Speaker 1 (00:08):

Welcome to Oversight Matters, a podcast on legislative investigations and the people involved. This is Ben Eikey and I am your host. Oversight Matters is a production of the Levin Center for Oversight and Democracy.

Speaker 1 (00:32):

My guest today is Phil Barnett. Phil Barnett worked for 25 years on Capitol Hill, where he served as the staff director of two major house committees, the Energy and Commerce Committee, and the Oversight and Government Reform Committee. During his career, he helped Rep Henry Waxman enact multiple pieces of landmark legislation, including the Clean Air Act of 1990, the Food Quality Protection Act of 1996, the Family Smoking Prevention and Tobacco Control Act of 2009, the Affordable Care Act of 2010, and reforms of the Federal telecommunications procurement and postal laws. Bill also has extensive experience in congressional oversight, having led major investigations into the tobacco industry, food and drug safety, steroid use and baseball contract uses in Iraq, the Wall Street collapse, and the Deep Water Horizon Oil spill. I interview Phil here to gain insight into the tobacco industry investigation featured in our newest portrait and oversight. Listen on for great stories on an important investigation of significant public health consequences for us all and what the investigation might mean today in light of the rise of e-cigarette popularity among youth, this is such a unique opportunity. I appreciate you taking some time this afternoon.

Speaker 2 (01:54):

Okay, good. Great.

Speaker 1 (01:56):

I'd like to start right off with our first question here, Sir. Please tell us about your career as a congressional investigator and how it was in general to work for the one and only Congressman Henry Waxman.

Speaker 2 (02:09):

Thanks, Ben. I, I worked on the Hill for 25 years, all except the very first three or four months was with, uh, Henry Waxman and it was real privilege and honor to work for him. I was his, uh, chief council and then staff director on the House Oversight Committee, which is the main oversight committee in the house. And then his staff director on the Energy and Commerce Committee, which is a major legislating committee, but also does major oversight. And he was a big believer in oversight, is a big believer in legislation. He thought they could work together, so getting a chance to work with him was really a remarkable experience.

Speaker 1 (02:48):

That's wonderful to hear. And then, you know, we feel the same way At the Levin Center, you need, you know, good government does not happen without good oversight. And what better example than for more than 25 years, we were so amazed, impressed that Congressman Waxman doggedly investigated and held multiple public hearings on the health problems caused by tobacco. He held the very first congressional hearing on the topic in 1982 and followed with many more hearings over the years until in 2009 he got legislation passed authorizing the FDA to regulate tobacco products. Why did he devote so much time and energy to the tobacco problem?

Speaker 2 (03:28):

Most people think of Congress Waxman as a master legislator, and he was, he had a enormous impact on our health laws and our environmental laws. But he also believed in oversight and oversight can be as impactful as, as legislation. He thought oversight was important because it could educate the members and they could legislate more effectively when he couldn't legislate. Good oversight could change administration policies and influence how laws were implemented. It could hold people accountable and that's really important for our government. And also on rare occasions it could really touch the public and galvanize and shape public opinion. And tobacco was one of those occasions and he realized that and through his hearings and especially his 1994 hearings and what came after that had a major effect on how the public viewed the tobacco companies and the dangers of tobacco, which translated into regulatory efforts and ultimately, uh, legislative efforts that have made a, um, tremendous difference.

Speaker 1 (04:32):

And they truly have. I mean, you see the statistics, they speak for themselves. I, I think I saw less than 10% of people age 16 to about their mid twenties are habitual users of tobacco. That is a much lower percentage than what we saw a generation ago. And a lot of that can be credited to Congressman Waxman's efforts. Could you speak a little bit to your own role in, uh, Congressman Waxman's efforts to expose the damaging health effects of, uh, tobacco? I'm sure listeners would love to hear a little more.

Speaker 2 (05:01):

Sure. I started on Congressional Waxman's staff in 1989. I was maybe about four or five years out outta law school and I was an environmental lawyer and I got thrust into the Clean Air Act amendments of 1990, which was a legislative accomplishment, but was also driven by a lot of oversight he had done about the dangers of pollution. After that legislation was passed, one of the issues he wanted us to look at was indoor air pollution. And indoor air pollution is also a tobacco problem from secondhand smoke, environmental tobacco smoke. And I think in 93, uh, EPA said it's a secondhand smoke was a carcinogen. So I was part of a small team working on that. Around the same time FDA announced that it was gonna look at tobacco from a nicotine perspective and the manipulation and as a medical device or a drug since I was working on tobacco and <inaudible> Wman needed a team to, to dig into this issue, I got assigned as a relatively young attorney to work on that and it really consumed me for a, a lot of that 93, 94 period. And I've stayed with it all the way until Congressman Waxman retired in 2015.

Speaker 1 (06:14):

Uh, what a worthwhile cause to really just dive into and just try to pursue facts and get the information in front of legislators to be able to just find ourselves in a better regulatory environment than we did previous side. That's just fascinating. Looking at 1994, and I'm glad you brought up the fda, the FDA announced that it had evidence that tobacco manufacturers were deliberately increasing the nicotine content in cigarettes to make them more addictive. But a spokesperson for the Tobacco Institute responded he didn't know what they could possibly be talking about. What did Congressman Waxman and his subcommittee staff think when the Tobacco Institute and tobacco companies took the position that they had no idea anyone was manipulating nicotine levels and cigarettes

Speaker 2 (07:03):

In the beginning of around sometime in announced that it was going be looking into tobacco products, although kill over 400,000 people a year were virtually unregulated. There were some warning labels on

the packets that got strengthened over time, which was important. Also became to some extent of a shield for the companies in litigation. Cause they say that they warned people, but for what they did, damage was caused. They were treated uniquely because of their influence. FDA sort shook up people and said, Well, we might be able to regulate it through our authorities. Around the same time ABC did a investigative journalism with reporting with evidence that it said the companies were deliberately manipulating nicotine to hook people. As you mentioned, Ben, the companies denied that they even sued. I think they brought like a 10 billion liable lawsuit against abc. So Waxman had this, this is going on, he has this great interest in tobacco and trying to improve public health.

Speaker 2 (08:13):

And he decides as his first step, he's gonna bring in David Kessler, the FDA administrator to testify about what's behind this. And this was in March of 94. Dr. Kessler gave absolutely riveting testimony and he talked about an important facet of the FDA's investigation, which no one had looked at before, which was investigating a company's patents. The company said they didn't manipulate nicotine, it just sort of, when they tried to make cigarettes more safe by lowering the tar levels, nicotine came down. That was their line. But there was patent after patent designing cigarettes that would enhance the nicotine that people would get. One of the patents that stuck out was how you designed the filters. And the filters were one of the major devices to burn the tobacco in the cigarette. And the tars come into, come into the smoker. But if you put a filter on that was gonna filter them out.

Speaker 2 (09:08):

And the companies had developed, uh, patents for filters that would have holes in them. And that when a smoking machine, which sort of pinched it with like tweezers was puffing in air, air would come in through these holes and would get a low reading, but smokers would obscure it so they get the full dose of nicotine. Um, we later learned of evidence trying to genetically manipulate to be especially high in nicotine so you deliver a bigger punch. So the FDA commissioner Dr. Kessler, gave us absolutely riveting performance testimony going through these patents, which no one knew there was completely at odds with what the tobacco institute, which was the trade association for the industry. And the lobbyists were saying, So Congress waxman's view was, well this is really significant new information. It's at odds what the hired PR people are for the industry. Congress needs to hear from the executives themselves. And so that led him to call for the executives to testify the following month in the middle of

Speaker 1 (10:15):

April. I mean, it's just purely deceptive sorts of techniques and strategies being used by the tobacco companies to try to present lower levels of nicotine or of tar than what was actually present in the product the way a reasonable person would smoke a cigarette. It's um, truly amazing how far out of the way they would go to present to the regulators a different story than reality.

Speaker 2 (10:39):

I'm jumping ahead a little bit but but it's relevant to what just

Speaker 1 (10:42):

Said. I'm,

Speaker 2 (10:43):

We got a, from the tobacco industry, we had one that it out a graph. One dimension was health and the other was satisfying their nicotine craving the addiction and what people wanted. If they could find a way to develop a cigarette that was low and tar that would attract smokers but were worried about their health but high in nicotine, it would satisfy their nicotine. That was what they were saying internally. And they had massive research projects trying to develop it, but it was completely odd of what you said about how they marketed and described what they were doing.

Speaker 1 (11:19):

So they would be doing

Speaker 2 (11:20):

Also one of the beauty of oversight

Speaker 1 (11:22):

Exactly.

Speaker 2 (11:22):

Have people saying this, trying to create about health, making these claims about their products. But Congress has the ability to, into an industry, get the documents, do an investigation, and reveal what's really happening. And when it's at odds with something that's as dangerous as tobacco products can have a profound effect on how the public and the country looks at the product.

Speaker 1 (11:47):

I mean it sounds like the exact role of oversight. And I love that the beauty of oversight because it was an investigative journalism piece from ABC that sort of sounded the alarm that Congressman Waxman had been trying to sound for 10 years going and then being able to, um, get these various hearings, the FDA commissioner, some of the different researchers that were more or less un muzzled by the tobacco companies to be able to come in and explain their research, looking at the addictiveness of nicotine. And then of course the dramatic moment, um, I believe this was, um, I wanna say it was Widen Morgan who asked about, uh, whether or not all seven of the tobacco CEOs believed that nicotine was addictive. And all of them, one by one said no. And our products are not addictive. So they're able to go on record and say that in a congressional committee, but then behind closed the doors are doing all sorts of research and studies trying to be able to do their best to delink the two and try to cast out. And that's what's great about oversight's place to cut through and find facts. And that was really what this investigation was all about.

Speaker 2 (12:51):

There were two real keys to national waxman's thinking about the investigation. And uh, one was addictiveness and the other was kids. Because the industries approach was this is free choice. Consenting adults are choosing to smoke, it only impacts them and they've made it a choice. If the companies are going after kids, they're not going after adults. And if the product's addicting them, it's not really a matter of free choice. So it was really essential. We knew the companies couldn't admit that they knew nicotine was addictive because that would undercut their claim. That's of a matter of free choice and undercut their strategy of trying to create doubt. Even as a scientist. And the surgeon general says addictive, when we come back to the researchers that you mentioned, how important they were on

their addiction research, but they still would try to create doubt. In fact, one CEO testified that if, if cigarettes are addictive, twinki are addictive, uh, there's something, you know, people just really, you know, people have a craving for twinki. They have a craving for cigarettes. It was scientifically ridiculous, but it was, uh, something that was backed up by this massive PR machine. And so even though it was completely odds with the science, it wasn't necessarily how smokers uh, regarded the issue.

Speaker 1 (14:16):

It's just fascinating. Uh, backing my way up a little bit, I wanna think a little more on that hearing with the seven tobacco CEOs. When Mr. Waxman asked the CEOs from the seven biggest tobacco companies in America to testify before his subcommittee, did you expect all seven tobacco CEOs to show up at that hearing? What was the thinking or the risk in issuing that challenge to the tobacco companies?

Speaker 2 (14:41):

Well, there was a very good case for them to testify. They'd actually been invited to testify at the hearing that Commissioner Kesler was second can panel, but they all declined. But they're public companies and if you can get it set up where a public really expects them to appear, and since you had the denials that this doesn't happen, when FDA says was investigating, then you had this dramatic testimony. People want to hear from them. And so Congress wife said is gonna invite all of them. If anyone doesn't come, there'll be an empty chair. But they weren't ready and able to answer Congress's questions. So we had a pretty good sense that they would come, there would be a lot of public pressure on them to come. There'd be a significant cost to them for not coming cuz there's no good reason not to come. So we expected when you do a high profile hearing like that, and this is a great thing about accident cause he was just really in addition to liking oversight, in addition to, um, being such a good legislature, he was just very courageous because when you have all the cameras and that's the major thing that's going on, that's what you want.

Speaker 2 (15:47):

If you're trying to use oversight to shape how people think about things, for people to understand the facts and um, appreciate their significance. But it also means if you trip up, if you make a mistake, if the something goes haywire or unexpected, a lot of people are gonna see it. And that deters a lot of people from having these big high profile hearings. But Conche Waxman was never like that. If he thought it was justified on the merits and it could help advance priorities that he cared about, like public health, he said, Let's do it.

Speaker 1 (16:19):

Well, these large public hearings, I mean, we see time and again that they're one of the best tools we have to really, you know, try to promote positive change within government and operations and just simply explaining to people how just different things work. I mean, it's an opportunity to educate the public at large about the information that's being thrown out, left, right, and center. It just is really one of those tools that we just need to have <laugh> and that we continue to use to be able to try to make sense of public companies of different, uh, sort of things in government processes. And I, I find this to be really one of the better examples in recent history of a congressional inquiry that really did affect some very positive change.

Speaker 2 (17:03):

I was just, I was just gonna add to that. I think it's absolutely important and it's also important when it's backed up by committee really doing its work. We did a lot to prepare for the hearing. Sometimes you do this at the very end of your investigation. This actually was a little bit different. This was to say, well, unusual cause this was pretty early in our investigation, but it unlocked so many doors and whistleblowers came forward, documents came pouring in that, you know, expression, things coming in over the, and what was really true, in fact it even happened during the hearing. Somebody called up contra waxman's office and asked us to ask Brown William about their genetically modified tobacco leak. We didn't ask at the hearing, but we followed up on that

Speaker 1 (17:46):

<laugh>. I didn't know that part. That's fascinating. That makes me wanna jump ahead to one of the questions. Another dramatic moment came during the next hearing when Dr. Victor Denoble, a scientist who had previously worked the tobacco industry, testified that do the research he had been conducting. The, uh, tobacco companies had known for years since 1983 that cigarettes were addictive. What went into getting him to provide that public testimony and then what kind of impact did it have?

Speaker 2 (18:14):

Victor Denoble and his CO or Paul were sort of unsung heroes of the investigation. And there were several steps to this that make a good illustration about oversight. We learned about Denoble and Paul Mely worked from the FDA as we were preparing for the hearing. And they said, these were researchers from Philip Morris and they conducted really the time, uh, pathbreaking work on the addictiveness of nicotine. And they were set to publish it or initially presented a scientific conference. And it sent in a summary of the work. And then as the approval process worked up, the Philip Morris chain, Philip Morris said, Oh no way you're not doing that. But that one short summary was in the hands of some researchers that had been hosting this conference and no one had seen it. Um, so we reached out and we were able to get a copy of, and it was pretty dramatic because it had them working with rats and showing that rats reacted to that nicotine was addictive.

Speaker 2 (19:13):

They pushed a lot of levers. If there was getting an injection of nicotine in a very, very dramatic fashion, we knew that was explosive when you have something explosive. But we knew the hearing itself with the seven CEOs was all gonna be about the back and forth. That's how it's gonna be covered. So what we did was release that in advance of the hearing. What we knew about the research, it both, we knew people would be paying attention cuz the hearing was coming. And so we get the kind of coverage that it should get and it would also further build interest in the hearing. But we couldn't talk to the researchers. We reached out to them. They were covered by confidentiality agreements. When they had left Philip Morrison for not being able to publish this work, one of the conditions was that they couldn't talk to anyone about it.

Speaker 2 (19:57):

So, and in those days on our committee, there was such an influence of the tobacco companies. We could subpoena them and generally a subpoena would overcome, uh, confidentiality. But it was unclear if we had the votes for a subpoena, um, how whether we could do it. So we tried a different strategy through a, a member of Mike Seiner who was from Oklahoma, who was a big consumer advocate. And this hearing was getting tons of attention. And he decided to use his time, not on a substance thing, but on a really important procedural thing. Would Philip Morris, the CEO who was sitting there, uh, would

he release these two scientists from their confidentiality ceo? Probably briefed lawyers that television as we're doing the hearing. And uh, so Mr. Seiner said, Well, your lawyers are sitting right behind you. Uh, I'll just wait until you consult with them.

Speaker 2 (20:57):

And CEO was under, you know, there's no reason not to. And Seiner would not. He was, he wouldn't let, and the CEO ultimately said, Yes, we'll release them in the next two weeks of the hearing. After the hearing, uh, hearing now, everyone thinks it was just a fiasco for the tobacco industry and it was in retrospect. But in those first two weeks, I would say we got maybe two thirds of the coverage and the commentary was favorable to public health. Well, Waxman was pushing okay, but there was a significant minority that took the tobacco industry position. Interesting. Oh, it was a witch hunt. It was too hard. They were there for nine hours. There's no way to treat members of Congress, anything they could to try to attack us. And so we were that back and forth. We were winning. But then de Noble and Paul come in and they had pictures.

Speaker 2 (21:48):

And this is maybe more in the weeds, but I, to me it was just fascinating the way you tell what, what they realized. And this was ahead, this is now like sort of standard, but they did this ahead of anyone. If you have two levers, Rat could push a lever and give them an injection and it was a sailing injection, they wouldn't push it very much. But if it was, uh, something that's addictive, you can just count how many times they'll push it to get one shot. And if you hold it back, so it's sailing and it's like takes, you know, a hundred shots to, to get it, that signals is really addictive. Well, the rats was way off the charts. How often they would push again and again and again, just the hopes of getting that nicotine. If they had pictures of all of this and they were absolutely gripping witnesses, it was completely at odds with they didn't know nicotine's not addictive. And after that point, the floodgate sort of unleashed. The tobacco industry was not two thirds, one third, it was 99.9%. The tobacco industry is wrong. They're trying to manipulate to the public. They're not being candid. And so it just helped it that people think of it as the image of them testifying, which it was. But this hearing really helped just shift the momentum significantly in our favor. And that led to lots more documents and other things coming out.

Speaker 1 (23:02):

I love thinking about the use of scientific studies. Um, you know, Mr. Waxman frequently cited scientific studies to demonstrate that tobacco was addictive, that it caused cancer and other serious health problems, and that the industry's CEOs knew about tobacco's dangerous impacts. How common is it for congressional investigators to use scientific studies to help establish facts and push for reforms to benefit the public?

Speaker 2 (23:25):

I think it's essential. If you looked at lots of congressional oversight on drugs, a lot of his environmental oversight, it's often a situation where the science is pointing one way, but other poor potent forces in our country, for some usually some kind of personal gain are are pointing another way. And that's an area which just drew him as an investigator to look into.

Speaker 1 (23:50):

There's some lessons there for today, certainly. Yeah. Um, speaking of today, it just, you know, for me, I mean I'm younger and thinking about the FDA and these rising nicotine levels and cigarettes and the

need for enhanced tobacco regulation and the FDA being the, the correct, um, <laugh> agency to do some regulation just feels like common sense to me. But it was very contentious then. And I'm, I'm looking at our question number 12 here. Was adding tobacco product regulation to the FDA in overarching initial goal of the investigation? Or did that regulatory approach emerge over time and become more compelling as more facts came to light?

Speaker 2 (24:31):

Uh, it was always present and it was always alluring because what really keeps people smoking gets them hooked is nicotine is so you had a cigarette without nicotine would make a big difference. But there was also scientific uncertainty about would it work, would it lead to a black market, Would people go to other, just what would the consequences be? And so that's an area where I think the science has evolved and the sciences evolved. It's making it more realistic. More feasible or more justifiable. Yeah. So the legislative efforts were one and the regulatory efforts at, at FDA initially really kids focused in their sort of forefront, Don't sell, don't market, don't advertise, don't do promotions, don't do other things that are that, that are drawing in the kids. And at the same time give the agency authority to make a science based determination about what to do with nicotine. Don't make it legislatively. Cause it wasn't, the record wasn't clear enough, but give the agency authority to go as far as the science would say.

Speaker 1 (25:38):

That's fascinating. I'm glad you brought up kids. Uh, I know we talked about it briefly at the start of the podcast, but I want to use it. So in kind of unique question here, talk a little bit about Joe Camela. Another key issue Mr. Waxman pursued for many years was how tobacco companies were targeting young adults to get them smoking early. Can you talk a little more about that?

Speaker 2 (25:59):

It was really in the framing that he used in the hearing. It was also the framing that FDA kesler were using because it resonated with the public. And it was also accurate that the way companies, they got kids competed. Once you a brand, you're smoker or mar there's a lot of brand loyalty. So a really key thing was getting young smokers and kids, Kids are getting addicted and they're getting, they can't break the habit. They're becoming lifelong customers and their lives are being shortened. And framing that all around kids was really important. Waxman did the investigation in 94. Lots of things came out, but then he lost his gap. But he was able to continue from the minority the next year in 95 with the tobacco company would be sued at different times, but then they would settle these cases if they had to disclose and have everything under seal.

Speaker 2 (26:53):

We got these documents from Philip Morris that said they were researching kids the effects of tobacco as youngest third graders idea that having kids smoke might help elementary school kids deal with hyperactivity. And there were just any way to give cigarettes a good name. So these were under sealed. They weren't supposed to be out, they were given to us by whistleblower, but members of Congress, uh, have speech and debate immunity. And so Congressman Waxman went on the floor of the house and read these documents. He got a special order, he had a whole hour and he read the documents into the record afterwards. The advice we're getting from lawyers was anyone else in the country could talk about the documents, but he couldn't really talk about them in interviews because he was protected

when he was on this floor. But that had a major impact. And then I think it was two years later, it was another suit.

Speaker 2 (27:40):

This was in California for false advertising against RJR for the Joe Campbell campaign. This time that the lawyers in the case, they settled, but a condition of their settlement was that they could use the documents. Wow. And that they, cause they thought they were explosive were, and they gave them Congress Waxman. Um, and they took us inside the RJ boardroom and they had the board discussing the origins of the Joe Campbell campaign and the origins of, of spring break and giving free cigarettes and promotions when college students went down there, which is people make their brand choices when they're young. We need an image that Joe Campbell that'll appeal to kids and attract them. We need to do these things like free giveaways and other stuff to, to young people so that we can get them smoking our products. And this was in the boardroom explicitly for their business purposes. And Carson Waxman and the minority was able to release these. And these had another tremendous jolt and influence on how the public thought about what the companies were doing.

Speaker 1 (28:39):

I'm so glad you shared that story. I mean, that was, uh, one of the questions that we had prepared for the podcast talking about this when, um, when Rep Waxman lost his gavel and just how he was able to still kind of continue to be effective from that minority point. And, uh, I think that was very illuminating. I really appreciate you sharing those stories. That's, I mean, what more is there to possibly add on my end? That was fascinating. <laugh>. Um, I do wanna look at question 14. Uh, when we look at this investigation today, by exposing tobacco's health impacts and discouraging smoking, it is plain that Mr. Waxman's work saved millions of Americans from tobacco related disability and death. He also saved billions of taxpayer dollars that otherwise would've been spent on tobacco related healthcare. In addition, proportion of habitual smokers in the United States has now plummeted from about one third of adults to less than 10% of young adults today. I really am curious to know, did you expect that kind of success?

Speaker 2 (29:40):

I don't know exactly what he expected. He had been a smoker and it was very hard for him to quit and relapsed. And again, so firsthand how hard it was to quit. But certain what hed, that's, he devoted so much effort to this and, you know, you could tally up different ways of looking at impact, but when you're thinking about fewer people smoking and having longer lives, that's why he was in Congress to have those kinds of impacts.

Speaker 1 (30:07):

I just love the leadership. I really admire it. Thinking about how today the battle is not over, uh, vaping and e-cigarettes ra growing concern for parents, health professionals and lawmakers. I am reminded of FDA Commissioner Kessler's testimony where he called traditional cigarettes, high technology, nicotine delivery systems, <laugh>. Do you have any advice for members of Congress interested in investigating the personal and community health effects of e-cigarettes? The advertising of e-cigarettes or the regulation of those products?

Speaker 2 (30:42):

It's really important. FDA has authority now to eliminate them and has been beginning to take action against them. And it required them to make demonstrations that they're in the public interest. And it's been evaluating, taking ones off the market. It's some, it's really important. There's a lot of, and especially, I mean even more so, but there's so many things going on and attention is hard to get. And if you have a real public health threat that's there, having attention coming from Congress makes a real difference. So bringing agency officials in, asking what they're doing, investigating the companies, all that has a potential to have a really positive impact.

Speaker 1 (31:21):

I've already noticed it myself. Um, I thinking about, uh, over the last couple of years, I mean, I'll listen to, you know, talk radio, sports, that sort of thing. And I would hear commercials for e-cigarettes and they would present themselves as a smoking resuscitation tool because there was a little bit of an exception where you could have advertising for tobacco related products if the product was a tool to help stop smoking. And so a lot of e-cigarettes would present themselves as a tool to stop smoking available in 10 very friendly, colorful flavors, <laugh>. And, and then you're gonna look really cool and it's not going to, you know, make your clothes smell all these other different sort of things. And it, I do believe the FDA stepped in because I have not heard such ads on the radio in recent memory. Uh, at least not nearly the way they were. I mean, they were prolific about two years ago.

Speaker 2 (32:15):

One of the things about the tobacco illustrate is long it can take, having members that stay at something for a long time is just really important. We did the hearings in 94, but we didn't get the legislation until, uh, 15 years later in 2009 when Congress Waxman was the chair of the Energy and Commerce Committee. One reason he ran to be chair was to help to make sure that that legislation could get enacted. And the authority was for the agency if it thought the science justified as we talked about the phase out nicotine. But we also knew there were new products coming along that weren't like products on the market. And those, it was illegal to market without prior approval. And the idea was, okay if the case people make for e-cigarettes as well, okay, you have a e-cigarette, you really don't have that tar we were talking about earlier.

Speaker 2 (33:06):

People satisfy their nicotine cravings gonna be safer. Well, if a science really justifies that, let them go forward. And it, well, companies started to, to come out and not seek the prior approval and just started selling these products. JU was like the one that really took off. And they did it with flavors that were candy coated flavor. They were tobacco products where people, that tobacco flavored stuff there, stuff that was gonna attract kids and lots and lots of kids. So there was action brought against JU and state ags took action and the jewel and FDA said, instead of like, immediately banning these things cuz they're being sold in vape shops around the country and Mark was building up, they said, We'll give you a grace period to come in and show that you actually meet the public health standards. And that process is going on. I'm probably need to have an FDA expert to tell you exactly where that is in the process

Speaker 1 (33:57):

And maybe they'll be a good guest for oversight matters. We'll do a, a podcast series on, uh, tobacco

Speaker 2 (34:03):

<laugh>. I'll, I'll be tuning in for

Speaker 1 (34:05):

Sure. It's such a fascinating topic. I got one last question back in Vermont just cuz I was curious. I I just really am curious to know, did Mr. Waxman and the staff know that all seven CEOs would go on the record under oath that they did not believe cigarettes were addictive? What did you think when they testified that way?

Speaker 2 (34:23):

We, we, we expected that they couldn't admit that knew it be addictive because they're selling the product. So it's just that was when he's think about the hearing, how are answer question like that, if deny it that it's, which everyone knows is addictive, they really look at outta touch. But if they admit this whole sense of doubt and any kind of claim, they have a legitimacy and this is a free choice, becomes very hard for them to maintain. And so one of the things when you're thinking about high profile hearings and doing it, it doesn't have a dynamic like that where the questions that really was simple that should be asked, and they're going be really illuminating. If they said it was addictive, which we didn't expect, that itself would also really make news. Cause why are they in this business and sort confirm FDA should be regulating. But other hand it real consequence that you mentioned now, Senator Widen asking that question has been viewed over and over again.

Speaker 1 (35:26):

I just wanna say thank you again, sir. It was, uh, a fascinating afternoon. I think there's a lot of great information here to share. I think our listeners are going to love hearing everything you, you know, being able to talk about here today. Um, any, anything else? Um, the, the floor is yours,

Speaker 2 (35:40):

<laugh>. Thanks Ben. I thought you covered a good set of questions. Pleasure to talk about this, um, with you. And again, thank you for all you're doing. Shine the light on the importance of oversight because that's more neglected than should be part of Congress and a important part and, uh, work you're doing is follow it and is super important. So glad if I could help you in a small

Speaker 1 (36:01):

Way. Well, it's purpose-filled work and I I really appreciate that, sir. And, uh, you know, do keep in touch. Uh, you know, we always appreciate any, um, any feedback or anything else that we ought to be looking at. You know, always be nice to hear from you. Thank you. Great.

Speaker 2 (36:15):

Nice to talk with you.

Speaker 1 (36:16):

Oh, that was fascinating. Thanks again.

Speaker 2 (36:18):

Okay. Bye-bye.

Speaker 1 (36:20):

Bye now. Thanks for listening. Phil was an engaging interview filled with the facts on what it takes to lead a long, impactful congressional investigation. I hope you enjoyed our conversation as much as I enjoyed learning from Phil. Until next time, this is Ben Ike and Oversight Matters is brought to you by the Levin Center for Oversight and Democracy. Thanks again for listening.