



June 22
Don Rittaler

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June 22, 2000

Public Hearing of WCB:

My name is Don Rittaler, president of The Sooke River Hotel. At the request of my staff I will leave you their comments on their support of a ventilation solution.

I would like you to know that I am a former Regional Director of the Capital Regional District and I am well aware of the many public anti-smoking health lobbyists like the CRD tobacco-free task force whose overall goal is to eliminate the use of tobacco and tobacco products in the CRD, and apparently at any cost.

I would like to speak to you today about "*The Truth About ETS Science - Part One.*" The bottom line of this report is the decision from the U.S. Federal Court Judge who stated that the EPA's risk assessment was demonstrably corrupt and the EPA had knowingly, willfully and aggressively disseminated false information with far reaching regulatory implications in the U.S. and worldwide. The decision from the Australian Judge ruled that the health authorities had been less than honest and also stated in an eloquent summation of the conduct of the NH&MRC, "*They misled the public.*" In any event this report reads as follows:

The Truth About ETS Science - Part One

The WCB is apparently completely convinced that ETS is an incredibly dangerous substance and that there is no meaningful debate within the scientific community about the validity of that claim. However, a brief investigation into the matter shows that there is a great deal of very heated debate surrounding ETS. Myself and other colleagues in the hospitality industry have engaged a researcher to pull many of the facts together, and we have been presenting you these findings over the course of these hearings.

If the WCB attempts to re-introduce a zero molecule approach to a smoking ban, which will again result in layoffs to workers and lost revenue to those that survive, as well as lost revenue and financial duress to the businesses in the hospitality industry, you must first demonstrate that the evidence to back your claims regarding ETS are incontrovertible.

If the board is incapable of making that case, the attempt to force a ban on smoking will be seen as little more than an exercise in social engineering and forced behaviour modification. No doubt the goal of convincing smokers to stop their dangerous habit is a commendable one but the methods that are employed to attain that goal are vexing to say the least.

The Board has implied through its actions that your claims regarding ETS are undeniable in spite of the fact that a full scientific report or risk assessment has never been commissioned. In order to reach this zero molecule conclusion you seem to have accepted the word of various public health lobbies. You have extended a great deal of

faith to those groups by accepting them at their word. However, from what we have seen it is apparent that you have either been completely negligent in thoroughly researching the complex issue of ETS or you have simply decided to ignore the evidence that contradicts the claims of various health groups and have joined forces with those who dream of a world free of tobacco.

We, however, have a lot more to lose in this matter than does the WCB and have decided to take a more careful look at what those groups have to say and how they're coming to their conclusions.

As is always the case, there is much to be learned from an enemy who has been very successful and it seems that public health lobbyists may be guilty of snatching several pages from the tobacco industry's playbook when it comes to manipulating and suppressing science when it furthers their goal of a smoke-free society. Throughout the day we will give numerous examples of how various groups have been accused of bastardizing science to justify smoking bans.

What Motivated The EPA Decision?

The best known and most controversial examination of the effects of ETS was the 1992 report done by the Environmental Protection Agency in the U.S. That report has been used to justify smoking bans ever since but it has been called everything from dubious to fraudulent. Even scientists who agree that a campaign to encourage smokers to quit and non-smokers not to start is important, have expressed doubt about the EPA's conclusions from the start.

Geoffrey Kabat, a cancer epidemiologist who was part of the panel which reviewed the report said of its conclusions, *"I just think a great deal more skepticism is in order. If these were data on something else - ingrown toenails or something like that - people would look at them and say 'well, it's really not too impressive... There's not that much there.'"*

Kabat seems to be saying that the subject of the report has influenced the analysis of the data and, consequently, the conclusion of the report.

Three years later Kabat pretty much accused the EPA of reaching a verdict and then going out and finding the evidence to fit the verdict when he wrote, *"To all appearances the EPA decided in the late 1980s to classify 'environmental tobacco smoke' as a 'known human carcinogen.' Their view of their mission was to 'update' the reports issued by the Surgeon General and the NRC which had reached the same conclusion in 1986."*

Kabat's next words suggest that the EPA fully understood what Malcolm X meant when he said, "By any means necessary". *"Although the process of drafting the EPA report had the appearance of an independent, critical evaluation of the scientific evidence, with intensive scrutiny from a panel of non-EPA scientists assembled by the EPA's Scientific Advisory Board, in fact this was fundamentally a political exercise which involved marshalling a mountain of evidence to support a predetermined conclusion."*

The fact that EPA released the first draft of a guide to restrictions on smoking in the workplace two and a half years prior to the 1992 report would have to be considered circumstantial evidence to back up Kabat's accusation.

Further circumstantial evidence to support Kabat's accusation comes from a notice issued by the EPA three years before their study that ETS, *"is a known cause of lung cancer."*

Over the years others besides Kabat came to believe that the EPA was guilty of having a predetermined conclusion regarding ETS.

Scientists Speak Out Against the EPA - To Their Own Peril

Phillipe Shubik is a toxicologist who could hardly be thought of as being an apologist for the tobacco industry. Some time in the 70s Shubik chided tobacco industry scientists who attempted to downplay the scientific evidence that smoking was a health hazard when he told them, *"You will go down in history denying facts well known to the scientific community."*

Conspiracy theorists will be quick to say that Shubik may have sold out to the enemy when he wrote a letter to the EPA's advisory panel in 1992 which, in part, read: *"It has come to my attention that the EPA has adopted the view that ETS demonstrably poses a lung cancer hazard...I believe that adopting an official stand that the levels of carcinogens produced by ETS are established human carcinogens is not only unjustified but establishes a scientifically unsound principle."*

Shubik, who states that he is, "*absolutely opposed to cigarette smoking,*" and calls it, "*an unequivocal human cancer hazard,*" continues with a stern warning to the panel that their unscientific conclusion regarding ETS may end up hurting the effort to convince people of the dangers of smoking:

"Indeed, current smoking advocates might well use the unsound science inherent in this approach to undermine the association between cigarette smoking and lung cancer. Assuming that ETS is a human carcinogen necessitates the assumption that a single cigarette must be carcinogenic to a smoker, a demonstrably false assumption...Let us not undermine the credibility of the best case in carcinogenesis even if the final aim is a laudable one."

The message of Shubik's warning will be familiar to anyone who knows the story of the boy who cried wolf.

What Was The EPA Decision And Why Did The Court Throw It Out?

In addition to being accused of having a predetermined conclusion before commissioning their report, the EPA has also lowered the standards needed to reach such a conclusion.

The report was partially based on 30 epidemiology studies. One lung specialist claimed, in articles in two periodicals, that 80 percent of those studies did *not* find a significant association between ETS and lung cancer.

however decided to take the data from the studies and use a less rigorous standard. A 1994 report from the American Congressional Research Service stated, *"It is unusual to return to a study after the fact, lower the significance level and declare its results to be supportive rather than unsupportive of the effect one's theory suggests should be present."*

Even with the less rigorous standards used by the EPA, the risk of ETS was shown to be small. The risk of non-smokers contracting lung cancer was roughly equivalent to the risk of a woman who has had an abortion contracting breast cancer. But while an editorial in the Journal of the National Cancer Institute, which referred to the association between abortion and breast cancer, stated the risk, *"is small in epidemiologic terms,"* numerous organizations continue to claim that the risk on non-smokers contracting lung cancer from being exposed to ETS is great.

What The Court Said About The EPA's Findings

In 1998 the two sides of the various controversies surrounding the EPA report had their day in court. A North Carolina Court decision invalidated the EPA report. The judge stated:

"The court noted that the EPA switched to opposing arguments in different chapters, choosing whatever was momentarily expedient. For instance, at times the EPA maintains that the mainstream smoke that smokers inhale is comparable to ETS and at other times that they are different, whichever suits the moment."

The EPA ignored that all studies reviewed include assumptions that are grossly unrealistic. The literature reports dozens of risk factors for lung cancer that may confound the results of ETS studies unless accounted for, yet the EPA ignored most of them under the convenient but absurd affirmation that they are immaterial. Such an assumption might allow the practical conduct of studies that are otherwise impossible, but hardly reflects a complex reality. The EPA simply assumes that ETS studies have accounted for potential confounders, when in reality they have not.

The EPA dealt arbitrarily with the crucial influence of bias, especially publication and misclassification bias. In regard to the latter, it managed to trivialize that virtually all studies have not accounted for the many smokers who deceptively state to be non-smokers or never-smokers - a bias that inevitably generates a false impression of ETS risk. The Agency did so by presuming to invent low rates of misclassification based on arbitrary assumptions and ad hoc procedures.

The EPA often distinguished better from poorer studies, but failed to describe its evaluation criteria or how they might have been applied. The EPA failed to note that virtually all studies evaluated are severely deficient, and failed to make it clear that a judgment of study quality could only range from bad to worse rather than from good to better.

The EPA did not address broad questions about the validity of consolidating data from different studies by the meta-analysis procedure. The EPA's use of the procedure is illegitimate because the studies analyzed are a dissimilar collection and do not justify meta-analysis summations.

The EPA transgressed by deviating from its standard operating procedures and by adopting substandard levels of statistical significance, in order to give a false impression of robustness to its preconceived claim that ETS causes lung cancer.

The EPA neither stated nor used standard criteria for inferring causality. The Court noted the EPA adopted whatever criteria were expedient to force its preconceived conclusion of risk, and did not try to determine whether ETS is or is not a risk for lung cancer, but started from the preconceived claim that it is and went out to prove that claim by whatever means imaginable.

The EPA claimed to follow a "*weight of evidence*" approach but in reality it focused routinely on selective references and methods, reaching conclusions by cherry-picking studies said to be of the highest quality on the basis of unstated criteria and unqualified assertions.

The EPA failed to recognize that a "*weight of evidence*" evaluation is expected to observe standard rules of logic that may reduce any given proposition to absurdity. For instance, it is apparent that the smokers of a few cigarettes per day likely experience no appreciable risk elevation and therefore it would be absurd to attribute measurable effects to ETS exposures and doses that are equivalent to smoking what could be less than one cigarette a year.

The Court found that the EPA disregarded a statutory requirement for an advisory group with members mostly deferential to the Agency. Because the EPA's risk assessment was demonstrably corrupt, the Court found that a legitimate statutory committee would have caused the Agency to come to a different conclusion about ETS.

The Court determined that the EPA had knowingly, willfully, and aggressively disseminated false information with far reaching regulatory implications in the U.S. and worldwide.

On account of the preceding, the Court ordered a summary judgment against the EPA and nullified the Agency's ETS risk assessment, which was the basis upon which many other agencies based similar findings, including California OSHA.

Judge Osteen's finding would likely come as no surprise to a number of distinguished scientists. At the same time that the EPA was conducting the ETS assessment, the EPA was compelled to ask a blue ribbon panel to inquire about the state of science at the Agency - a panel that ended up criticizing in detail how "*junk science*" was used by the Agency to prop up its own policy agenda.

What Happened In Australia?

On the other side of the world, Australian health lobbyists were also stealing pages from the tobacco industry playbook in an attempt to cobble together the scientific evidence needed to procure smoking bans.

The National Health and Medical Research Council was putting together a report on the studies done on the health risks posed by ETS. *Unfortunately for the proponents of smoking bans all the science didn't seem to be fitting the predetermined conclusion that they shared with the EPA.*

Simon Chapman, an Associate Professor in the Department of Medicine at the University of Sydney was alarmed at the findings. He was, in fact, so alarmed, that he

sent an urgent fax in June 1995 to the members of the working party in charge of the report:

“I am DEEPLY concerned about the implications for the credibility of our whole report arising from the calculations...If we look at Table 7 in the way any journalist would...a reasonable conclusion will be that the idea that there is ANY lung cancer caused by ETS in Australia will be seen as a huge joke. Journalists...will be hard pressed to write anything other than ‘Official: passive smoking cleared - no lung cancer.’”

Chapman, who has no background in science or medicine and is actually a specialist in advocacy, marketing and the media, took it upon himself to point out what the scientists should have concluded by writing, *“our estimate of 93 deaths should be 4,247.”* That, of course, would be a number better suited to gaining public support for smoking bans which, in the world of politics, is apparently far more important than credible scientific evidence. We often hear the same type of gerrymandered statistics in BC, when a scientifically unattributable estimate of 50 deaths caused by 2nd hand smoke mysteriously becomes 500.

However, back in Australia, Chapman and friends had a serious problem on their hands but nothing that a seasoned spin doctor couldn't handle. Chapman decided to take control of the situation and concluded his missive by writing:

“I think we had better get out a thesaurus and find a lot of words to express the words ‘conservative estimate’ in hundreds of different ways....We are looking down the barrel of a MAJOR public relations problem...I

STRONGLY recommend that we convene another face-to-face meeting to discuss what to do about this.

When the first draft of the report was released, important scientific evidence had simply been suppressed or not even considered, including that troublesome Table 7 that caused Chapman so much grief.

Back To Court In Australia

The Aussies were quicker to take their problems to the courts and in 1996 the tobacco industry and the NH&MRC pleaded their cases in front of Justice Finn. As Judge Osteen would two years later in the U.S., Justice Finn ruled that the health authorities had been less than honest. He said, and I quote:

“It is clear that the NH&MRC has fallen well short of meeting...the obligation to have regard to submissions received...to take them into account and to give positive consideration to their contents as a fundamental element in its decision making...”

The community is not to be excluded from that participation simply because, for whatever reason, the NH&MRC does not wish to give consideration to some part of the contents of submissions...It had unilaterally excluded from consideration material, which it previously had determined to be relevant by virtue of the Terms of Reference it had approved...

What was objectionable in what the Working Party did was to adopt this exclusionary discriminator without bringing to the notice of the public that this was what

they were going to do. In an eloquent summation of the conduct of the NH&MRC Justice Finn said, "*They misled the public.*"

Justice Finn made subsequent orders that the recommendations contained in the draft report on the estimated costs to the community of passive smoking, and for the elimination of environmental tobacco smoke in public places be taken out, as those recommendations could not be inferred from the evidence contained in the report.

19 signed petition

in total

Name of Establishment & Phone Number

Sooke River Hotel

#40027

VOICES OF THE EMPLOYEES IN PUBS THROUGHOUT BRITISH COLUMBIA

I the undersigned support Ventilation and Air Quality Control in my Workplace:

I would like to believe that
Ventilation and Air Quality Control works
in the work place. I also believe that the
employer should have the right to post a sign
whether his or her establishment is a non smoking
or smoking premises. As people we have the
right to enter or not.

I the undersigned support Licensed Smoking Rooms in my Workplace:

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I the undersigned support a Complete Ban on Smoking in my Workplace:

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Fax back by June 19, 2000 to Bob McDonald at
Thanks Everybody!!!