building. The way the work force is distributed, there is very little contact you would come into as far as another person smoking is concerned.

ASSEMBLYMAN HERMAN: What you are really saying is, the bill needs to be better defined in order to cover those situations. That is a concern you have, right?

MR. GONZALEZ: I think that is a concern, and I think there is a possible narrowing of the definition, right.

ASSEMBLYMAN HERMAN: That is a legitimate concern, okay. That type of criticism is certainly welcome and warranted.

MR. GONZALEZ: To continue, our third concern is the posting of the signs, etc. That is not as an important concern to me, and I don't think to our committee, because--

ASSEMBLYMAN HERMAN: (interrupting) But, on the other hand, if there was a general rule, you wouldn't have to spend money on the signs anyway because you would know it was a company rule, right?

MR. GONZALEZ: Right.

ASSEMBLYMAN HERMAN: I understand that point. Go ahead.

MR. GONZALEZ: Our fourth concern is the requirement of the development of written rules regarding smoking, which would really put the employer in the middle of disputes within the plant.

ASSEMBLYMAN HERMAN: Let me just go over these, because I have a comment. You had a fifth there, by the way, that you didn't mention. See, I read it all, Joe. That was the issue of a penalty. I think in your statement you talked about a penalty.

MR. GONZALEZ: That was in the first one there, on the enforcement of the provisions, yes, sir.

ASSEMBLYMAN HERMAN: Okay. Certainly, I see no problem, as the sponsor of the bill, in ameliorating the penalty provision, and perhaps substituting allowing an employer to adopt a policy to suspend or dismiss, as Johns Manville does. Okay? Certainly, the threat of losing one's job or being suspended is far more effective than the employer acting as a policeman. I have no problem with changing that and allowing a company to develop such a policy. I made a note to do just that, because I think what you are saying makes sense. I am trying to learn from what has occurred throughout New Jersey and elsewhere on this particular issue.

In the area of labor negotiations, I believe the bill does provide for scope of negotiations. I would ask you to take another look at the bill in that regard. I think that criticism is probably addressed in the main. It may not be addressed totally, but we can chat about that, okay?

As far as the policy is concerned, as you know the employer is usually in the middle anyway. There is one additional -- I call it a carrot. Some people say I have gone too far in the bill, but I think it is just a matter of balance. It was alluded to here today. As you know, there is a lawsuit insulator in the bill against industry, and you and I both know that the status of the law today, based on Shimp versus Bell Telephone, is that every employer is subject to a lawsuit, a substantial lawsuit.

MR. GONZALEZ: I believe that was the last case on this subject in the State.

ASSEMBLYMAN HERMAN: Well, you know, the state of the art. Let me just say it is my impression of the law, rather than putting you in a box on the subject matter while you are representing your client. It is my impression, and the impression of a lot of us seated up here, that the state of the law presently is that industry is subject to all sorts of lawsuits, in the imposition of this policy anyway. What we tried to do with the bill was to allow each particular company to establish its own policy and have that insulation to be free of lawsuits. I don't think you could point out to me anything in the bill which would mandate a specific policy.

MR. GONZALEZ: That is correct.

ASSEMBLYMAN HERMAN: I beg your pardon?

MR. GONZALEZ: That's right.

ASSEMBLYMAN HERMAN: So, from that standpoint I think this bill is probably more laissez faire than any piece of legislation I have seen on the subject, because it doesn't tie anyone's hands. As you know, I am not exactly big on rules and regulations. It doesn't tie anyone's hands to a particular policy. It allows a company, I think, broad flexibility in establishing policy. As I said, I would welcome the opportunity to address your group again.

MR. GONZALEZ: You know, I think we talked about this, I believe it was February of last year, just after I came on board. It may have been an oversight on my part, but you certainly know the welcome mat is out. I will talk to Les to make sure you are given as much time as you need at a meeting of our Industrial Relations Committee.

ASSEMBLYMAN HERMAN: Well, I think we had an interesting dialogue. We do not always agree; we did not agree on the mastectomy bills. There are some bills we do agree on. However, I think the dialogue has always been positive.

MR. GONZALEZ: One of the things that the members of our Association and I would like to become more aware of is the pattern in some of the other states that were mentioned today.

ASSEMBLYMAN HERMAN: I think that Regina Carlson-- Is Regina still here? (affirmative response) Would you do me the courtesy, Regina, of perhaps giving some of that information that you shared with the Committee to Mr. Morford and Mr. Gonzalez? I think it is important, and they can take the information back to their groups. I know both of these gentlemen and I know the groups they represent, and I would be hard-pressed to say that if it could be demonstrated to them that there was a way of working out these bills where they could acknowledge that they could be pro-consumer, pro-health, pro-worker, and pro-industry, I think they would modify their position. I don't think they are so intransigent that if we could perhaps work with them some more and give them more information, and perhaps establish a more convenient dialogue, that we might not be able to come out with a bill, whether it is this one or any other bill, that might be able to do all of those things. You would be willing to do that, wouldn't you, Joe, on behalf of your Association?

MR. GONZALEZ: I would be happy to work with you on this, Mr. Chairman.

ASSEMBLYMAN HERMAN: Let's address it in that vein. Perhaps, Regina, when I am invited, you would be willing to come with me with some of the supporting information from the standpoint-- I can be my own advocate, as you know, but come with some of the technical

information as to where it is being done and how it is being done. Could you contact the gentleman we had earlier today -- I believe Mr. Rosner left his card with you -- to get some more information as to how it is being implemented and to overcome, perhaps, that psychological fear? Bob Rosner, by the way -- and I won't name the companies -- mentioned a couple of major companies, you know, a couple of New Jersey's blue chippers, that he is presently having dialogue with to do these types of programs. You may want to get that information from him one on one. That was discussed with me privately and in confidence, and I am not going to divulge that confidence.

I think that labor, employers, and the consumers of this State can work hand-in-hand on these bills because, as I said, we don't have too many tobacco growers here. We do have a big chemical industry which has problems that I think could be helped by these bills in keeping their workers' comp rates down and keeping their occupational disease rate down. I am very selfish, Joe. I represent an area that has a large chemical industry, as you know. I would like to see that industry flourish. I think it is an important industry in our State. I think they produce mucho jobs and do wonderful things. I know they have been subject to attack, sometimes rightfully, sometimes wrongfully. We passed some legislation that they are not crazy about, but, by and large, I would like to keep them healthy and I would like to keep the workers healthy. I think we can do that, and I think that these bills will be helpful for them. I think I mentioned this to Jim Morford before.

So, we will take it in that vein. If you will get in touch with us, I will sure appreciate it.

MR. GONZALEZ: Certainly; we will keep the dialogue going.

ASSEMBLYMAN HERMAN: Thank you very much.

MR. GONZALEZ: Thank you, sir.

ASSEMBLYMAN HERMAN: Keeping that in mind, I will allow Jim to go next. Then we will go back to our regular witness list. Believe it or not, we will get to the special police. Do you think the only thing this Committee does is smoking? Good afternoon, Jim.

**JAMES MORFORD:** Good afternoon, Mr. Chairman. I am James Morford, Vice President of Governmental Relations, New Jersey State Chamber of Commerce. Thank you, Mr. Chairman and members of the Committee, for the opportunity to speak to you at this public hearing today.

We at the Chamber recognize and commend the sincerity of Chairman Herman for seeking to address this difficult, sensitive, and very often problematical and unenforceable issue in some areas. We recognize, Mr. Chairman, your hard work and how you have worked and reworked this legislation over the years. I think it seems to be moving in the right direction. You and I have had a number of discussions on this. I apologize; I was out of town the last couple of days and was not able to return your call. I just received the message this morning.

**ASSEMBLYMAN HERMAN:** No problem. It was to tell you not to show up. Only joshing, go ahead.

**MR. MORFORD:** I particularly want to address the concerns of the State Chamber to one bill in the package, A-546. It certainly has become apparent over the years that the Legislature has had considerable difficulty in writing law in this area. You need ask no one but the Chairman himself. With A-546, using this mechanism, the Legislature would require businesses to develop specific smoking policies, and failure to do so would result in a penalty assessed against the business, or at least some liability attaches there.

The Legislature's failure to do this, at least in the view of the State Chamber, is, therefore, an attempt to hold New Jersey employers accountable and liable for what the Legislature, at least to date, has not been able to do, and that concerns us.

**ASSEMBLYMAN HERMAN:** Will you stop there for a moment?

**MR. MORFORD:** Sure.

**ASSEMBLYMAN HERMAN:** Let's correct the dialogue. You know I was the prime sponsor of the oversight bill, even though it got passed in another house. You know what I think of rules and regulations, and you know how I put the kibosh on even those rules and regulations dealing with smoking because I did not feel that public policy should be made by bureaucrats. I felt that those regulations were overly

restrictive. I do not apologize for doing that. But, I would like you to go back -- you and your Association -- and take another look at the bills, because too often you come in, and correctly so, and accuse us of being "big brother," of telling you what to do, specifically nuts and bolts. You did that for months on the Right-to-Know, right? I voted for that bill; I thought it was right, and so did most of my colleagues.

But, whether it was the Right-to-Know or any other bill, you have continually over the years leveled that criticism at the Legislature, sometimes justly. But, this bill does none of that, Mr. Morford. You're coming in and criticizing the legislative product as allowing you to establish your own product and not telling you what to do. Now, in all due fairness, without being disrespectful to your membership -- because we have had some excellent dialogue-- You know, it reminds me of the old joke about the rabbi -- pardon me for digressing, but I think it is very applicable here -- who used to do counseling in the old country. He did marriage counseling in Russia. One day his wife was at the door, which was ajar. The rabbi was counseling Jake; Jake was complaining about what a bad person his wife was. The rabbi kept saying to Jake, "You're right, you're right, you're right." Then Jake's wife came in and said exactly the opposite, and the rabbi said to the wife, "You're right, you're right, you're right." They left, and the rabbi's wife said to him, "Rabbi, I couldn't help but overhear; the door was slightly ajar. You told Jake he was right; you told Becky she was right. Now, they both can't be right." He said, "You're right." Now, that is what you are doing to me.

MR. MORFORD: Okay, let me try to apply that.

ASSEMBLYMAN HERMAN: As I understand it, what you are saying to me is, "Mr. Herman, as a legislator, you're wrong for over-regulating us, and, Mr. Herman, you're wrong for under-regulating us." Now, we cannot be wrong in both instances, Jim. You better tell me that I'm right.

MR. MORFORD: You're right. (laughter) You can only be wrong in this respect, Mr. Chairman. If, in the absence of

legislation, there is a compulsion to legislate, to make a law, hopefully that law can be structured in such a way that it is reasonable and is specifically clear to the regulators who write the volumes and volumes of regulatory law. What I am suggesting here, and I do not think it is inconsistent, is recognizing that A-546 itself, in the statement, talks about a number of employers having adopted policies, and that is commendable. Through collective negotiations and discussions with employees, whether they be union or nonunion, they work out procedures internally which affect their specific circumstances. This is not obligated by your legislation, but the question comes to mind, is it necessary? Do we really need to write law in this area? That is where I think we have our basic concerns.

You raised the challenge earlier this morning to the State Chamber and to BIA with respect to the weight of evidence that has been offered before the Committee today and at other times. I would respond to that by saying that as more and more employers accept, understand, and embrace the statistics that have been cited, they will undoubtedly take appropriate steps consistent with their individual circumstances, and consistent with their employees and the circumstances of their employment, to address the issue. We see this going on in the workplace. We think it should continue in that kind of an atmosphere, and if the law itself, as you seem to suggest, is only a minimal step, we are not convinced that this particular bill -- A-546 -- is a necessary step. We think those procedures are going on and can continue to go on without a specific law saying they must.

ASSEMBLYMAN HERMAN: All right. Address the issue of Donna Shimp versus New Jersey Bell Telephone and how it impacts on New Jersey business then.

MR. MORFORD: Excuse me, was that a question?

ASSEMBLYMAN HERMAN: Yes.

MR. MORFORD: Will you please repeat the question?

ASSEMBLYMAN HERMAN: Address the issue of Donna Shimp versus New Jersey Bell Telephone and how it potentially adversely impacts on New Jersey business at the present time.

MR. MORFORD: I am not making the assumption that it does.

ASSEMBLYMAN HERMAN: Well, the answer is that it potentially does. Very candidly, I think what Donna Shimp did was admirable and wonderful, and that she, in essence, took Bell Telephone to task for treating their equipment better than they treated their human beings. I think that as a result, maybe that is why we find AT&T on the Interagency Council today, and I have to commend them for taking the next step. However, the point is simply-- What I am trying to get through everyone's head is this: Very candidly, Mr. Morford, we are engaged in a potential trade-off. Under the law, as I understand it, every industry in this State is subject to litigation, subject to being compelled to do all sorts of extensive things by court edict. And, that is the law, Mr. Morford. Take my word for it, that is the law of this State as it has been interpreted.

What I am saying is, by encouraging, in a laissez faire way, by not shoving it down industry's throat, but by saying to each industry, "You must enact a no smoking or balanced smoking policy, and we are going to insulate you from lawsuits," in my mind, is a fair trade-off, and I say it publicly. Some people disagree with my particular view, but I say it is a fair trade-off, because in the main it establishes a statewide policy; it encourages industry on a statewide basis. That is what I'm saying. So, I am asking you to go back and take a look at it from that viewpoint. I have been very candid with people on the no smoking side who are not particularly happy with my posture on that particular point. We could probably get a lot of hands around the room showing how many people are not happy with me, but I am the only sponsor they have at the moment.

You know, it is my intellectual trade-off, because I think it is the one bill I have seen, Mr. Morford, that will have a positive impact on workers' compensation rates in this State, especially in the chemical industry. It will keep down occupational hazards. Johns Manville obviously agrees with me. I'm asking you to look at it from the standpoint-- You are always coming to me, as a legislator, and you say, "What can you do, Assemblyman, to keep down the costs of everyday business in this State?" I'm telling you that this will keep down the costs of business. That is why I told you that if I am not right -- if

the studies of Boeing and all the other companies that have done this prove me wrong -- I will be happy to withdraw the legislation.

MR. MORFORD: If I may, Mr. Chairman, I would like to respond. You and I are not in a substantial area of disagreement in what you are trying to do with this piece of legislation, as far as a trade-off against the regulatory community is concerned. We talked about this and we recognized this, and I thank you for it because I do appreciate what you are seeking to do in this particular thrust.

You have been in this Legislature long enough to share our kinds of experience. Once we establish the right -- not the right, the right is always there -- once we establish legislation, law, in an area, the great temptation is to continue to legislate in that area, to make it tougher, to go further, to drive further. Then this begins to go to the heart of the kinds of individual initiative that we would hope to encourage within the private sector.

ASSEMBLYMAN HERMAN: I have heard that argument before. It is a concern, but I think it is an unnecessary one in this case. I would offer you the same suggestion that I made to Mr. Gonzalez. I would like to address your group in the very, very near future. I would tell them that if they can demonstrate to me how this is a bad piece of legislation and how it negatively impacts on New Jersey industry and business, I will withdraw it. But, on the other hand, I would expect the same commitment from them. If I can demonstrate to the contrary, one on one, I think they have an obligation to support it. You are all busy telling me that what is good for New Jersey industry is good for the people I represent.

MR. MORFORD: Mr. Chairman, I thank you, and I will accept that offer on your part. I already talked to Regina earlier this morning and we, at least at this moment, notwithstanding the good intentions of the proponents and their motivations, are concerned, particularly in the area of A-546, that further legislation isn't desirable at this point. We would be happy to continue to discuss that with you. Thank you very much.

ASSEMBLYMAN HERMAN: Fine. Thank you very much. Our next speaker will be Mr. Don O'Brien, from the Hotel-Motel Association.

**DONALD O'BRIEN:** I will be very brief, Mr. Chairman. As you know, approximately two years ago I submitted a written statement as to the position of the Hotel-Motel Association with regard to these bills, and it hasn't changed. We still believe that the best way to operate a hotel is to let the manager handle it.

Hoteliers make their living by satisfying their clients, or guests, as they term them. If they do not satisfy them, the clients go elsewhere. This is a simple fact of business life for them. So, this is again our statement. Let the hotelier run his business without interference, and he will provide a comfortable atmosphere for his guests and do everything in his power to have them as repeat customers.

**ASSEMBLYMAN HERMAN:** I think that is fair to say. Now, please tell me which bill your comments are directed to. Are you talking about the restaurant bill?

**MR. O'BRIEN:** The restaurant bill and the workplace bill. Some of our hotels will be affected. They have more than 50 employees.

**ASSEMBLYMAN HERMAN:** That is worthy of discussion, because I think hotels are really a different breed. I would like to talk to you further about that, because there are some points that we did not think about. I would like to say that I can think about everything in the whole world, but I would like to chat about that.

**MR. O'BRIEN:** All right.

**ASSEMBLYMAN HERMAN:** I would like to know what areas of concern are not subject-- Obviously, hotels are not the same as factories or large secretarial offices. I would like to know just exactly how that impacts, and maybe I will change my mind.

**MR. O'BRIEN:** All right.

**ASSEMBLYMAN HERMAN:** I would like to chat with you about it. I assume you read the restaurant bill, right?

**MR. O'BRIEN:** Yes.

**ASSEMBLYMAN HERMAN:** And, you know that that bill does not really mandate anything other than the posting of a sign, right?

**MR. O'BRIEN:** Well, one of our problems is, we are getting so many signs we have to post that we're wondering if we are going to have to put up additional walls to put all the signs on.

ASSEMBLYMAN HERMAN: You have been around for some years, right?

MR. O'BRIEN: Yes.

ASSEMBLYMAN HERMAN: And, you were around in the days when the Public Health Council mandated putting up partitions.

MR. O'BRIEN: I was not here at that time.

ASSEMBLYMAN HERMAN: Okay, but you know of that?

MR. O'BRIEN: I've heard of it, yes.

ASSEMBLYMAN HERMAN: Okay. And, we can agree that this bill does not take away the ability of the restaurateur, whether it be a hotel or otherwise, to operate his, her, or its business, can't we?

MR. O'BRIEN: Except that it does indicate to the person who wants to be negative to whatever the sign is that the person running the hotel has something against him.

ASSEMBLYMAN HERMAN: I mean, I'm talking just friend to friend here, because you honored me a couple of years ago as your "Legislator of the Year." I was awarded that from the Hotel-Motel Association. They thought I was decent enough as a legislator to award me that, so I hope that I am not a terribly bad person at this moment. But, taking this from your ex-legislator of the year, as your former legislator of the year, you're not saying that posting a sign that says "This restaurant has a no smoking section," is going to stop people who smoke from coming in. You're not saying that, are you?

MR. O'BRIEN: No, I am not saying that because they will go into the bar anyway.

ASSEMBLYMAN HERMAN: Or, they will go to your smoking section.

MR. O'BRIEN: However, I will say this. To the zealous, the one that says, "We do not provide a no smoking section--"

ASSEMBLYMAN HERMAN: (interrupting) They would go elsewhere?

MR. O'BRIEN: They would go elsewhere, but this is not the way of a hotelier. He would provide it with or without a sign.

ASSEMBLYMAN HERMAN: All right, stop what you are saying and let's take both thoughts. Let's assume that I am Mr. or Miss Zealous. As a member of the public, whether I am zealous or not zealous in my

beliefs, am I not entitled to know whether you have a smoking or a no smoking section? Am I not entitled to engage in my zealousness and take my business elsewhere?

MR. O'BRIEN: You can ask as soon as you walk in the place.

ASSEMBLYMAN HERMAN: Then, what is the difference? Why do I have to ask? Why can't I know without having to ask? Tell me what the great difficulty with that is.

MR. O'BRIEN: I don't believe it is a proper way to run a business to have to say to people, "Hey, I do this or I don't do this."

ASSEMBLYMAN HERMAN: But, you're really not saying that would impact on your business, are you?

MR. O'BRIEN: It could well impact on our business.

ASSEMBLYMAN HERMAN: In other words, people who would want a no smoking section might go elsewhere.

MR. O'BRIEN: Yes, and at the same time they would have been provided one had they come in.

ASSEMBLYMAN HERMAN: Yes, but then you would be telling them. All this bill does is say that you have to have-- If they would be provided a no smoking section, sir -- I'm just trying to go back and understand what you are saying.

MR. O'BRIEN: They would be provided a no smoking section right now, without a sign.

ASSEMBLYMAN HERMAN: I beg your pardon?

MR. O'BRIEN: They would be provided that right now, without a sign.

ASSEMBLYMAN HERMAN: Then, what is the problem with the sign, sir?

MR. O'BRIEN: It doesn't add to the decor.

ASSEMBLYMAN HERMAN: It doesn't detract from it either, does it, sir?

MR. O'BRIEN: Oh, yes, because of all the various signs they are already required to put up everywhere you go. There are signs that say, "No Smoking in Elevators," which I agree with.

ASSEMBLYMAN HERMAN: I'm talking about your restaurants, sir. What signs do you have to put up now in your restaurants?

MR. O'BRIEN: In the back part of the restaurants -- and remember, I am talking about hotels--

ASSEMBLYMAN HERMAN: (interrupting) I understand.

MR. O'BRIEN: In the back part of the restaurants you have to have choke signs, you have to have all the various labor signs--

ASSEMBLYMAN HERMAN: (interrupting) Do you disagree with the choke sign?

MR. O'BRIEN: I am perfectly in agreement with it.

ASSEMBLYMAN HERMAN: Why? As a matter of common sense, it could help to save lives, right?

MR. O'BRIEN: Right, but I don't think having a sign that says smoking or no smoking is going to help to save lives.

ASSEMBLYMAN HERMAN: Were you here all day as we heard testimony?

MR. O'BRIEN: What? I'm sorry, I can't hear you.

ASSEMBLYMAN HERMAN: Were you here all day listening to the testimony?

MR. O'BRIEN: No, I was only here part of the day.

ASSEMBLYMAN HERMAN: Well, I wish you had been here earlier because maybe you would change your mind. A lot of our experts who testified earlier, whom I listened to because they are doctors, scientists, and people like that, seem to indicate that having no smoking sections in restaurants and encouraging no smoking happens to be a good reenforcement in helping people to continue not smoking, or even giving it up. Now, that is what they say. They are only the experts.

MR. O'BRIEN: That is their opinion.

ASSEMBLYMAN HERMAN: Yes, that is their opinion, but I would like to know from you how that one little sign is going to detract from the decor of your restaurants, sir.

MR. O'BRIEN: Suppose you have to go into a large hotel which may have as many as five restaurants.

ASSEMBLYMAN HERMAN: Yes?

MR. O'BRIEN: They are going to have these signs all around to state this.

ASSEMBLYMAN HERMAN: Do you mean the one little sign on the front going into the restaurant?

MR. O'BRIEN: Wait a minute. Doesn't the bill specify exactly the size and so forth that the sign has to be?

ASSEMBLYMAN HERMAN: Are you concerned about the size? How about if I had a smaller sign, would it be all right by you?

MR. O'BRIEN: I would prefer no sign at all.

ASSEMBLYMAN HERMAN: But, let's assume that you had your preference?

MR. O'BRIEN: I would prefer no sign at all, because you are taking away from the manager's prerogative to run his business.

ASSEMBLYMAN HERMAN: I understand what you are saying. We also took it away when you put the choke sign up, right?

MR. O'BRIEN: Yes, but that is done for the help.

ASSEMBLYMAN HERMAN: I beg your pardon?

MR. O'BRIEN: That is done for the help so that they will understand.

ASSEMBLYMAN HERMAN: It's for the people, isn't it?

MR. O'BRIEN: Yes, to help the people.

ASSEMBLYMAN HERMAN: Okay, and don't you have unemployment signs up that help people?

MR. O'BRIEN: Not in hotels that I know of.

ASSEMBLYMAN HERMAN: You don't have a sign about unemployment compensation?

MR. O'BRIEN: Oh, do you mean workmen's compensation signs?

ASSEMBLYMAN HERMAN: Right. Do you have those signs too?

MR. O'BRIEN: Oh, yes, those are up in the hotels.

ASSEMBLYMAN HERMAN: That isn't even a pretty sign, but you have it up there anyway, right?

MR. O'BRIEN: I even have that in my office; it is required.

ASSEMBLYMAN HERMAN: Okay. That is not hurting anything, is it?

MR. O'BRIEN: It detracts from the wall.

ASSEMBLYMAN HERMAN: Okay. But, a little sign that says, "This restaurant has a nonsmoking section" -- do you think that is going to turn people away?

MR. O'BRIEN: No, but you have taken away from the manager's prerogative in running his business the way he sees fit. By government fiat, you are saying that he must have this sign.

ASSEMBLYMAN HERMAN: You're telling me, sir, that you are going to have a no smoking section anyway, right?

MR. O'BRIEN: If the manager is a smart hotelier, the hotel will have one. He'll provide one.

ASSEMBLYMAN HERMAN: Okay, if he is a smart hotelier. We are just going to help people be smarter. But, beyond that, did you read the bill?

MR. O'BRIEN: Yes.

ASSEMBLYMAN HERMAN: And, does this bill mandate how many seats your restaurant has to have?

MR. O'BRIEN: We have 50 seats.

ASSEMBLYMAN HERMAN: No, does it mandate how many nonsmoking seats you have to have?

MR. O'BRIEN: No, it does not.

ASSEMBLYMAN HERMAN: So, in other words, in your restaurant, if your trade differs from day to day, all you really have to do is change the ashtrays on your tables in order to comply with this bill. Isn't that right?

MR. O'BRIEN: And he would do that today without the bill.

ASSEMBLYMAN HERMAN: Fine, then we are really not requiring any restaurateur or hotel manager to do anything other than what he should do anyway, right?

MR. O'BRIEN: Returning that to you then, why don't you just exempt hotels from that position because it will be done anyway? They don't even need this.

ASSEMBLYMAN HERMAN: Maybe we will talk about the workplace with you, but you do run restaurants, right? You do run restaurants.

MR. O'BRIEN: Hotels do have restuarants, but I don't run them.

ASSEMBLYMAN HERMAN: We agree that we have stop signs and we enforce them because they are for the good of people. What do we enforce the law for?

MR. O'BRIEN: I am a law-abiding citizen, I hope.

ASSEMBLYMAN HERMAN: Fine. You stop anyway, right?

MR. O'BRIEN: Yes.

ASSEMBLYMAN HERMAN: And, as a good restaurateur, you have smoking and nonsmoking sections, right?

MR. O'BRIEN: If I choose. Now, I may not choose to do so.

ASSEMBLYMAN HERMAN: You told me it was good business.

MR. O'BRIEN: It is.

ASSEMBLYMAN HERMAN: You told me it was the right thing to do.

MR. O'BRIEN: But, suppose the manager didn't agree with me, and he wanted to have it his way. That's his business.

ASSEMBLYMAN HERMAN: Oh, in other words, we should then allow-- We should take what is a good public policy and allow people to have their own way with it?

MR. O'BRIEN: Remember, he has to depend for his living on the business he does in that restaurant.

ASSEMBLYMAN HERMAN: Let me ask you a very direct question.

MR. O'BRIEN: (interrupting) And, if he doesn't want nonsmokers, that is his business.

ASSEMBLYMAN HERMAN: Then, aren't the nonsmokers entitled to know whether he wants them or not?

MR. O'BRIEN: If he doesn't, I'm sure they will know it. I'm sure they will know.

ASSEMBLYMAN HERMAN: With all due respect to you, your testimony is somewhat contradictory.

MR. O'BRIEN: No, sir.

ASSEMBLYMAN HERMAN: Would you say it is a good public policy to have--

MR. O'BRIEN: (interrupting) We say the bill is unnecessary as far as hotels are concerned, that it will be done because they are good businessmen.

ASSEMBLYMAN HERMAN: Which hotel are you from, sir?

MR. O'BRIEN: I run the Association, not a hotel.

ASSEMBLYMAN HERMAN: Now, would you tell me, sir, whether your Association believes it a matter of public policy -- that it is

good public policy to encourage restaurants to have nonsmoking and smoking sections in a restaurant?

MR. O'BRIEN: As far as the hotel is concerned?

ASSEMBLYMAN HERMAN: As far as running a restaurant is concerned.

MR. O'BRIEN: Having a no smoking section is a matter of policy of the manager of that hotel.

ASSEMBLYMAN HERMAN: I am asking a very direct question of your Association. Please try to follow my question.

MR. O'BRIEN: We have no policy with regard to that as far as the Association is concerned. That is for the individual member to decide. He runs his business.

ASSEMBLYMAN HERMAN: You are not telling me whether that is a good policy or a bad policy.

MR. O'BRIEN: From my point of view, I think it is a very fair policy.

ASSEMBLYMAN HERMAN: Then I am going to try to implement your point of view. Thank you very much.

MR. O'BRIEN: Thank you.

ASSEMBLYMAN HERMAN: Our next witness will be Mr. Fred Schneeweiss. It seems like deja vu, like we have met here before sometime, right? Good afternoon, Mr. Schneeweiss, how are you?

**FRED SCHNEEWEISS:** That's right, we have. Good afternoon, Mr. Chairman. My name is Fred Schneeweiss and I represent the New Jersey Restaurant Association and, also, the National Restaurant Association.

ASSEMBLYMAN HERMAN: It's good to see a constituent.

MR. SCHNEEWEISS: Assembly Bill 547 would require a restaurant which seats 50 or more patrons to notify the State Health Department as to whether or not it provides a no smoking area, and then to hang a sign in every public entrance stating its decision. New Jersey restaurateurs are constantly pestered with legislation requiring us to display various signs, such as signs for occupancy loads, the selling of cyclamates, or whether we use them, whether we handle kosher or non-kosher foods, signs regarding the use of sulfiding agents, and, of course, the sign which states that we have the authority to collect the sales tax in New Jersey.

In this session, for example, along with this bill, we are facing bills which would require us to hang posters which describe the effects of alcohol consumption with respect to the customer's body weight and warn of the consequences of drunk driving, plus a modest proposal which would require us to post a sign saying, "Warning, pesticides recently applied," every time we use a disinfectant to wash the floor. The New Jersey Restaurant Association uniformly opposes this sign legislation for good reason. If we did not oppose these bills, our restaurants would soon look like billboards. We consider the requirements of A-547 to be unnecessary and troublesome. The intent of the bill is to establish that the right of the nonsmoker to breathe clean air should supersede the right of the smoker to smoke. Taken literally--

ASSEMBLYMAN HERMAN: I'm sorry, could you repeat that last sentence one more time?

MR. SCHNEEWEISS: The intent of the bill is to establish that the right of the nonsmoker to breathe clean air should supersede the right of the smoker to smoke.

ASSEMBLYMAN HERMAN: All right, continue.

MR. SCHNEEWEISS: Taken literally, this is a standard which well may be impossible to achieve. If a restaurant which already has a nonsmoking area -- and I would like to emphasize that a good many restaurants have already voluntarily established nonsmoking areas without government coercion -- notifies the State Health Department that it has a nonsmoking area and posts the required signs at its public entrances, it is reasonable to expect that the restaurant will soon be notified by the Health Department that its nonsmoking area does not meet the intent of this proposed law.

ASSEMBLYMAN HERMAN: Could you give me an example of that, sir? As the sponsor, I had assumed that the bill would be laissez faire and you could have one seat, or two seats, or as many seats as you wanted, and that it could be flexible and could be changed on a day-by-day basis. Would you show me in the legislation where your concern is evidenced?

MR. SCHNEEWEISS: Well, I have had the opportunity to serve on the committee that rewrote the health laws in this State--

ASSEMBLYMAN HERMAN: (interrupting) Would you show me in my legislation where that is permitted? If you would like an additional sentence that would clarify that, I would be more than happy to help you. In fact, we will write an additional sentence to say that the number of seats may change on a day-by-day basis, that it is up to the restaurateur to establish clearly the number of seats, and that there is to be no interference from the Department of Health. Now, we will put that amendment in. We clarified that now, so go ahead.

MR. SCHNEEWEISS: Further on in the bill, the Health Department has the authority to determine whether your air-handling system is adequate or not.

ASSEMBLYMAN HERMAN: Isn't that only under those circumstances when you seek an exemption from having a no smoking section at all?

MR. SCHNEEWEISS: No.

ASSEMBLYMAN HERMAN: Yes, it is. You better go back and read the bill. I would indicate to you, sir, that that section only applies to those restaurants which do not want to have a designated no smoking section, that they are allowed to put in an air-filtering system, and that that air-filtering system has to be approved. That was an option. I would suggest that you take a look at it.

MR. SCHNEEWEISS: Excuse me, you are correct in that.

ASSEMBLYMAN HERMAN: Thank you very much.

MR. SCHNEEWEISS: But, the problem lies in the fact that we already come under the Department of Community Affairs, which regulates the BOCA Code, which handles our installations of air-handling systems.

ASSEMBLYMAN HERMAN: That was suggested by someone who thought that that would be one of the alternatives to a no smoking section and I put that in as an accommodation. Am I correct, Assemblyman Kern?

ASSEMBLYMAN KERN: Yes.

ASSEMBLYMAN HERMAN: Would you like me to take it out of the bill?

MR. SCHNEEWEISS: I would like to see the decision whether to have a sign posted left to the management of the restaurant.

ASSEMBLYMAN HERMAN: I'll make you another deal, how's this? You agree that having a smoking section and a no smoking section is good business, right?

MR. SCHNEEWEISS: No, it may be good business under certain circumstances for an individual operator.

ASSEMBLYMAN HERMAN: Okay. Let me give you this deal. We will take off the sign-- If a restaurant has a no smoking section, I will be happy to make an amendment to this bill that will say that it does not have to post any sign. I will leave it with those particular restaurants that have a provision that they do not want to comply with the law, that they do not have a no smoking section. We will only have one sign for those restaurants that have refused to have a no smoking section. We will eliminate all signs other than that one. You are telling me that most restaurants are now going to this, so they will not have any sign requirements at all. Now, tell me what the problem is.

MR. SCHNEEWEISS: My problem is that it is not necessary to have a sign posted whether you have a smoking section or a nonsmoking section.

ASSEMBLYMAN HERMAN: Do you think a patron today has a right to know whether a restaurant has a smoking or a nonsmoking section?

MR. SCHNEEWEISS: I certainly believe they do.

ASSEMBLYMAN HERMAN: Do you think it is good public policy that they know that?

MR. SCHNEEWEISS: I don't know if it is good public policy; I think if they have the desire to know, they can ask when they enter a place. They can find out whether there is no smoking, the prices on the menu, etc.

ASSEMBLYMAN HERMAN: Why should they have to-- Don't a lot of restaurants put their menus on the window?

MR. SCHNEEWEISS: A few do.

ASSEMBLYMAN HERMAN: You don't see that as clutter, do you?

MR. SCHNEEWEISS: Well, if you put the menu with the rest of the signs, I do.

ASSEMBLYMAN HERMAN: If you put one little sign on the door that says, "This restaurant does not have a no smoking section," wouldn't I know that I wouldn't have to walk all the way through the restaurant?

MR. SCHNEEWEISS: I don't think you have to walk all the way through the restaurant. I think you can find out that information at the same time you go in to look at the menu, to find out whether there is a waiting line, or whether the price structure is to your satisfaction. I think those things are all found out--

ASSEMBLYMAN HERMAN: (interrupting) Do you think that putting that sign on stigmatizes businesses, as Mr. Katz said?

MR. SCHNEEWEISS: Yes, I do.

ASSEMBLYMAN HERMAN: Why?

MR. SCHNEEWEISS: I think it is a negative approach to a problem. When you come into an operation, a restaurateur's place of business, where a person wants to be hospitable and welcome people, and one of the first things you see is, "We do not have a no smoking section"--

ASSEMBLYMAN HERMAN: (interrupting) Hey, shouldn't that turn people off? In other words, if I walk into your place, sir, and you don't have a no smoking section, are you going to create one automatically for me?

MR. SCHNEEWEISS: I don't feel that there is a need for a no smoking section if you have an adequate air-handling system.

ASSEMBLYMAN HERMAN: Well, then you would be covered under the exemption in the law, wouldn't you?

MR. SCHNEEWEISS: But, you would have to put a sign in there.

ASSEMBLYMAN HERMAN: No, you wouldn't if you had an exemption under the law. Let's make that clear too. If the air-filtering system was approved, no sign would be required. Now, what is your next problem under this bill? I think you are raising some legitimate points and I am just trying to handle them.

MR. SCHNEEWEISS: If we have an adequate air-handling system, there will be no signs required?

ASSEMBLYMAN HERMAN: Absolutely. What is your next problem?

MR. SCHNEEWEISS: I don't believe I have another problem.

ASSEMBLYMAN HERMAN: Then you can go back and talk to your folks, right?

MR. SCHNEEWEISS: Right.

ASSEMBLYMAN HERMAN: Great. Your testimony has been fantastic and very constructive too.

MR. SCHNEEWEISS: Thank you very much.

ASSEMBLYMAN KERN: It is always good to have someone from District 40.

MR. SCHNEEWEISS: That's right.

ASSEMBLYMAN HERMAN: You don't vote for this guy, do you really? (laughter)

MR. SCHNEEWEISS: Oh, yes I do.

ASSEMBLYMAN HERMAN: Now we will take the gentleman who said he was next. Please go ahead.

**MATTHEW BARS:** Thank you, Mr. Chairman.

ASSEMBLYMAN HERMAN: Thank you. May we have your name for the record?

MR. BARS: My name is Matthew Bars.

ASSEMBLYMAN HERMAN: Okay, sir.

MR. BARS: Mr. Chairman, fellow members of the anti-smoking movement, members of the press: My name is Matthew Bars. I am President and Director of Clinical Services of Medical Control Centers of Englewood, New Jersey. Medical Control Centers is a medical clinic helping smokers to become nonsmokers. I greatly appreciate the opportunity to finally address this Committee. You have heard, or will hear shortly, every conceivable reason why Assembly Bills 546, 547, 548, 639, 640, and 864 should be enacted, how they will save tremendous amounts of money in terms of health care costs and costs in the workplace, and how restaurant revenues will increase, despite what tobacco industry spokespersons say.

You will hear, or have heard how environmental tobacco smoke, or ETS as it is called on occasion, actually represents forced smoking and is a major source of indoor pollution, and how ETS poses serious health risks for smokers and nonsmokers alike, despite what tobacco industry henchmen say. Perhaps you are aware that per capita,

cigarette consumption is finally trending downwards. Everything that can be done to reenforce this trend should be done, as Dr. Everett Koop, Surgeon General of the United States, says, "To ensure a smoke-free society by the year 2000," because cigarettes kill 1,000 Americans everyday, 30 of whom are New Jerseyans. Indeed, it is because of the ability of the tobacco industry to lie and mislead the public that these self-evident truths need repeating at all, but they do.

However, I am not here to restate the obvious. Ladies and gentlemen, I wish to discuss how this legislation will affect the forgotten minority, the recovering "smokeaholic." An estimated 714,000 New Jerseyans attempt to stop smoking each year. Unfortunately, most are unsuccessful. The new ex-smoker must overcome his physical addiction to nicotine, his emotional and psychological dependence on cigarettes, and the psychosocial habit of smoking.

ASSEMBLYMAN HERMAN: Could you stop for just a moment, because that is an interesting number. We have what, maybe five million New Jersey adults, four million, how many?

MR. BARS: I believe that according to the 1982 July Census, it was 7,438,000.

ASSEMBLYMAN HERMAN: Well, they are not all adults; that includes children.

MR. BARS: Thirty-two percent of whom smoke.

ASSEMBLYMAN HERMAN: No, no, that is not what I am talking about. I don't mean to break your trend of thought. I assume that maybe we have four to five million adults in New Jersey, 30% of whom smoke, which is about a million. Are you telling me that one out of every two or one out of every three New Jersey adults every year tries to give up smoking?

MR. BARS: According to the Journal of the American Medical Association.

ASSEMBLYMAN HERMAN: I am just trying to break it down into numbers I can understand.

MR. BARS: That's correct.

ASSEMBLYMAN HERMAN: One out of two or one out of three?

MR. BARS: One out of three, approximately.

ASSEMBLYMAN HERMAN: Okay, go ahead.

MR. BARS: Unfortunately, the smokers' urge to smoke is precipitated by a wide range of factors, including the environment that he or she may find themselves in. Medical Control Centers has helped many thousands of smokers throughout the New Jersey/New York metropolitan area in the past four years. As a former smoker, and as a psychologist, I can tell you from personal, as well as professional experience, that the vast majority of smokers find the urge to smoke extremely strong around other smokers, specifically at work and at mealtimes. Ladies and gentlemen, I submit that these recovering smokeaholics, as I call them, these new ex-smokers, have the right to breathe clean air, to travel on buses, to perform their jobs, to dine at restaurants, and to assemble in public places without being bombarded with unhealthy reminders of their addiction.

We would not consider for one moment requiring that new recovering alcoholics be exposed to other drinkers in, say, a tavern or a nightclub. We would consider it cruel and inhuman to purposely expose an ex-heroin addict to the temptation of associating with other junkies who are still actively engaged in their drug abuse. Yet, every smoker who chooses health over disease and death, freedom over addiction, is exposed to just such temptations on a daily, even hourly basis.

The enactment of this legislation into law would help the recovering smoker tremendously to successfully combat the urge to smoke. I urge you to resist the lies, the deceit, and the power of the tobacco industry. I strongly recommend that this Committee, the Assembly, and the Governor of New Jersey rapidly move these bills into law. Thank you.

ASSEMBLYMAN HERMAN: Thank you very much. I understand you have someone else who wishes to speak. He or she may come up; why don't you just move over one seat. I understand this is a joint presentation, am I correct?

MR. BARS: Dr. Chester had to leave to treat his patients.

ASSEMBLYMAN HERMAN: Okay, thank you. I apologize for the time lag.

MR. BARS: No problem.

ASSEMBLYMAN HERMAN: If there is any supplemental information you wish to provide, I think that would be dynamite, because that is really an argument that we have not advanced nor appreciated to the extent that you have enunciated. I think it is a public policy consideration that really has not been presented before to the Legislature.

MR. BARS: I would be happy to submit supplemental information.

ASSEMBLYMAN HERMAN: Regina, if you could help us out with that too, I would appreciate it. Our next witness will be Judy Gilbert. Judy, please go ahead.

**JUDY GILBERT:** My name is Judy Gilbert. I am here as a concerned citizen for everyone, smokers and nonsmokers. I am in full support of the bills being discussed. However, I have one recommendation.

This past summer, my daughter was employed by AT&T Information Systems in an office of 49 people. She happened to have been the only person who did not smoke. She was ill the entire summer. She had upper respiratory and throat problems because of the smoke. Everyone in front of her, behind her, and the supervisor who was instructing her constantly had a cigarette under her nose. She was even forced to miss a day or two of work because of illness. She is a college senior and she was interested in a career with AT&T, so she found it necessary to remain at this position in order to secure her future.

ASSEMBLYMAN HERMAN: Even though it was an unhealthy one, right?

MS. GILBERT: Yes. She was very ill the whole time. She had terrible headaches. I also have extreme allergies toward smoke. If I were in a position to have to work in an office with only two smokers, I would have to suffer for it.

ASSEMBLYMAN HERMAN: There is a good point to the AT&T story. As you know, AT&T does not allow smoke around its equipment, so we don't have to worry about telephone reception because of sensitive equipment, and I say that facetiously.

MS. GILBERT: Yes, I know. The equipment that was in this office-- There were people who had headphones on; there were sheets of paper where there was a dangerous situation. The cigarette smoking was constant. There was no lounge she could go to, to escape from the smoke. There wasn't a room. There was nowhere she could go, other than to leave the building.

ASSEMBLYMAN HERMAN: Thank you, Ms. Gilbert. I think you made your point, and we appreciate your being here. Please tell your daughter that there will be 41 of us with enough courage to help her out.

Is Mr. Rosenthal still here? I know he has been in and out all day.

UNIDENTIFIED PERSON: With two minutes notice, he can be back.

ASSEMBLYMAN HERMAN: Well, please tell him he will be the next witness after Mr. Lefkowitz. Do you have a brief comment, Barry, just very brief?

**BARRY LEFKOWITZ:** Mr. Chairman and members of the Committee: My name is Barry Lefkowitz, and I will be very, very brief. I represent the Garden State Restaurant Association, which is a restaurant association made up of over 400 restaurants in the State of New Jersey.

The GSRA Board has taken a position in favor of the smoking bill for restaurants on the basic belief that most people come to restaurants for good food. The responsibility of a good restaurant is to try to provide as much convenience as possible and to let the customers know that they are important to us. It is our belief, based on the flexibility you have provided in the bill in terms of the number of seats that, in fact, this is actually good for business, not bad for business.

ASSEMBLYMAN HERMAN: Will you give us a letter to that effect?

MR. LEFKOWITZ: Yes, we will.

ASSEMBLYMAN HERMAN: I don't want my colleagues to faint or anything.

MR. LEFKOWITZ: Although I am not sure whether or not we can argue with Mr. Katz or the others regarding the stigma, it is our basic opinion that the majority of our restaurants have given an indication that they would, in fact, have no smoking. Many of them already have no smoking areas.

ASSEMBLYMAN HERMAN: It is a good public policy, right?

MR. LEFKOWITZ: On the basis of this, we believe that it is good for business and, therefore, it is good for restaurants.

ASSEMBLYMAN HERMAN: Okay, that is another point of view, and we thank you. It is nice to hear it said. You're right, Joe, there are two sides to every coin.

Dr. Joel Campbell? (affirmative response) Again, my apologies, as well as my thanks, to those of you who have waited patiently to be heard.

**DR. JOEL CAMPBELL:** I am Dr. Joel Campbell. I have taught statistics at the graduate level for more than 30 years at Case Western Reserve University, the University of Pennsylvania and, most recently, at the Princeton Theological Seminary.

I want to speak about the table at the top of the page I provided to you. I know you have all heard about these studies before, but in view of some of the statements that have been put forth by the tobacco industry, I would like to direct your attention to the statistics involved here, and I can be very brief.

If you look at the column that has at the top a wavy "X" with a square sign beside it, in statistics that is the symbol used for a statistical test for determining whether or not random occurrences can account for the kind of phenomenon under study. If the value under that had been 10.8, it would have indicated that there was one chance in a thousand that just random occurrences could have produced the phenomenon under study. Actually, you see it is 36.81, so there is considerably less than one chance in a thousand that these random occurrences could have occurred.

Going down to the last one, you see that is 23.6, so again you cannot logically say that this is just a random phenomenon. The value for the study in the middle, 2.14, did not reach that level of

10.8 and this is marked in the next column, "Not Significant." To the statistician that means there are more than five chances in a hundred that random occurrences could account for the phenomenon. Actually, in this instance, it is about 16 chances in a hundred.

Now, taking three studies all together, any time you have three separate studies by different investigators, all showing results in the same direction, you begin to be convinced that there is something real happening. In this instance, we have three separate studies, two of which reached the significant level and had a very high rate, and one which came reasonably close to being significant. To me, that indicates that this is a real phenomenon. I think the conclusion drawn here that the currently-available evidence is not sufficient to conclude that passive or involuntary smoking causes lung cancer is an extremely over-cautious interpretation.

ASSEMBLYMAN HERMAN: So, what you are saying is, based on your statistical evaluation, we have a real problem on our hands as a result of sidestream and mainstream smoke.

DR. CAMPBELL: We have a real problem. Now, the tobacco industry has done its best to confuse the issue. In one of the ads, they said that the U.S. study was insignificant. They convert the statistical term "not significant," which has a precise meaning, to insignificant.

ASSEMBLYMAN HERMAN: When you have a billion and a half dollars, Doctor, you can do a lot of tampering with the public's mind.

DR. CAMPBELL: You can see, there was 17% more women who died than would have been expected. Possibly those women wouldn't consider that as insignificant. Thank you, sir.

ASSEMBLYMAN HERMAN: And, thank you. I would like, by the way, since we are making reference to the Doctor's testimony about a particular table, to have this appear in the Appendix of the transcript so that when the members of the Legislature read it they will have some reference point. Thank you, Doctor.

Steven Rosenthal is here now. Steve, they have had you floating in and out all day. I knew we would get to you.

**STEVEN ROSENTHAL:** Thank you. Mr. Chairman and members of the Committee, I will make my testimony brief. I am in a training session across the street, and that is why I have been floating in and out.

**ASSEMBLYMAN HERMAN:** Have you been busy smoking?

**MR. ROSENTHAL:** Right.

**ASSEMBLYMAN HERMAN:** Go ahead.

**MR. ROSENTHAL:** I want to clear the air on CWA's position on this issue, because it has been a little muddled the last few days. I represent the Communications Workers of America, a union which represents 65,000 New Jersey working men and women, including 32,000 State workers, approximately 15,000 county and local government workers, and another 18,000 New Jersey Bell Telephone workers.

I am not going to sit here and pretend to speak for all of the members of CWA. I won't do that on these bills, and I won't do that on any piece of legislation. Our members certainly have minds of their own and they can speak for themselves. We try to represent our members as best we can on issues we see affecting them day to day on the job.

The problem we have with these bills is more with the enforcement process than with anything else. I would venture to say that our members are as split on this issue as the general public, and as split as the testimony that we have heard here today.

**ASSEMBLYMAN HERMAN:** Steve, if they were consistent with the general public, they would be at least seven-plus in favor.

**MR. ROSENTHAL:** Again, I don't know the statistics. I don't claim to be an expert on this issue. The reality, though, is that the way we read these bills right now, our members would be responsible for enforcing these laws in public places. Let me use the example I used last spring in an unemployment insurance office. We represent the workers there. Now, if it is going to be no smoking for the general public, will our members be told -- and the way we read the bill they will be told -- to inform the general public to put out their cigarettes and to stop smoking in the building? Now, unless we plan on giving our members guns, badges, and billy clubs, I don't know how they are going to enforce these laws.

Secondly, if a supervisor were to say to a worker, "Go and tell that six-foot-eight guy over there on the corner to put his cigarette out," and the worker said, "No, I don't want to do that," can the worker be disciplined for not listening to his supervisor?

Generally, we support the concept of these bills. The problem we have is, why is it that our members are going to be asked to enforce them, or how can we work this out in a way that our workers won't be asked to enforce them?

ASSEMBLYMAN HERMAN: I think that your last question is an appropriate one -- how can we work it out -- and we will try to meet on that particular issue. Let me say this: I indicated earlier, and you may have been here, that we have done a complete study of this. To the best of our knowledge, in 98% or 99% of all the cases, the posting of the sign, in and of itself, has enforced compliance. I think your concerns--

MR. ROSENTHAL: (interrupting) The concern would be even in that 1%, that one case where a worker is punched, or worse, for trying to enforce a law and giving out a \$25.00 fine.

ASSEMBLYMAN HERMAN: With all due respect, I think you are overstating the case. In that situation isn't it better -- if the person would not comply, he would have to call someone in a very rare situation -- to encourage a public policy that will benefit seven million people?

MR. ROSENTHAL: The problem is that people are people, and workers are workers. We are concerned that in any case, any one isolated case, or maybe in 50% of the cases-- I don't know that 98% of the time when someone is told to put out a cigarette that he will do it. I hope that is true. Let me add, if you have spent any time at the unemployment insurance offices, or at the Motor Vehicle offices, and I have, I spent three hours there about two weeks ago having my license renewed, anyone who has had the pleasure-- By the way, maybe I can get this on the record now. I don't blame the workers; I blame the system. Anyone who has waited for three hours gets a little agitated. There is always a lot of tension in the rooms, and I just don't see why there should be that added responsibility now to say to public workers,

who have enough duties and responsibilities, "You are now going to be responsible for enforcing a law to protect yourselves."

ASSEMBLYMAN HERMAN: Let me just ask you a question because I think it is an important question. How is that for self-serving? We made an exception in the bills for psychologists because they were able to come in and convince us that in a situation where a patient has had a serious neurosis, had other problems, and was completely nervous, where smoking was even part of the therapy, or whatever -- we made an exception. They sold it to us. They demonstrated a case. Some people disagree. Other than along the unemployment and the Motor Vehicle lines, are there any other problems?

MR. ROSENTHAL: The county welfare offices. We represent workers in 15 county welfare agencies around the State. I think that by and large the provision that was written into these laws -- into these bills -- the way I see them now, which mandates that they be negotiable between the employer and the employees, is good, and we are glad to see that. I don't believe that was in the legislation last year. I'm not sure; correct me if I am wrong. That, from the standpoint of worker to worker, is fine. What we find in most State agencies right now, in most public agencies throughout New Jersey, is that there are provisions already established which designate certain areas as smoking areas, and other areas as nonsmoking areas. What you find--

ASSEMBLYMAN HERMAN: (interrupting) I think we can work this out.

MR. ROSENTHAL: May I finish?

ASSEMBLYMAN HERMAN: Go ahead.

MR. ROSENTHAL: Our main concern, as I said, is that we don't want to see our members with the added responsibility of having to enforce this law. I wouldn't pretend to speak for the entire AFL-CIO, or for other unions, but I would think that in many of the instances in these bills, what we are doing is saying to workers, "Aside from your usual daily responsibilities, you now have the added responsibility of acting as a law enforcement officer."

ASSEMBLYMAN HERMAN: You didn't hear my comments earlier about the work force bill. I suggested that we take out the penalty provision and allow the employer in those situations to do what Johns Manville does, issue warnings and have progressive steps of discipline, so there wouldn't be any penalties at all. Okay? I really have no problem with working this out. But, do you agree with the concept? Do you agree that, if worked out, it can benefit New Jersey workers?

MR. ROSENTHAL: My general feeling is that our workers are probably split on this. We had a few people down here earlier today who support the legislation. If your figures are correct, we probably have 70% who support it; I don't know. We have never done a poll of our members, and I wouldn't sit here and pretend to speak for 65,000 people.

What I can say, though, is that the basic problem the CWA as a union has with the legislation is, we don't want to see our members put in a position of having to enforce this law, when they are not really law enforcement officers.

ASSEMBLYMAN HERMAN: Well, let's see what we can do. Maybe your concerns are not real concerns at all and we can work them out.

MR. ROSENTHAL: Very good.

ASSEMBLYMAN HERMAN: May I assume you are willing to do that so we can move on?

MR. ROSENTHAL: Absolutely.

ASSEMBLYMAN HERMAN: Thank you very kindly.

MR. ROSENTHAL: Thank you, Mr. Chairman and members of the Committee.

ASSEMBLYMAN HERMAN: We will meet to do that. Steve, arrange a meeting with Mr. Rosenthal and the few other people we have to work things out with. Going back to the other part of the agenda, our next witness will be Mr. Irwin Cooper. Good afternoon, sir, and thank you for waiting.

**IRWIN COOPER:** Good afternoon. Mr. Chairman, members of the Committee: My name is Irwin Cooper. I have come here from Lafayette in Sussex County to say a few words in support of Assemblyman Herman's bill regulating smoking in the workplace. My opinions on this issue were

formed through my own experience and the experiences of my wife, Patty, who is sitting back there, as working people in this State.

My wife and I had worked for a major electronics company in New Jersey for a total of 14 years, and we both lost our jobs in December, 1981. We had both been experiencing symptoms while at work that for many months we did not associate with any particular cause. Our symptoms became increasingly severe, however, and in March, 1981, we realized they were related to tobacco smoke exposure.

By that time our sensitivity had increased to the extent that my wife was having serious difficulties breathing after spending only a half an hour in the building. It had become impossible for me to be productive in that very smoky environment.

A number of doctors at that time, and since, have confirmed that we are both very sensitive to tobacco and have strongly advised us against continuing to work in a smoke-contaminated workplace. When we informed our employer of our medical circumstances and asked for more suitable working conditions, he told us that there was nothing the company could do to help us and that we would have to look for employment elsewhere if we could not tolerate the smoke levels in the building. Refusing to provide a suitable work area, the company extended us a personal leave, forcing us to live on our savings. By this time we recognized the limited job opportunities available to the severely tobacco sensitive, so we attempted to file for workers' comp benefits and to file a civil suit for wrongful discharge. In the position in which we found ourselves, it looked as if suing for reinstatement to our former jobs in a smoke-free workplace might be our only hope for financial survival.

It took a considerable amount of time to find lawyers willing to help us. By late 1981, we had exhausted our savings and were forced to apply for unemployment. The company took that opportunity to discharge us. Since 1981, we have filed for workers' comp and have filed a civil suit for back pay and damages. Both cases are still pending.

After many months of underemployment working free-lance and part-time, and even some weeks depending on food stamps, we are both

finally working full-time again. We expect to finish paying our 1981 medical bills sometime this year. We are both still very sensitive to tobacco and to many other forms of environmental pollution. In fact, the drive down here was not easy for us, except that we do have an air filter in the truck. Maintaining a reasonably good state of health requires constant attention to the environment to which we are exposed. My wife is fortunate to have found employment in a smoke-free office. Smoking is allowed at the company I work for, but so far circumstances have allowed me to limit my exposure enough to keep my health problems under control, but not without experiencing more or less continuous symptoms while at work. In the three and a half years since we were forced to leave our jobs, we have learned that our situation is not unique and that smoke is a lot more than annoying to many people.

I would like to remind you that those of us who are exposed involuntarily to tobacco smoke in the workplace are exposed for 40 hours a week. I urge support for legislation that will protect my right to breathe clean air.

ASSEMBLYMAN HERMAN: Thank you very kindly. May I just ask you-- I hope this won't be too personal a question since you have both gotten other jobs. What was the combined income that you had to give up as a result of not being able to breathe?

MR. COOPER: Our combined income was \$40,000 a year.

ASSEMBLYMAN HERMAN: Of course, some people would tell you that that's really not a problem, it is just a matter of courtesy. You know that.

MR. COOPER: I've heard that.

ASSEMBLYMAN HERMAN: Yes. Thank you very much. We appreciate your sharing your experience with us.

MR. COOPER: You're welcome.

ASSEMBLYMAN HERMAN: Good luck with your litigation, by the way. Our next witness will be Mr. David Malcolm. Thank you for joining us, Mr. Malcolm. It looks as if you have a deck of cards for each of us. Please identify yourself and who you represent.

**DAVID MALCOLM:** Mr. Chairman and members of the Committee, it is a privilege as a resident alien to be sitting in a Chamber of a State House in the United States. I am delighted to tell you that I am now on the progressive conservative side. I felt a little awkward over there on Mr. Trudeau's side.

I come from Toronto. I have been in the United States since 1970. I am now a retired insurance professional. My specialty was employee benefits and brokerage. In my own office in New Jersey, I did not allow anyone to smoke. I didn't need a badge, a club, or a pistol. That was just one of the standard operating procedures. If they wanted to smoke, they went to the lavatory. It was very simple, and there were no objections. It improved the health of the people who worked in that office to the degree that I was able to award some of the secretaries additional time off because they were not taking time off due to being sick. I think that is important.

I do not allow anyone to smoke in my automobile. I can be very objectionable sometimes when a person gets into my automobile with a cigar and I tell him he has to throw it out. As a matter of fact, I don't even allow him to get into the car.

I think this is important for the health of all of us. The passive smoker suffers just as badly -- as the doctor indicated -- as the active smoker. There is absolutely no question statistically that this is a fact.

Now, I just brought this (witness holds up an object) because if I put-- I hope that people can see this. What does this suggest to everybody? A package of cigarettes, correct?

**ASSEMBLYMAN HERMAN:** I thought it was a book of playing cards; I have the wrong mentality. It does look like a pack of cigarettes.

**MR. MALCOLM:** It does look like a pack of cigarettes. It has everything. It has a little sticker on the top. It has a lot of homilies to help people who are trying to break the smoking habit. Now, when I retired two years ago I embarked on a crusade, as Regina knows, to help people break this habit. I joined a national organization which utilizes a technique of behavior modification which

was developed by Schick, the inventor of the razor blades. Mr. Schick spent some six or seven million dollars developing this technique. Most of his clinics are in California and in the South. The organization to which I belong has 110 clinics in the United States, and Canada now, and they stretch from Portland, Maine, to Miami, to New Orleans, to Duluth, Minnesota, to Seattle, to San Diego.

I have a group of therapists who were trained to use this technique we are talking about. The problem is that most people who smoke-- Everyone wants to stop smoking. They either want to stop for health reasons, because their doctors said, "You have to stop smoking," or because their dentists said, "You have something down in your throat which doesn't look too good." They want to stop for economic reasons. When the price of cigarettes went up in the United States, they all wanted to quit. But, after reviewing all of the literature, after talking with all of them, the reason why most people do not stop smoking is because they are afraid of the failure of not stopping. No one wants to be a failure. That is the hurdle of smoking cessation -- whether it is Smoke Enders, Bantron, you name it -- seeking to overcome the habit. The secret is to overcome the fear of failure, because none of us likes to fail in whatever we undertake to do.

You have to have a lot of character. No one in the United States who runs these clinics has a magic wand or a box of sprinkley dust that they can just throw out and a person will stop smoking.

ASSEMBLYMAN HERMAN: Let me ask you this to get to the point. How will this legislation hurt or help?

MR. MALCOLM: This legislation will help because it will become an ally of ours. Obviously, I don't go to a restaurant which doesn't have a no smoking section. When that man said that he couldn't put a sign up -- that I do not accept, because he has no hesitation, or the restaurants which are members of the Association have absolutely no hesitation about putting up signs saying Diners Club, Visa, Master Charge, you name it.

ASSEMBLYMAN HERMAN: Well, they make the door beautiful; you don't understand. (laughter)

MR. MALCOLM: They can address the question of a nonsmoking section--

ASSEMBLYMAN HERMAN: (interrupting) I think you make an excellent point, because doesn't that tell us, if you put American Express, Diners Club, Visa, "Come here because I have these conveniences. If you don't have the cash, you can charge it."

MR. MALCOLM: Yes, it makes it easier; it makes it a little less painful.

ASSEMBLYMAN HERMAN: Right. You don't necessarily have to walk in and whisper to the maitre d', "Do you accept Diners Club or Visa?"

MR. MALCOLM: Or, "Will you take my check?" As you know, in New York today many of the better restaurants will take a check, rather than take your Visa or American Express, particularly if you use the American Express Gold Card, because they do not want to pay that 6%.

ASSEMBLYMAN HERMAN: Now you tell me. (laughter)

MR. MALCOLM: They would rather take your check. I used to say, "I live in Toronto," and they would say, "Well, that's all right, do you have an American account?" "Sure, here it is." So, that is what they do.

I would like to make a couple of observations about some of the speakers, particularly the last man who spoke about the CWA. He made the observation that his members would have to have a pistol, a club, and a badge in order to prevent smoking. That is absolutely not true. How many go to Madison Square Garden to see the Rangers play? How many people go there and if they are nonsmokers, the smoking kills them, particularly if they happen to be in the blue section, because the smoke filters up. By the third period, you can't even see the ice. That is right. But, do you know, that in Maple Leaf Gardens in Toronto, and in the Forum in Montreal, and in the new rink in Calvary, there is no question about smoking? You do not smoke. You don't even smoke over where the Islanders play.

ASSEMBLYMAN HERMAN: I might suggest, sir, that in most stadiums in New Jersey, and elsewhere, smoking is not permitted.

MR. MALCOLM: Absolutely. I know that Meadowlands does not allow you to smoke.

ASSEMBLYMAN HERMAN: Especially indoors.

MR. MALCOLM: It is easy to stop people from smoking. All you have to do is say, "There is no smoking." Now, in the Forum, they don't use any language. They use a flashlight. It is a five-cell flashlight, if you remember what they look like. If they see someone smoking, they put that person in the spotlight. The person is so embarrassed that he even leaves the park. He doesn't stop smoking; he just leaves the park.

ASSEMBLYMAN HERMAN: So, what you are really saying is that that is a make-believe problem, or a false concern.

MR. MALCOLM: Of course it is, of course it is. There are hotels-- The hotel that I stay at in Toronto, the Plaza Two, a very fine hotel, has seven floors that are provided for nonsmokers. They ask you when you register, just as when you get an airplane ticket. They ask you if you are a nonsmoker when you go to Newark Airport to fly to Los Angeles. The first question the agent asks is, "Are you a smoker or a nonsmoker?" The Plaza Two does exactly the same thing.

ASSEMBLYMAN HERMAN: To sum this up, if you were Marty Herman on this Committee, how would you convince your colleagues to support the bill and why?

MR. MALCOLM: I think you are doing an excellent job. (laughter) No, I seriously do. I think you are doing a fine job. I didn't realize when Regina invited me to come down here that it covered such a wide range of restaurants and all of these other parties. In Toronto, the insurance company -- and I will finish with this -- that I worked for, the eighteenth largest in the world, had a no smoking rule. That rule was passed about 12 or 13 years ago. Now, there are some smoking areas, but no one smokes at his desk. The initial impact came from the people who worked with the computer. They said, "We can't smoke around the computer floor because it does something to the computer." Whatever it did, I didn't know, and I didn't care because I didn't smoke. But, the people who smoked probably asked questions. That was the wedge they used. No one smokes in that office except in certain areas, which are shrinking.

ASSEMBLYMAN HERMAN: If I were to summarize your testimony, what you are really telling me, based on your experience in the

workplace, about the concerns that have been raised here by industry and business, and a few other folks, is that their concerns are really false concerns.

MR. MALCOLM: Completely.

ASSEMBLYMAN HERMAN: And when we talk about behavior modification, we could have positive behavior modification by establishing a public policy because people, by and large, will follow it.

MR. MALCOLM: Absolutely, absolutely.

ASSEMBLYMAN HERMAN: I couldn't say it better myself.

MR. MALCOLM: That summarizes my testimony beautifully. Take them to Make-Believe Gardens in Toronto, if you can get a seat, or take them to see the Rangers, and you will see the difference.

ASSEMBLYMAN HERMAN: It was very kind of you to be with us today. We have one or two questions. Assemblyman Thompson?

ASSEMBLYMAN THOMPSON: Thank you, Mr. Chairman. I have one question, Mr. Malcolm. We passed the Volstead Act; the people went against it and repealed it. This Act was passed in 1929 or 1930; it was the prohibition act, better known as the Volstead Act.

MR. MALCOLM: Yes, we had it in Canada before you had it here.

ASSEMBLYMAN THOMPSON: People openly defied this Act. It was repealed for two reasons: Number one, the people were against the Act, and number two, the United States government lost millions of dollars as far as liquor taxes were concerned. I would like to ask you-- You used an example, the Rangers. Now, would you be in favor of implementing this type of legislation on a broad base that would cover, say, boxing matches and race tracks, because you would be dealing with an altogether different type of crowd? You would be dealing with people with serious money. Some of them might not be the best characters in the world, but you would be dealing with a different type of crowd, a hard-working crowd.

MR. MALCOLM: Right, I understand. I may have misled you. I am not saying that they don't smoke in the Make-Believe Gardens. They smoke out in the hallways. They do not smoke in the Gardens itself.

So, if they want to go for a cigarette, it would be the same thing as if they wanted to go for a beer. They would have to go out.

ASSEMBLYMAN THOMPSON: I am not a bettor, but I understand how they bet. When the odds change on the board, you have to be in the vicinity to understand. That is why people stay there, to watch the board so they will know how to bet their money, how to parlay, or whatever they call it. If a person has to go outside of the track, or out of that area, it wouldn't be practical. Also, for other reasons, they don't allow people to leave the track.

MR. MALCOLM: That may be a bit impractical, but you're talking about a sport that takes place outside.

ASSEMBLYMAN THOMPSON: But, for security reasons, they don't allow you to leave the premises.

MR. MALCOLM: No, I mean, it's out in the open, isn't it?

ASSEMBLYMAN HERMAN: I think we can cover this. It is not fair to ask this gentleman this question because some of these activities are exempt.

MR. MALCOLM: You're taking advantage of a poor Canadian.

ASSEMBLYMAN HERMAN: That's okay. Some of these things are exempt under these provisions. For instance, racing is exempt. There are certain special circumstances where we recognize the sociology. Some people may say this is a compromise, but I think some of us would rather have 90% of the loaf than none of it.

MR. MALCOLM: That's it. This Plaza Two Hotel in Toronto started with two floors; now, they have seven.

ASSEMBLYMAN HERMAN: Thank you. Maybe we will try to get two bills, and tomorrow we will have seven also. Thank you very, very much.

MR. MALCOLM: You're welcome.

ASSEMBLYMAN HERMAN: Mr. Tully, where are you, sir? We will enter your statement on the record. By the way, your concern about the railway car was expressed earlier by Mr. Katz. I concur; I will amend my bill to allow for smoking cars. You don't care about buses, do you?

**NEAL TULLY (speaking from audience, not near microphone):** No, I don't.

**ASSEMBLYMAN HERMAN:** Okay, you've got it. Thank you for coming. I'm sorry you had to wait all day, but a silent win is better than no win at all, right?

**MR. TULLY:** Yes, sir.

**ASSEMBLYMAN HERMAN:** Thank you, sir. May we have Jeff May?

**JEFFREY MAY:** I want to thank the Committee very much for allowing me to be here today.

**ASSEMBLYMAN HERMAN:** Would you tell us who you are and where you are from, sir?

**MR. MAY:** My name is Jeff May; I am a physical science teacher in Edison, New Jersey. I have been teaching for 16 years. Recently I was invited to participate on Governor Kean's Committee for Public Responsibility. One aspect of that was the effect of the legal system on our educational system.

I would like to speak today both as a teacher and as a private citizen. Young people are often unknowing and defenseless victims of others' irritating and unhealthy smoke by-products, such as tar, nicotine, carbon monoxide, ammonia, benzopyrene, nitrous dioxide, cadmium, and many other lethal substances. Children who are asthmatic or who have allergies are commonly affected by cigarette smoke, and they have told me this. Their eyes turn red, their noses clog, they get headaches and inner ear infections, and they cough. What do the smokers say about this? "We have the right to smoke."

I believe this legislation is necessary to protect children from this reckless endangerment. School districts throughout the State have rules which ban certain dress and foul language, and yet they have sanctioned smoking on school grounds. This is a demoralizing situation at best, for these policies contradict the information given to students in health classes. Students are late to class, or even cut class sometimes, because they are involved in smoking. I have seen students pull away from teachers who reeked of smoke from chain-smoking. A few of my students have even asked me whether I smoked after I left the faculty room. My total career in smoking has been two cigarette puffs when I was about eight.

Studies have shown that secondhand smoke increases hostile behavior and decreases attention span. Both of these are a detriment to what we are trying to accomplish in the classroom. Is this the quality of life we want for our children? I have seen this correlation in my classes myself. We simply must protect children in public places -- grocery stores, buses, and restaurants. One million new smokers, mostly children, are influenced by their peers, parents, and ads which are one-sided, and they are born each year.

By passing this legislation we will help ourselves to discourage children from hurting themselves, at least in public, and will also help to protect the nonsmoker. In this pamphlet put out by the Commissioner of Education in 1981 -- it may have been updated since I got this -- it says, and this is from Fred Burke, who was the Commissioner of Education, whom I agreed with-- He said in point number one: "Because of the health hazards of smoking, a no smoking policy should be implemented in and around the school areas with no double standards allowed." That is why I am speaking to this point in particular. A no smoking policy should apply to administration and faculty, as well as to students.

In an article by Carl Rowan, he states: "Yes, arrogantly indifferent, the hooked chain-smoker is about the rudest of all kinds and classes of people I see. They proceed to ruin the meals of half of the people at their tables. How many times have diners who were allergic to smoke gone to an excellent and costly restaurant, only to find out before they have finished the appetizer that they are thrown into an embarrassing spell of sneezing from smoke from a nearby table." Obviously, this affects children as well. "Given the ruthless greed of the tobacco industry and the insensitivity and arrogance of most heavy smokers, there is no choice but to have government intrude at every level." I have long had smoke coming out of my ears about this business of other people pumping smoke into my nostrils, throat, eyes, and lungs, even though I detest it.

ASSEMBLYMAN HERMAN: Mr. May, do you think that protecting the public's health is an intrusion?

MR. MAY: Excuse me?

ASSEMBLYMAN HERMAN: Do you think that protecting people's health is an intrusion?

MR. MAY: Certainly not.

ASSEMBLYMAN HERMAN: So, I think maybe we ought to take the other tack, don't you think so? We are really not intruding; we are really protecting, aren't we?

MR. MAY: I think these bills would be a large step toward protecting everyone. As a private citizen, I am affected by smoke. I have severe allergies. My eyes turn red, my nose clogs, and I can't breathe as well. I suffer, and I am fed up with it, not to mention the limitations on my public life because of the fact that I am allergic to all this smoke. Just yesterday, I was told by another faculty member that if I didn't like the smoke in the lounge that was left by smokers, I should get out and go to the library. My district has made a fair attempt to satisfy both smokers and nonsmokers, but problems remain in most districts. Nonsmokers are tyrannized into breathing these toxic fumes. Burning leaves outdoors is illegal, yet we allow burning cigarette leaves indoors. Why?

We are disabled. I want to stress that. We are disabled by these inconsiderate individuals who toss pollution rings into the air like Frisbees. This pollution, though, is unregulated by environmental pollution legislation. Smokers say, "We have the right to smoke despite the fact that it hurts you." We receive no compensation from these people for the medical effects they cause. This is a human rights' issue, and those in the Legislature who believe the public has a human right to breathe clean air will vote for these bills. Remember, smoking is a limited privilege and, when it creates medical problems in others, it should cease, whether it be adults or children.

ASSEMBLYMAN HERMAN: I think you have stated it very well. What I appreciated, I think, was your term "limited privilege." I think perhaps it has not been presented in that fashion, and perhaps we ought to present it in that fashion, such as all indulgences are a limited privilege, alcohol and other things which have a potential for abuse if used to excess.

MR. MAY: Absolutely.

ASSEMBLYMAN HERMAN: Thank you very kindly. I appreciate your indulgence in waiting.

MR. MAY: Thank you.

ASSEMBLYMAN HERMAN: That is the type of indulgence we like. Our next witness will be Mr. David McRitchie. Is Carol Roberts here? (affirmative response) Dr. John Slade? (affirmative response) Okay. Is there anyone else here who is not on my list, but who desires to be heard on this issue? (no response) All right, then we will take you in that order. Good afternoon, Mr. McRitchie.

**DAVID McRITCHIE:** Thank you, Mr. Chairman and members of the Committee. I agree with most of the previous statements.

ASSEMBLYMAN HERMAN: Would you identify yourself and tell us where you are from, please?

MR. McRITCHIE: My name is David McRitchie; I am from Bound Brook. I am a citizen of the State of New Jersey. I am for the passage of all of these bills, especially Assembly Bill 546, controlling smoking in the workplace. I suffer from an allergy to smoking, which causes nausea, headache, abdominal pain, and other things. I think we need this legislation very much. To say that this can be controlled by politeness-- I find that the only politeness of a smoker is a politeness to other smokers if the smoke bothers another smoker, but never if it bothers a nonsmoker, who has to be bothered much more than a smoker could ever be.

I am concerned about the health aspects of smoking. There are many statistics on this, but the statistics do not show the things that are happening -- emphysema, heart disease, lung disease. These diseases are irreversible once they are detected. So, there are no early warning symptoms. Once you have them, you have them, and they are not reversible. Thank you.

ASSEMBLYMAN HERMAN: Have you had any personal problems concerning smoke, or is what brings you here just a matter of general citizen concern?

MR. McRITCHIE: Yes, I am allergic to smoke. I have had a lot of problems in the workplace with it. I have been essentially fired twice at my own workplace, but it simply meant that I transferred from one place to another.

ASSEMBLYMAN HERMAN: Was that because you raised concerns about the environment and they saw fit to transfer you, or was it more than that, if I am not being too personal?

MR. McRITCHIE: Well, it was more a matter of being fired, whether I knew it or not. Somebody else found out and I work for them now instead.

ASSEMBLYMAN HERMAN: Thank you very much for coming here today. I appreciate your sharing your time and your experience with us. May we have Carol Roberts, please? Carol, thank you, too, for being patient and waiting.

For those of you who are waiting for legislation, we will be about another 10 to 15 minutes. About 10 to 15 minutes and we will get into the legislation. Please proceed, Ms. Roberts.

**CAROL ROBERTS:** My name is Carol Roberts, and I am a citizen from Nutley, New Jersey. Unlike Mr. Katz, I am taking a day off from work at my own expense to be here. I urge the prompt passage of all six of the bills protecting nonsmokers in public areas.

I have personally experienced the many dangers of an unprotected nonsmoker. For over a year, I suffered physically and mentally from the effects of smoke in my workplace, a medical center. I spent hundreds of hours, and hundreds of my own dollars in meetings, in research, in phone calls, and in writing over 50 letters seeking personal relief. Even a documented letter from my personal physician stating a physical intolerance for smoke was completely ignored by my employer, a medical center.

I was angry at being forced to inhale toxic smoke while performing my work duties. I repeatedly urged that smoking be restricted to designated non-work areas. This was never done, and only the threat of legal action brought any change.

I eventually transferred to a smoke-free department in my medical center; however, this is only a stop-gap measure. There is still no protection for nonsmokers. The policy is established by the personal preference of each department manager. If my boss were a different person tomorrow, I would again be subjected to the smoke.

The majority of our population is nonsmoking. All citizens need legal protection. It is quite interesting that I fell into a loophole. There was legislation established previously that included protection at medical centers and health care facilities, so I thought I would have an easy downhill fight, so to speak; however, that was not true at all. I fell into a loophole which the medical center used. I was working in a building that was physically separated from the complex of direct patient care areas, and that was used as a loophole. They did not have to protect me because I was not sitting in a direct patient care area. That was never stated as such, but it worked out to be the loophole. They eventually offered me a transfer, which I took.

But, as I say, I am still at risk. Tomorrow I could be subjected to the same smoke-filled work environment that I fought for a year to get away from. I am at risk at my job. I have been forced to inhale tobacco smoke. I had no choice as to what air I could breathe. If I wanted to work at this medical center, I would be breathing smoke for 2,000 hours a year.

I urge the passage of all of these bills because I, as a nonsmoker, as well as my smoking friends, need protection and encouragement as public policy to end the number one health hazard to us all. Thank you.

ASSEMBLYMAN HERMAN: Thank you very much. In summary, what you are really saying is, the employees, without a public policy, are always at the mercy of the employer.

MS. ROBERTS: Exactly. It is the personal preference of your department head. No one could believe that working for a medical center I could experience this particular situation. They certainly should know the facts, and they certainly should have responded. But, it was not that way at all.

ASSEMBLYMAN HERMAN: Thank you very kindly. We appreciate your coming. May we have Dr. John Slade?

**JOHN SLADE, M.D.:** Assemblyman Herman, in recognition of the work you are doing, the seed you have planted and nurtured, I would like to give you a packet of tobacco seeds which I found in my local pharmacy this summer, and to offer to you and the members of your Committee boxes of candy cigarettes from stores in various parts of Mercer County.

ASSEMBLYMAN HERMAN: I think the point you are trying to make is that this is the very direct and indirect subliminal effort that is being made by cigarette companies through the back door to encourage young people to say, "Smoking isn't so bad; otherwise, they wouldn't have these."

DR. SLADE: Yes. My name is John Slade, and I am a physician in the practice of internal medicine and rheumatology at Rutgers Medical School in New Brunswick. I work at Middlesex General Hospital and at St. Peter's Medical Center. I am here today to testify in favor of the bills before you, with the addition of the amendment which was suggested earlier today that small businesses also be covered by this legislation, because the enactment of these proposed pieces of legislation will help my patients, especially those who use cigarettes.

Most of my patients are young and middle-aged adults. The reasons they come to me almost never involve diseases caused by tobacco, in contrast to the presenting problems seen by my colleagues in cardiology, pulmonary medicine, thoracic surgery, and cardiovascular surgery. When I ask my cigarette-using patients whether they want to stop smoking, the answer is nearly always, "Yes, but I can't." These men and women have tried to stop, and some have succeeded for as long as several months to a year or so, but they have returned to this addiction, often in a vulnerable moment of stress.

I do not doubt what I have heard from some tobacco industry apologists that there actually are people who smoke simply because they want to, who feel not the slightest doubt or qualm about it, and who have no desire to stop. I have not met these people in the course of my work, however.

What makes it so difficult for the men and women I see to stop a practice they usually dislike and fear, a practice which clearly threatens their health?

Certainly, nicotine plays a role. Certainly, individual habit patterns and learned responses play a role. Certainly, unconscious identification with the carefully manipulated brand images of Kool, Marlboro, Camel, Virginia Slims, or Carlton plays a role. But, there are yet other influences and pressures which make it difficult to quit.

When a patient leaves my consultation room, resolved to become a former smoker, he finds little support for this in the rest of the world. Restaurants, waiting rooms, offices, and lounges offer him ashtrays and even matches. They expect my patient to smoke. It is easy to light up in grocery stores, as well, because so many others do it. At the checkout counter of my local convenience store, more than two dozen varieties of cigarettes and chewing tobacco are by the cash register to be picked up on a whim and added to the milk, eggs, and bread.

Magazines and newspapers are full of seductive advertisements for cigarettes, ads which glow with the sporting life, health, and an innuendo of safety by virtue of low tar or fancy filtration. On my way to and from work each day, I pass nearly 40 billboards advertising cigarettes. These billboards are changed each and every month so viewers do not become bored. These billboards may be seen more than 100 million times each year, largely by local men, women, and children, many, many times over. The message is always a promotion of brand identification, aimed at specific risk groups in the population, implying happiness, sexiness, success, or pleasure from the use of this or that sort of cigarette. While television and radio no longer promote cigarette use, these media also no longer encourage people to stop smoking. In fact, throughout the culture, tobacco counter-advertising is virtually absent.

ASSEMBLYMAN HERMAN: In fact, it was indicated in an article I recently read -- an excerpt from the Atlantic Monthly published in the Reader's Digest -- that one women's magazine which received a large amount of advertising, refused an ad from an anti-smoking clinic to make that point. So, we know that money has no influence over the media. We can all draw our own conclusions whether that hypothesis I just raised is true or not true. Please continue, Doctor.

DR. SLADE: Another factor which subverts my patients' resolve to quit is the nearly universal availability of tobacco products. Cigarettes are peddled in more than a million retail outlets nationwide. In fact, this product, which has been recognized as "the most lethal instrument devised by man for peacetime use," is also the most widely available retail product in America.

The incredible promotion and sale of cigarettes is coupled with widespread permission to smoke. It is difficult to find a safe environment, one which offers protection from the urge to smoke. For me, the major importance of the bills before you today is that they will make it easier for my patients to unlearn the habit of smoking and to learn the habit of not smoking. By providing more and more areas where rules make it easy to not use a cigarette, you will help my patients develop the nonsmoking life style they prefer.

More than two dozen people in New Jersey died yesterday from diseases caused by "the only consumer product in America which is harmful when used as intended." It is relatively easy for me to help someone stop using cigarettes after they have already had a heart attack, or after their lung cancer operation, or after they require supplemental oxygen for comfortable breathing. It is both more difficult and, obviously, more important for me to discourage people from starting in the first place and to help them quit before serious illness develops. You can help me enormously in this part of my medical practice.

Other groups besides smokers will benefit from this proposed legislation. People who find tobacco smoke irritating will be able to conduct their business in greater comfort and in a better state of health.

Building maintenance and cleanup costs will be lower. Another usually neglected benefit from restrictions on indoor smoking is lower heating and cooling costs. The American Society of Heating, Refrigerating, and Air Conditioning Engineers published a set of standards entitled "Ventilation for Acceptable Indoor Air Quality." These standards require an up to fivefold greater intake of fresh air to properly ventilate spaces where smoking occurs. This is outdoor air which must be heated or cooled. Thus, substantial energy savings are potentially available to the managements of buildings which begin to restrict or prohibit smoking.

Thank you for the opportunity to speak before you today. I ask for your assistance in my work, and that you report these bills favorably.

ASSEMBLYMAN HERMAN: Do you have a copy of your statement?

DR. SLADE: Yes, I do have copies, as well as a copy of the ASHRA standards.

ASSEMBLYMAN HERMAN: That is very, very fine. I assume you agree with the observation in the New York Medical Journal that we, by passing legislation such as this, can save more lives per year than all the doctors in New Jersey combined, or is that going too far?

DR. SLADE: Well, this legislation itself isn't what will do it, but it is a part of the whole process. I think this is very important. That is why I took a day off from the hospital to sit down here to listen to the testimony and to talk to you.

ASSEMBLYMAN HERMAN: We appreciate that. I don't think there is any member on the Committee who doesn't appreciate that. You were certainly a good "clean-up hitter," if I can call the twenty-fourth witness a clean-up hitter. Certainly, the hearing has been productive. Obviously, a transcript will be made. I will hold the record open for ten days to allow time to receive any other comments.

ASSEMBLYMAN KERN: I have one quick question for the witness, if I may. You have given us samples of products, not smoking products, but products, I guess, aimed at children to create a climate whereby these people will graduate to the real thing. Is there any connection, any interlocking of directorates or ownerships of candy manufacturers and the tobacco industry?

DR. SLADE: I have never done a study of that, and I am not aware of any direct connections. The tobacco manufacturers are scrupulous in indicating, as R.J. Reynolds recently did, that "We do not advertise to children." You will notice that the candy cigarette boxes before you have brand names which sometimes are exactly the same as a brand of cigarettes which is sold in this country, and there is sometimes a very striking and close resemblance to a brand of cigarettes which is sold.

ASSEMBLYMAN HERMAN: Which would indicate to all of us of common sense that they would not use those brand names unless they had the permission of the companies to do so.

DR. SLADE: Well, except when you go asking whether they have the permission, or ask the tobacco companies whether they have licensed the candy, you do not get positive answers.

ASSEMBLYMAN HERMAN: I think we have come to the same conclusion. If I were really true in my intent about not hooking kids, I wouldn't let someone use my name, right?

DR. SLADE: Right.

ASSEMBLYMAN HERMAN: That is the conclusion, and I think that is the point you were trying to make, Assemblyman Kern.

ASSEMBLYMAN KERN: Thank you, Mr. Chairman, for being so perceptive.

ASSEMBLYMAN HERMAN: Thank you very much. For anyone who is interested in the other legislation, we are not going home. We are going to wrap this matter up. Will someone please write our constituents and tell them that we really do give them a full day's work?

This hearing is adjourned.

**(HEARING CONCLUDED)**



**APPENDIX**



Mr. Chairman, members of the Assembly Judiciary Committee, my name is Joe Gonzalez, Vice President of the New Jersey Business and Industry Association which represents 12,000 employers in New Jersey. My comments today will be confined to A-546. Our Association recognizes the delicate balance of competing personal rights that this bill to regulate smoking in the workplace attempts to address. Let me state at the outset of this testimony that the Association takes no position on the health or comfort effects of sidestream smoke. The concerns which we are about to express regarding this bill focus only on the role it would create for employers, placing them squarely in the middle of employee disputes regarding sidestream smoke.

The cross impact of smokers' and nonsmokers' legitimate desires is an increasing problem in the workplace setting. The Association compliments the sponsor on his concern regarding the rights of smokers and nonsmokers in the workplace, however, we have several problems with the bill before the Committee today. They are of such magnitude that the Association urges no positive action on this bill.

First, as written, there may be problems regarding enforcement of the provisions of the bill. The bill clearly specifies that persons smoking in a designated nonsmoking area are subject to a fine. There is, however, much less clarity regarding who will introduce the court action necessary for enforcement. In today's delicate labor relations climate, employers—who may otherwise fully comply with the bill—will

be extremely reluctant to take employees into municipal court for enforcement of the bill's provisions. Not only would this be expensive for the employer, but it would be seriously damaging in terms of personnel relations. If enforcement is left to fellow employees, the strain on labor relations and employee group morale may be even greater.

The second problem the Association has with this bill is in the definition of a covered workplace—a "...structurally enclosed location or portion thereof which is not usually frequented by the public at which 50 or more individuals..." are employed (§ 2.6). This does not take into account the wide variation of physical workplace standards in New Jersey. Some such areas may be large, well ventilated, with very low employment density. These may never be "problem" areas, but they would be covered by the bill nonetheless. There has to be a clearer and more precise definition of real problem areas rather than the type of overbroad coverage provided under this bill.

Third, this bill requires the posting of "Smoking Permitted" or "Smoking Prohibited" signs in "every area in a place of employment...(\$5)". The bill also regulates the wording and size of type for these signs. This provision could be particularly burdensome for those employers who have implemented similar control plans on a voluntary basis. Universal posting of signs is not common practice in voluntary plans, and, in practice, a wide variety of types of signs are in use. The posting provisions of this bill may cause needless expense to alter ongoing, voluntarily designed smoking plans.

Fourth, the bill would also require the development of written rules regarding smoking. This again places the employer squarely in the middle of employee disputes regarding smoking.

In summary, the Association objects to this bill's creation of the employer as the central focus of the debate as it moves into the workplace. Rather than requiring complete designation of every place as a smoking or nonsmoking area, the posting of specified signs, and the development of written smoking policies to be enforced by the employer, the real resolution of the problem of second-hand smoke should be left to private negotiations in each workplace. Only through that procedure will the technical differences in physical workplace and the varying tastes of groups of employees be fully accounted for.

For these reasons, the New Jersey Business and Industry Association urges this Committee not to take any positive action on this bill.

TESTIMONY ON ASSEMBLY NO. 864

PRESENTED BY  
NEAL C. TULLY  
CHIEF, BUREAU OF POLICY ANALYSIS  
NEW JERSEY DEPARTMENT OF TRANSPORTATION

BEFORE THE  
ASSEMBLY JUDICIARY COMMITTEE  
SEPTEMBER 25, 1984

Mr. Chairman, I want to make a few comments on Assembly Bill No. 864.

NJ TRANSIT's current policy does not allow smoking on regular route service buses. In the case of group charters, the choice to smoke or not to smoke is left to the determination of the group. NJ TRANSIT does not enforce a no smoking policy for these group charters.

However, if the group charter is a tour, where riders sign up and pay individually, the bus is considered regular route service and a no smoking policy is enforced.

As for rail, NJ TRANSIT currently allows smoking on specially designated cars on each rail line. These cars are isolated from the nonsmoking areas and do not inconvenience nonsmokers.

Under A-864, NJ TRANSIT would not be allowed to designate the special smoking car. NJ TRANSIT currently provides the smoking car, among other amenities, in hopes of increasing and keeping riders on their lines. Any change in the current policy may cause loss of ridership on all lines.

The Department recommends that the bill be amended to exclude special group charters on buses and specially marked railroad cars.

