

Hearing on Smoking in the Movies

before the

Senate Commerce Committee

May 11, 2004

OPENING STATEMENT OF HON. JOHN ENSIGN, U.S. SENATOR FROM NEVADA

Senator Ensign: I want to welcome the witnesses today, and we are convening and also thank the chairman of the full committee, Senator McCain, for allowing us to have this hearing today. I think it is an important topic something that I have been following with personal interest for quite some time and I am looking forward to receiving the testimony today.

Really, the purpose is to find out what the effects of smoking in movies, what affect that really has on our children, does it in fact lead to as a causative factor or correlative factor and does it in fact lead to increased teenage smoking? I come to this as a kid growing up in the 60's when we all remember, whether it was the Beverly Hillbillies and the ads they did for portraying smoking-- the tobacco industry at that point understood that, just like anybody does, that if there is a celebrity with their product that people's behavior is influenced by that. That is the reason why Michael Jordan gets paid so much by Nike or Tiger Woods or whoever you want to put out there.

The reason that advertisers and people who have companies want celebrities to endorse their products is because they know that a percentage of people will be influenced on their purchasing decisions because of those endorsements.

I was 10 years old at the time and, for those of you weren't around, maybe if you remember the old Tareyton ads where, as I recall, "I would rather fight than switch," and they had a guy or a woman, male, female, that had a black eye and that was a cool thing. For whatever reason, my

friends and I at the time thought that was cool and we wanted to be like them and we started smoking Tareytons.

Luckily, I quit a year later and didn't stay with it. I was one of the fortunate few, I think, young people that did not stay with smoking because based on the research that I have seen-- and I don't think anybody disputes this that if children or young people start smoking the chances of them smoking as adults is greatly, greatly increased.

Some may question whether it is all the findings in Dr. Dalton and our colleagues, report, but I don't think that anybody can question that the study that they have completed is probably the most exhaustive study and the most complete study that has ever been done on this particular issue and I want to compliment Dr. Dalton and our colleagues for this study.

I have heard the presentation several times now and have asked many many questions and have heard others ask a lot of questions on the study. As a veterinarian, I understand that when science and taking out various variables out of the equation, trying to factor out other things that may lead to skewing of results I think that as much as I have looked at this study it has been pretty thorough in trying to get rid of some of the factors that may be underlying the chances ---the causes that what would cause a child to smoke.

The bottom line is what you see can affect your behavior. I don't think anybody can argue that. I would like to see anybody stand up and try to argue that and then tell us why anybody would pay \$2 million for a 30- second ad in a Super bowl. I mean advertisers know that what you see affects a certain percentage of the population, and the younger you are the more likely you are to be affected. I think that is without argument.

The smoking deaths from tobacco in this country are arguably somewhere 400,000 plus. It is one of the greatest public health risks that we have and we know. And we know that if kids do not start smoking, teenagers don't start, the chances of them starting and becoming addicted as an adult are very low. So it would seem to me that we have a great social responsibility to do everything that we can to stop kids from smoking, whether that is enforcement, whether that is making sure that the tobacco settlement is enforced where the tobacco companies are not allowed to advertise to children.

I think all of those things are important but I also think that if we have scientific evidence out there that suggests, that suggests that we have a correlative factor, a strongly correlative factor toward teenage smoking we should investigate it.

Now, this Senator is not a person that wants to see the First Amendment abridged. It is something I believe very strongly in. So, this is not, this hearing is not, at least from my perspective is not to call for censorship, to call for no smoking in movies, or even, as many of the attorneys general have called for an R rating on the movies. That is just not something that I support.

However I do believe there are some things that Hollywood in particular could do to be more responsible. One of the reasons for this hearing is to raise the level of this issue up to where people are taking it -- they start paying attention to it more. We want producers, directors, actors, to think before they just instinctively put a cigarette in an actor's hand in a movie: What effect is that going to have on children? Do I want to be the person responsible for addicting a kid and therefore shortening their life?

There are times when I think, when I have watched movies-- and I am very sensitive to smoking in movies because I have been following this for some time, so I notice. Every time I go in and I

watch -- and I watch a lot of movies. Hollywood makes a lot of money off me and my family, I will just say that right up front. I watch a lot of movies.

I just finished watching "Band of Brothers", a Tom Hanks, Steven Spielberg presentation on HBO. I thought it was one of the best things that I have ever watched for depiction on history and the emotions and just how it was done, not only the subject matter but also how it was done; a tremendous amount of smoking, foul language in that movie.

The reason that I did not find it offensive -- and I would like to hear from Dr. Dalton on some of this-- is that, first of all, it was for historical accuracy. I mean our military, let's face it, used to put in their supplies, used to put tobacco or cigarettes in their supplies. That is what-- and a lot of people became addicted in the military. We were almost complicit as a government for getting people-- because frankly it was a different time.

So for historical accuracy sake, things like that I don't have a problem with. As a matter of fact the language that was used in the movie was very, very coarse language. I am a father of 12-year-old, an 8-year-old and a 6-year-old. Now I watched it first and then allowed my 12-year-old to watch this but then talked to him about the language, talked to them about the violence, talked to them about the smoking in the movie. As a parent I took the responsibility to do that.

Now most of the time you don't watch everything before your children watch it so it would be nice, I believe, for Hollywood to do things like public service announcement before movies about teenage smoking. It would be nice if we had a tobacco rating. I know Mr. Valenti you and I have had discussions about this and you don't want to start regulating about what your comments to me have been about regulating things that are legal.

But at the same time, you put in warnings on things like nudity. Well nudity is not illegal well maybe in public, but certainly not in private. And there are many things that you rate. Coarse language is certainly not illegal, but you put that so parents or people who want to judge for themselves whether to watch a movie -- it is just information. I would like to see in the rating system not an R rating but at least educationally to know that there is tobacco use.

Then, lastly, let's look at this from, we have gratuitous violence and there have been calls and there have been calls again gratuitous violence, and I think that those are very important things to have calls against. I think we should have calls against gratuitous smoking in movies. Many times smoking is put in movies and I have heard from directors, actors, that it is just too easy and that everybody in Hollywood should take a look at what we are doing first before those kinds of things are just put in.

Go to Senator Wyden first.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator Wyden: Thank you, Mr. Chairman, and I think you have made an excellent statement. I would just make a couple of additional points.

The first is that the history of the tobacco industry is that every single time government closes a window that facilitates marketing to kids; the tobacco industry finds another window to open. For me, a big part of my views on this are colored by the fact that in 1994 we had the tobacco executives in the House. I was on the Health Committee. I went down the row and asked each one of the executives if nicotine was addictive. All of them were under oath and they all said no, nicotine is not addictive.

Obviously they were wrong. I know again today and in other kinds of forums we are going to hear that the tobacco industry isn't using movies to target children. I think again they are wrong and I think we need to examine the issue particularly around some of the issues that Senator Ensign has talked about. I think that Senator Ensign is absolutely right when he says a big part of the challenge is to make sure that people can make movies and actors who participate in them think again before they introduce cigarettes and allow them to be used in a manner that glorifies them for children.

I think thinking about it is good but what troubles me and an area where we could work together on is that there are no consequences, none as far as I can tell, if after they think about it they go ahead and do it. So the debate ought to be-- and I think you Mr. Chairman, have been right to say you have to figure out a way to do it that is sensitive to the First Amendment. But after people think about it, there ought to be consequence for it as well.

I would help in addition that we examine that we examine the master settlement agreement, which is really the key agreement that is relative with respect to marketing in films. The master settlement agreement prohibits participating manufacturers from making any payment for the use of tobacco product identification in a motion picture, television show, theatrical production, musical performance and the like. Suffice it to say I would like to hear more -- and I think Mr. Valenti can be helpful--on this, the industry's views about whether this agreement is working.

My sense is that this agreement if it was a piece of cheese it would have a lot of holes in it. It really in my view needs to be strengthened, and I would hope that at is hearing and in sessions similar to this in the days ahead we could find a way to strengthen it because it is the master settlement agreement that governs what goes on with respect to the use of tobacco in films.

Suffice it to say that already the New England Journal of Medicine has pointed out that in magazines there still is an effort to target young people, and I am concerned that this is carrying over to the movies as well.

So I look forward to all witnesses. We have an excellent panel. I, like you, Mr. Chairman, have looked at this issue for a lot of years and I think it is very constructive that you are using the committee to examine it once again because I think it is high time.

Senator Ensign: Senator Allen:

STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA.

Senator Allen: Thank you Mr. Chairman for recognizing me.

This is an interesting topic for this committee. I know the Chairman cares a great deal about it. My good friend Senator Wyden talks about the master settlement agreement having more holes in it than Swiss cheese. I think some of these statements -- and I very much like Senator Wyden. He is a good ally on so many issues. Shoot, I think a lot of these concerns and assertions about the master settlement agreement being violated by having cigarettes in movies is generally a lot of baloney rather than Swiss cheese.

So, you look at the testimony in here, and I have read, read through it last night, wonderful reading on this subject. LeVar Burton's statements are very probative of what the --let me get your exact title -- the Directors Guild of America and what you are trying to do. Jack Valenti, even his words are eloquent and precise and principled.

So I think when you actually look at the facts rather than some of the hype and some of the concerns, is that the creative folks in the motion picture industry are acting very responsibly. When we get carried on about tobacco, recognizing we have tobacco leaves on the Capitol here and Thomas Jefferson said that tobacco needed to be on there as that was the first cash crop of this country. I suppose if Disney had had an accurate portrayal of Pocahontas, rather than those waterfalls and all the rest, they would have had maybe people, gosh, American Indians smoking, and that would have made that movie an R-rated movie by some of the proposals in here.

But let us remember that tobacco -- look there are people who oppose smoking and that is fine; people who oppose tobacco, that is their right. But it is a legal product in this country although it is very highly highly taxed and highly regulated.

I am one that -- you have all have heard me, because Senator Ensign and Senator Wyden, we are normally together. I am just one who doesn't like nanny government telling citizens how to live. I have three young children, a 6-year-old, a 13-year-old, and a 15-year-old, and I don't care for them to be smoking either. But I don't need the Federal Government to tell me how to raise my children. My wife and I, and I though, can help out and are capable of this ourselves.

Heck, I watched T.V. with the kids the other night. They wanted to watch some MTV show called "Pimp My Car". It was kind of interesting how they fixed up a Chevrolet love truck or something like that. It was very interesting. The point I made to my kids was, gosh, if some guy had things somehow perforating through his lip, and I was just saying, isn't that not stupid. I thought it was great, the work they did on this truck, fixing it all up.

But nevertheless, as a parent you need to watch what your children are watching. And whether somebody is smoking, whether it is somebody drinking, whether it is somebody putting spikes through their lips, or a variety of different things, I think we ought to be responsible.

Second, again tobacco is a legal product. How far do we want to go in further regulating it? I think you already have the master settlement agreement a prohibition on placing tobacco products in movies. From all the evidence I have seen, that is being upheld. But do we want to stifle the creativity and freedom of expression in our movies?

Third, what is the next step in attack on tobacco? Are we going to see smokers sue movie studios under some contrived tort liability for the effects of smoking? Someone will say: Gosh I saw John Wayne smoking; oh gosh Humphrey Bogart was smoking; Clint Eastwood was smoking in a Dirty Harry movie or in the "Outlaw Josie Wales" he was chewing. So therefore you are going to sue Clint Eastwood or whoever made those movies. I think individuals need to be responsible.

The R-rating of it -- and I know that is not your recommendation, Mr. Chairman, on it. But making a R-rated movie because there is smoking in it doesn't make sense as far as I am concerned. I will be hard pressed to be convinced that congress has a roll in passing laws restricting the creativity in our motion picture industry anymore that if somebody is drinking. Let's assume someone is drinking in a movie. Are you going to have some sort of mention of drinking? There is going to be for kids, especially teenage kids learning how to drive, what if they have a chase scene? Are we going to have something in the chase scene about fast driving?

The point is that I think the rating system that we have now is a good system. Maybe it can be tweaked and improved in some regards but making a movie an R-rated movie simply because

somebody is smoking a cigarette to me going overboard, and I do think ultimately, I do not think the government ought to be stifling the creative genius of the motion picture industry.

I will close with what the Long Beach Press Telegram wrote last summer, quote, "Cigarettes might not belong in most films, but government meddling belongs in none of them."

Senator Ensign: Senator Nelson.

Senator Nelson: Thank you, Mr. Chairman.

Well, there is a policy issue for the Federal Government and that is what are the costs to society and how much does the Federal Government have to pick up those costs of additional health care as a result of generations of young people being hooked on tobacco and why are they being hooked on tobacco? And why are they being hooked on tobacco?

Now, the Chairman has graciously called this hearing as a follow-up to Senator McCain's hearing several months ago, of which two very interesting things came out: one with regard to movies, and that was that was that where a brand named cigarette -- I am talking about the brand - is shown in a movie where a promotional of that movie is made, called a trailer, that the incidence of cigarettes being in that promotional trailer is four times as great when there is a brand cigarette shown in the movie. And therefore, when that promotional is shown on T.V. promoting the movie guess what gets advertised, contrary to the laws of this country.

The second thing that came out of the hearing that Senator McCain held several months ago was dramatic testimony about after the settlements in the various states with the tobacco companies, and of which a major portion of that annual income coming into the States is supposed to go to an educational program for prevention in order not to get kids hooked on tobacco, we had a tale of two States representing the rest of the States.

One was the state of Mississippi, the first State to have the settlement, of which the Centers for Disease Control target of what should be spent in that State according to its receipt on the tobacco settlement each year, indeed the Legislature of Mississippi had continued to make those appropriations for a major prevention program.

In the tale of two States, the other State which had the opposite effect, was my State of Florida, the second State in the country to have a tobacco settlement, a State that gets in nearly \$400 million a year as part of its settlement that will go on ad infinitum for some 25 years, and of which the CDC said that the target for a prevention program in Florida should be \$75 million a year. I am sad to report to you that the state legislature for the last two years has appropriated \$1 million, the most recent of which was one week ago when the legislature adjourned.

Now, what is the effect of this? The effect is that all of the advances that we have made in getting kids off of tobacco are now reversing and kids are getting hooked back onto tobacco because of -- and I want to hear the testimony from you -- things just such as what came out of that last hearing which gets back to policy.

You can talk about individuals and they make their own choices, but we have a responsibility of allocating the Federal dollars. And when that cost increasingly higher health care cost as a result of this hooking on tobacco, then that is when the Federal Government can get into this policy arena.

Thank you Mr. Chairman.

Senator Ensign: Thank you.

Just a couple of brief housekeeping things. I have two statements to be submitted for the record, and all of your full statements will be submitted for the record as well as any opening statements by any Senators that wish to. But I have a statement or testimony of Cheryl G. Helton and also written comments of Phillip Morris for the record, because they are not on panel today. So without objection, those will be made part of the record.

Senator Ensign: With that, I will introduce the witnesses in the order that they will testify. First of all we have Dr. Madeline Dalton, Associate Professor of Pediatrics, Dartmouth Medical School. Second will be Mr. Jack Valenti, Chairman and CEO of Motion Picture Association of America. Third will be the Honorable Joseph Curran, Attorney General of Maryland. Fourth would be Mr. LeVar Burton, Co-Chair Social Responsibility Task Force, Directors Guild of America. Fifth would be Dr. Stan Glantz, Professor of Medicine, University of California, San Francisco School of Medicine. And last will be Steven Yerrid, Attorney-at-Law, Tobacco Plaintiff, Florida.

So with that, let us start with Dr. Dalton.

STATEMENT OF MADELINE DALTON, M.D., ASSOCIATE PROFESSOR OF
PEDIATRICS, DARTMOUTH MEDICAL SCHOOL.

Dr. Dalton: Thank you, Senator. I am honored to be here today and appreciate the opportunity to share with you the results of our study, which looked at the influence of movies on adolescent smoking behavior.

Smoking is the leading cause of preventable death in our country. The period of greatest risk for smoking initiation is during childhood, particularly between 10 and 15 years of age.

Senator Ensign: Excuse me, Dr. Dalton. Just to remind all of you, if you could keep your testimony to around 5 or 6 minutes somewhere in there, and, like I said, we will do the full statement for the record. That way everyone will have a chance to testify. Thanks.

Dr. Dalton; Okay, great.

In the U.S., 2,000 adolescents begin smoking each day and one third of them will go on to become addicted adult smokers. If we can prevent children from smoking until they are 18, then their chance of becoming an addicted smoker is very low. Movies not only depict modern societal norms and styles, they help define them. In popular contemporary movies, smoking is commonly associated with characteristics many adolescents find appealing such as toughness, sexiness, and rebelliousness. Cigarette brand appearances and smoking portrayals in movies endorse smoking behavior by associating it with larger than life actors, many of whom are social icons for adolescents.

We analyzed the smoking of 600 top box office hits released over the past decade. 85 percent of these movies portrayed smoking. Movies were more likely to have smoking as the rate increased. For example, approximately half of G-rated movies containing smoking compared to 90 percent of R- rated movies. PG and PG-13 movies, most of which are considered appropriate for adolescent audiences, featured smoking more than three-thirds of the time.

Prior research has shown that adolescents are more likely to smoke if their favorite movie star smoked on screen. Experimental studies of adolescents suggest that viewing smoking in movies is associated with more positive attitude toward smoking. Our cross-sectional survey of almost 5,000 adolescents showed that the more smoking adolescents viewed the more likely they were to have tried smoking themselves.

To validate these findings, we initiated a prospective follow-up study to determine if viewing smoking in movies predicted smoking initiation among adolescent never-smokers. We surveyed adolescents 10 to 14 years of age at 14 middle schools in northern New England. We asked the students about their movie viewing, their smoking behavior, and other factors related to smoking, including peer and family smoking.

Through this survey we identified 3500 adolescents who had never tried smoking. We re-contacted 73 percent of them 1 to 2 years after the initial survey and found that 10 percent had initiated smoking.

Adolescents who saw the most amount of smoking in movies were much more likely to initiate smoking themselves. 17 percent of those who had the highest exposure to smoking in movies had initiated smoking, compared to only 3 percent of those who had the lowest exposure.

We recognize that other factors also influence an adolescent's decision to smoke. In our analysis we included the child's age, gender, personality characteristics, school performance, peer and family smoking, parent education, parental monitoring, and parental disapproval of smoking as possible or alternative explanations for smoking initiation. Even after taking all of these factors into account, we found that adolescents who viewed the most smoking in movies were still two and a half times more likely to try smoking compared to those who viewed the least amount of smoking in movies.

The influence of movies on adolescent smoking initiation was greatest among children whose parents did not smoke, showing a fourfold increase in risk of smoking initiation when children with high exposure to movie smoking were compared to those with low exposure. Overall, even

after controlling for all other factors, the data indicate that half of the adolescents who initiated smoking in this study did so because of viewing smoking in movies.

These results confirm prior research by providing strong evidence that viewing smoking in movies promotes smoking initiation among adolescents. Children of non-smoking parents appear to be particularly susceptible to the influence of moving smoking, indicating that modeling non-smoking behavior in the home is not enough to prevent children from initiating the behavior.

Based on these findings, we conclude that eliminating or reducing adolescents' exposure to smoking in movies could significantly reduce the number of adolescents who initiate smoking.

Thank you.

Senator Ensign: Thank you.

Now, Mr. Valenti.

STATEMENT OF JACK VALENTI, CHAIRMAN AND CHIEF EXECUTIE OFFICER,
MOTION PICTURE ASSOCIATION OF AMERICA

Mr. Valenti: Thank you very much, Mr. Chairman. I am grateful to see Senators Nelson and my dear friend Mr. Wyden and Senator Allen here.

Let me say up front, as I said in my testimony, that I am opposed to smoking on the screen and off. I think it is a nasty, smelly, vicious kind of habit and I am opposed to it. But I am here representing the movie industry and making a movie is a dramatic narrative, and it is the duty of the director and the writer and the producer to gather together and assembly the best talents they can to tell a story, visual story telling in its purest form.

If the director believes it is essential, because of the time and place of the story or because he wants to quickly identify the demeanor, the character, the objectives of whatever role this actor is playing, I have to tell you that I believe it is his right to tell the story as he chooses to tell it. I believe that.

So what we have here is a script that attempts to engage an audience and make it laugh or cry or hold it in suspense or whatever it is that the script attempts to arouse in the audience. That is what the director does. I do not know why a director does anything. It is an inventive gift and I don't have it. I have never directed a film. That is why I am so admiring of my dear friend LeVar Burton and his colleagues.

But I have to say that I do not believe that whatever the director does ought to insight the intervention of the government in any form. I have no problem with the government having a hearing, issuing statements, and listening to people like the four Senators, whom I greatly respect, and I think that is good for the country. But in the final end of it all under the canopy of constitutional privileges I do not believe that it is the obligation of the Congress to intervene in something like this.

Now, I do know that there are certain legal products and behavior omnipresent in these scrambling and unquiet times that unhappily cause tragedy in too many lives -- alcohol abuse, murder by gun, unsafe driving, smoking, obesity, which the Centers for Disease Control say is the number one health problem in America today surpassing smoking as the number one preventable disease.

Now, when Senator Ensign called me some time ago I instantly responded. I learned when I was working in the White House that when a Senator or a Congressman calls you you better answer

his call that day. And I then, with his counsel, organized three meetings: one in Washington D.C. where I first heard Dr. Dalton present most eloquently and most convincingly for the Dartmouth Medical study. The second meeting took place in California with the Directors Guild of America with a committee headed by Mr. Burton, whom you will hear from shortly, the third with the production executives and member companies. I wanted them to hear this. I thought it was important that they understand to the best of their ability what Dr. Dalton presented although, I have to tell you and she understands I have some questions about the Dartmouth Medical Group study, some of its methodology, its correlation effects as contrasted to causal effects. But I thought the study was extremely well done and I thought it ought to be presented to everyone in Hollywood so they could ask questions about it and try to have them sensitized as to what this study offered even though they may have some questions about it.

But I also keep coming back to the idea that, as you brought up Mr. Chairman, with “Band of Brothers,” that there are some movies that are in another place and time. When I was very, very young I was a combat pilot in WWII, and I am so pleased to suggest to you that I survived. And I am hard-pressed to think that movies like “Saving Private Ryan” or “Schindler’s List” could every be presented without having a lot of people smoking. And as you know from at least reading about it, that the military actually issued cigarettes in their ration kits, which of course would be unthinkable today. I have no idea, however, what they are doing in Iraq right now.

But I want to conclude by saying that it is my belief that the more information, the more education, the more persuasions that we can offer to the movie community, I think that is good.

But I also want to say that I have no evidence of any kind to this hour that there is product placement, Senator Nelson, of tobacco brands. It may be there, but I have talked to endless numbers of producers about this subject because I feel strongly about it myself, and I have been

unable to unearth one jot of evidence of that, of product placement of cigarettes, I am talking about. Others I am not so sure of. But about cigarettes I have had not one single director, producer, studio executive who would say that that is going on, and I am talking about in private. If someone had said that, I would not mention their name to you, but I would say that yes, I have had evidence of that. I have not.

But I want to continue to work with you, Senator Ensign and others, and with the Directors Guild and the studio production people and whatever else we can do to continue this informational program I am eager to do.

Thank you very much.

Senator Ensign: Thank you.

Attorney General Curran.

STATEMENT OF HON. J. JOSEPH CURRAN, JR., ATTORNEY GENERAL OF
MARYLAND

Mr. Curran: Thank you very much for the chance to share with you this afternoon, Senator Ensign. And also thank you for your continuing keen interest in this very subject.

I was one of a number of the attorney generals that did in the mid- 90's determine that there was a reason to file the lawsuit we did. Actually, it was a two-fold reason; one is in a way suggested by Senator Nelson. There was a cost. In Maryland, which is a relatively small state in comparison to our sister States, we determined that conservatively we spent each year about \$100 million dollars of Medicaid payments to pay for the illnesses caused by, in the terms of the medical people, caused by smoking. Now, obviously half of that is our money and half of it is the Federal money,

but in any event it is a pretty heavy number on a yearly basis. So there is a cost attached to it, and I will admit to you that was one of the reasons we chose to follow suit.

But the underlying cause, in addition to that, was to deal with the issue of youth smoking and our convincing data that there was in fact the targeting of young people, because as we all know, that adults are wise enough and mature enough not to consider to start smoking, and that our data was that if you can get to a youngster when he is not quite as mature and perhaps wants to experiment and is experimenting when he is 13, 14, 15, the likelihood is he will be a smoker forever.

So if you get rid of that temptation, the likelihood is that you are not going to have him smoking. That was the purpose for our lawsuit. I am happy to say it has been settled. We have a MSA agreement. It is working reasonably well.

I was so impressed when I learned of Dr. Dalton's study and analyzed what I thought was a pretty good analysis of the correlation between viewing heroes and heroines and how kids can be impressed, that some, not all, but some kids would attempt to start smoking and that is why I was joined by 27 other attorney generals, wrote to Mr. Valenti, who was so kind as to respond, had a hearing here in Washington attended by a number of us, including Senator Ensign, and Mr. Valenti was very understanding of our concern, made it possible for some of us to go the L.A. and talk to other persons.

In other words, it was an educational opportunity and I am happy for that. Having said that, we would like to think that we could now go to the next step. I am talking for myself and I believe most attorney generals; we are talking about a voluntary commitment on the part of the movie industry, that they could help eliminate what is the most preventable disease that I am aware of

and that is smoking, because as I can tell you our data shows that there is in fact 400, if not 45,0000 Americans who die each year because of this.

So I am here to really urge that they consider voluntarily moving with us to eliminate or reduce at a minimum the instances and the depictions of smoking in movies, particularly the G and the PG and the PG-13, where most of use see to it that our kids or in my case grandkids do go to the movies. The data supplied by Dr. Dalton indicates that there are a substantial number of the PG and PG-13's that do have a depiction of smoking. We would like to think that maybe they voluntarily could consider at least reducing those incidents.

I have been asked, what would I suggest to the movie industry besides having this continuing dialogue, and I will admit I thank you very much for having the directors and the studio people hear this data. From what I either observed or heard, they were sensitive, because all of us are concerned about the fact that no one wants to have a product available for young people that we believe from medical science is going to end up being a harm to them.

So what were my suggestions? That was one of the letters that Senator McCain wrote to us: What would you suggest? Well, permit me to share with you what my suggestions would be to I think would help eliminate this problem. First of all, I would eliminate all tobacco brand appearances. I don't think it adds anything to the movies with respect to the directors' ideas.

I would avoid all gratuitous depictions of smoking. There may well be from an historical perspective something that might blend in, but certainly we could consider eliminating the gratuitous.

And, I would make certain that the movie folks would certify that they receive nothing from the tobacco people, which would be a violation, I might add. But so long as it being a violation, there is nothing wrong with certifying that.

And I would urge that they consider in connection with the National Association of Theater Owners, whom I might add we have also met -- there is a little time between when you buy your ticket, you walk through the lobby, you get your popcorn, you get your candy and you sit down and you have about a 10-minute wait for the feature. Well in that 10-minute wait, everybody is talking, etcetera, there is a little bit of time where if we could run a PSA's, a 30-second PSA's, particularly where there is going to be some smoking or there is going to be -- kids are there. It is a captured audience.

They are the ones who have bought a ticket and they are making money for the producers and directors and movie stars and that is great. But maybe PSA showing, a well-done PSA in which you show the evils of smoking, 30 seconds, and that is what I would recommend.

Finally on this R thing, I understand the concern of Mr. Valenti and others and I appreciate it. If it is not possible, at a minimum -- the rating system as I understand it from the movie folks and the theater people involves a lot of factors -- nudity, cursing, violence, and all the things that we really understand are unacceptable. If bad words, saying bad words that would make us blush, are the subject of a rating, maybe we could also consider smoking, at least have it considered as criteria in some way, shape, or form.

So that would be my recommendation. I am one of the attorney generals who started these lawsuits. We are continuing to monitor the actions of the smoking industry. We continue to take them to court where appropriate.

Senator Nelson, I am happy to say that in the State of Maryland we are in fact using substantial sums of that money that we get to do prevention, and I hope that we continue to do that. And I would wish that quite frankly, many of the other sister States would do it, but I have no say in that. But I am happy to say that Maryland is doing its share.

Thank you very much.

[The prepared statement of Attorney General Curran follows:]

Senator Ensign: Mr. Burton.

STATEMENT OF LEVAR BURTON, CO-CHAIR, SOCIAL RESPONSIBILITY TASK
FORCE, DIRECTORS GUILD OF AMERICA

Mr. Burton: Thank you, Mr. Chairman, for this opportunity to be here today. As Senator Allen said, I am representing the Directors Guild of America here today. I am a member of the national board of the DGA as well as a Co-Chair of the Task Force on Social Responsibility.

But I am also wearing a couple of other hats in my appearance today. I am here also as a children's advocate, a child advocate. I spent the last, the better part of the last 20 years engaged in efforts to use this very powerful medium of television and film to steer children back in the direction of literature and the written word.

I am also here as a parent as well. I have a 23-year-old son and my daughter Michela will be 10 in a few months, and I also have a 4 and a half year old granddaughter as well, who is a very avid movie watcher, as our my two children, and they are all consumers of media and popular culture.

So this is a very important issue to me and I want to assure the committee that it is a very important issue for the Directors Guild of America.

Very briefly, the DGA sees its mission as that to protect the economic and creative right of directors, and all the while working to advance our artistic freedoms and to ensure fair compensation for our work. This issue of smoking in movies is very important to us because of the unique roll the director plays in the film making process. It is the director who is at the center of the creative vision and is responsible for the myriad of creative decisions that go into the making of a feature films. The pre-production, the principle photography and the post production, all of those thousands of decisions that eventually end up on the screen are all, those creative decisions, are all filtered through the director.

I believe that in essence directors are seeking out the truth, and based on the text or a narrative, the director's job is to represent that truth through all the elements of storytelling: set design, costumes, properties, etcetera. I believe, like most personal traits, smoking can be an important signal that reveals or underscores the emotional or mental state of a character.

In other instances, portraying smoking on the screen might be necessary in establishing historical accuracy, be it in the battlefield, in a bar, or on a college campus in the 50's. You cannot portray either Roosevelt accurately without tobacco, without having a cigar or a cigarette is part of that portrayal. It would be impossible to do the story of the Rat Pack without depictions of smoking, and in their case without the attendant use of alcohol. The decision to have a character smoke should be exercise by the individual director as they shape a story of their film.

I have believed for a long time that television and film, this very powerful web that we have created that link us globally, is very probably the most powerful tool ever invented in the history

of civilization for addressing societal growth and change. When I was 19 I saw the consciousness of a nation shift as a result of having watched eight nights of television back in 1977. As I look around I see that a significant number although not the majority of people in this room are old enough to have remembered “Roots” when it aired for the first time in 1977. But it was aired in eight consecutive nights of television and America’s frame of reference for the institution of slavery was changed during the course of those eight nights.

This is an incredibly powerful and influential movie. I believe that along with that power goes a commensurate responsibility. I want this committee to know that the DGA takes that responsibility seriously, which is why in 1999 it may the unprecedented move the national board did of creating the Task Force on Social Responsibility.

Along with Taylor Hatford, the very distinguished director, as it was said earlier, I co-chair that task force. I want this committee to know that some of the most prestigious directors in television and film are on that task force. This is not some in-name-only committee. These are working directors, committed and dedicated to the craft of film and television, and they are also committed to carrying out the charge handed to them by the national board.

Since the creation of the task force, we have had a lot of meetings and not just among ourselves. We have met with academics; we have met with medical associations. We met with the studios, theater owners. We have met with just about anybody from whom we might be able to glean insights and knowledge that might be important to our members, as not just film makers but as citizens as well.

Over this past year, the task force has looked very closely of this issue of the depiction of smoking in movies as it relates to teens and its impact on young people. Out of our many

meetings and discussions we have drafted a series of resolutions that were presented up the chain to the various governing bodies of the guild and they were finally then presented to the national board, which unanimously adopted these resolutions on November 13, 2003. Accompanying this testimony those formal recommendations will be submitted, but allow me to just very briefly paraphrase. First, the guild is firm in its belief that allowing a character to smoke is a creative decision to be made by individual directors and that our members' First Amendment right to free expression must be upheld.

The resolution further goes on to state that gratuitous on-screen smoking in films and television should be discouraged; that directors should recognize the social responsibility they hold in making creative decisions including how they depict characters that smoke.

Finally, the DGA would like to take on a leadership role in the industry by creating materials and an outreach campaign for our membership that would encourage their awareness of their social responsibility in the connection with the depiction of smoking in movies.

Mr. Chairman, I want you and the other members of the committee to know that the DGA holds firm in our belief that filmmakers need to be aware of this issue of smoking on screen and teen smoking. Once again, we are committed to educating our membership so that every director might make an informed decision about the depiction of smoking in their films.

To that end, I am very happy today to announce a new partnership between the Directors Guild of America and the Entertainment Industry Foundation which is one of the leading nonprofits in our business that is devoted to education and involvement on a range of societal issues, most particularly, though health care issues. This campaign is going to be launched very shortly and we plan to use written materials, member meetings, most particularly through health care issues. This

campaign is going to be launched very shortly and we plan to use written materials, and most importantly peer-to-peer outreach to inform and educate our membership.

It is our hope that this program will then become a template for the other unions and for the producers as well. The DGA holds every intention that this effort that evolves over time to keep our industry informed and up to date on this issue going forward.

I want to thank you once again for this opportunity to appear before this committee today, and also I would like to commend you on the leadership you show by holding these hearings. I thank you for your time and attention.

Senator Ensign: Just to inform the panel, we do have a vote on, and I have asked Senator Wyden, because I think Senator Allen is going to have to leave also. But when Senator Wyden gets back he is going – either one of the two of them will take over while I go run and vote, and that way we can keep on, keep going and pay attention to people’s schedules.

Senator Allen: Mr. Chairman, if I may, I am going to have to vote and I have some other things coming on. If I may use this, since we have an esteemed lawyer here, I rest my case with Mr. Burton’s testimony. Thank you.

Senator Ensign: Thank you.

Dr. Glantz

STATEMENT OF STAN GLANTZ, M.D., PROFESSOR OF MEDICINE, UNIVERSITY OF CALIFORNIA, SAN FRANCISCO, SCHOOL OF MEDICINE

Dr. Glantz: Senator Ensign, thank you very much for attending this hearing. I think that it shows the level of concern which has grown with the public and public policymakers about the problem of smoking in the movies.

As you heard from Madeline Dalton, there is exceptionally strong scientific evidence that, even after accounting for other factors, smoking in the movies stimulates adolescents to smoke. Indeed, smoking in the movies is a more powerful promoter of smoking than traditional cigarette advertising. Most important, like a drug, there is what is called a dose-response effect. The more smoking in the movies kids see, the more likely they are to start smoking. Equally important, smoking in the movies can actually neutralize positive effects of non-smoking parents as role models.

I think it is important to mention, by the way, while the study that Dr. Dalton and her colleagues did is probably the best study of this it is by no means the only study. There is a very large body of scientific evidence to support the view that smoking in the movies leads children to smoke. In fact, as someone who spent 10 years helping to edit a cardiology medical journal, I would say the evidence we have today that smoking in the movies leads kids to smoke is stronger than the evidence we have for a very larger fraction of what is done to you when you go into the hospital. So there is just no question about the strength of the science.

Now apologists for the studios and the current situation like to say that smoking in the movies just reflects real life. This is simply not true. Since 1950 the percentage of Americans who smoke has been cut in half from about 45 percent to about 22 percent. Yet the amount of smoking we see in the movies is increasing. It has essentially doubled since about 1990 and after falling through the 1950's 60's 70's and 80's, it started to increase dramatically around 1990.

Moreover, since 2002 smoking in the movies has shifted out of the adult-rated R movies into youth-rated films, particularly PG-13. Between 1999 and 2003, 80 percent of the PG-13 movies included smoking. Over that same period, American movies delivered over a billion—that is a “billion” with a “b”—smoking impressions to 6 to 17-year-olds in the United States in just theatrical release, plus many times that more through video and television.

All this exposure is having an effect. Based on the results of the Dartmouth study, we estimated that about 390,000 kids start to smoke every year because of this smoking in the movies that they see, enough to almost replace all the people that the tobacco companies kill every year. We have estimated that Time Warner alone delivered 100,000 kids to the tobacco industry, followed by Disney at about 60,000 kids delivered to the tobacco industry, and then the other studios.

There has been a great deal of concern about why there is so much and so much increase in smoking in the movies particularly in youth-rated movies. We know that in the past that tobacco industry paid Hollywood off to get smoking in the movies. We know that payoffs were at all levels from deals with the studios to free cigarettes for actors and directors. We know that everyone denied the payoffs, including in 1989 hearings before the United States Congress.

We also know from documents that have come out through the litigation against the tobacco industry that everybody lied about it. We know that the tobacco industry said that they would stop making payoffs for smoking in the movies in 1989. And we know again from the secret documents made available from the litigation against the tobacco industry that inducements continued at least into the mid-1990's when the trail goes dark.

Today as in the past, we hear everyone denying that any money or any other favors are changing hands. And, despite searching for the money, no one has been able to prove it is there.

But there are three things we do know. One is that both the tobacco companies and the motion picture industry are exceptionally talented at hiding money and creative accounting. We know that there is more smoking in the movies than ever, more than there was in 1950. And it really frankly doesn't matter if people are getting paid off or not. If Hollywood is getting money to deliver 390,000 kids to the tobacco industry every year because they are still getting paid for it, they are corrupt. If they are doing it for free, they are stupid.

The real goal needs to solve the problem by reducing the does of smoking in the movies delivered to kids in movies produced for and marketed to kids. That is why I have suggested four simple steps to reduce the dose of smoking that kids see in movies.

By the way, I am a professor. I am as committed to freedom and free speech and the First Amendment as anybody. I have been sued twice by the tobacco industry and mounted First Amendment defenses. But with freedom comes responsibility.

The first thing we have recommended is an R rating for smoking. This would be a simple change to the existing rating system that the MPAA has had for years, and just having an R rating for smoking would cut the dose and the effect by about 60 percent. An R rating for smoking in the movies would probably prevent 200,000 kids a year from starting to smoke. It would cost nothing and it would not represent anyone's infringement open on anything.

It would not say to Hollywood you cannot put smoking in the movies. It was just say to Hollywood we are going to treat smoking as seriously as we treat using the word "fuck." If you use the F word once in a sexual context you get an R rating. That has not destroyed Hollywood. That has not prevented people from making excellent movies. It leaves the choice with the people

making the movies. People make movies knowing what the rules are and if the rules said you put smoking in, you put a little tobacco promotion in if you think it is necessary for the plot, or the story, fine you do that; just as you can use foul language, just as you can have a lot of violence, just as you can show nudity; it just labeled with an R rating which substantially reduces the number of kids who see the movie.

Now, what do I think would happen if you did that? I think when they made "Men in Black" they would have said: You know what, it isn't worth it to get an R rating to put a little Marlboro promo in there, so we will leave it out. But that would be the director's choice, that would be the producers choice.

And by the way, all the films that we heard about that had smoking in them -- "Band of Brothers", "Saving Private Ryan," "Schindler's List"-- are R rated films. You know, those would not be affected at all by the proposal that we have advanced.

The next one, as you heard from Attorney General Curran, is we would like to see a certification at the end of the movie that nobody got paid off. Everybody says they are not getting paid off. We would like to see it certified.

We would like to see an end to brand identification. If you look at the classic movies up until about the 70's, there was no any brand identification. It started when the big payoffs started.

The last thing is to run an anti-smoking ad before any movie has smoking in it. There is good research to show that neutralizes the pro-tobacco effect without affecting how much people like the movie.

None of these recommendations would require any change in the content of the film if the director, the writers, the actors wanted to make the film. It is simply a matter of labeling and controlling whether or not kids have access to the film. These steps are so reasonable they have been endorsed by a wide variety of major organizations: the World Health Organization, the American Academy of Pediatrics, the American Heart Association, the American Legacy Foundation and others. Most important, these policies, particularly the R rating could be implemented by the motion picture industry within its current practices and without requiring governmental action. You can simply take the language in the ratings code devoted to language and apply it.

Unfortunately, though, the people in Hollywood working with me on this issue are convinced that until the studios think that Congress is going to force some kind of law down their throats they are not going to take voluntary action. I think voluntary action is the solution. But as Senator Wyden said, right now education is great but there is no consequence for ignoring the education.

So I think -- I hope to see Mr. Valenti and the theater owners take the evidence and take meaningful voluntary action before the pressure grows to ask Congress to legislate or before one of the enterprising attorney generals who is looking for the money, and there are several, finds it and Hollywood is confronted with a major scandal.

Cigarettes don't sell movie tickets. The First Amendment freedom of creative expression is not being impinged by adding smoking to the standard for a voluntary R rating. Nobody in Hollywood says they are making any money off of this, or so they claim, so I don't understand why the MPAA and the others are digging in their heels on this issue. What is behind this curtain beside the tobacco industry? I don't see, frankly, anything here worth defending let alone worth

incurring the wrath and suspicion of every American parent and the 390,000 kids a year who are addicted because of smoking in the movies. Thank you.

[The prepared statement of Dr. Glantz follows:]

Senator Wyden [presiding]: Thank you.

Mr. Yerrid.

STATEMENT OF C. STEVEN YERRID, THE YERRID LAW FIRM, TAMPA, FLORIDA

Mr. Yerrid: Thank you, Senator. First of all I want to thank the chairman and each member of the committee for having the opportunity to appear today.

I think the endeavor that you are undertaking is among the most –

Senator Wyden: Mr. Yerrid: I think we are going to have problems hearing you. Grab that mike.

Mr. Yerrid: Oh, sure. Excuse me. I am sorry, Senator.

I think first of all I wanted to thank you and express my appreciation for having the opportunity to appear today. Hopefully my input as a trial lawyer will not immediately be met with disdain.

Hopefully my input as a trial lawyer will not immediately met with distain. I see my favorite son from there from the State of Florida, Senator Nelson, and I ask his protection. At least hear me out.

I was a trial lawyer for the last almost 30 years.

Before than I ran the Senator's elevator right down the street, right down the hall here. I used to come there and watch these hearings. I was able to attend Watergate and watch the staff work very, very hard. I know some of the preparation it takes to even float a hearing like this and allow this distinguished panel.

I remember Mr. Valenti some 25 years ago when he first started in the motion picture business over there at his office. I think he let me sneak in and watch one of his movies at that fancy theater. I remember the six nights that changed America when I watched that star down there perform in "Roots."

But boy, do I remember how I got involved with tobacco and how my mother and father were both lost to me early in life because of tobacco addiction. I remember that real well. And I remember when our late governor Chiles, who was distinguished and kind enough to represent the State of Florida in this great body, the United States Senate, for three terms. I remember well when that phone call came and said: Would like to join in a team of 11 private lawyers taking a crazy stance against an industry that has never been beaten? We can do a lot of good. We have got a chance to change the world. We can save a bunch of lives.

I remember the dedicated health professionals that came to assist us and said: Listen, we can show you how this cigarette addiction is killing young kids, 400,000 Americans every year. We can show you but we can't stop them.

I can tell you, when I made that commitment to do it that commitment carries through and includes today because I have got people like Senator Nelson who have taken the time to tell the people of Florida that we have become an embarrassment to this country. And "embarrassment" is the only word to use. We have betrayed our generations.

Whether you talk about the silver screen and the cigarette products in the cinema -- and by the way, I defend and honor the First Amendment more than most trial lawyers, I would think although I abhor advertising by lawyers. I think it does not do us good in our reputation. We wrote the Constitution, not those 30-second slick spots. But that is for another day.

I will tell you this: Movies change ideas and lives, and the inclusion of cigarette products may or may not be something that would be subject to, I think Senator Allen has left, but nannyng by government. I am not a big fan of nannyng. I am not sure that Mr. Valenti could ever be exceeded in terms of is unique ability to express all the concerns he did so very graciously. I don't know how you meddle in something like that, artistic talent, First Amendment. I don't know if it can be done.

But I know what can be done that does not disallow any of the notions that have been implanted before this committee. With education comes enlightenment and enlightenment becomes a wonderful illumination of what the truth is. The truth is undeniably cigarette smoking and nicotine addiction kills people. It is the only legal product when used and taken as directed causes sickness and death. How many times do you have to hear it?

Senator Wyden was there in 1994 when the seven blind mice, we affectionately called them, got and said: I swear, I swear to God nicotine is not addictive. We know now what the truth is don't we? Do we have to have a refresher course on the promises that the tobacco industry made to us? Do you really want me to tell you as a lawyer that in 1964 the industry said that it was not marketing to kids and adopted voluntary ad codes and said, oh, we aren't going to use the movies, we are not going to use television, we are not going to use the media, where did that get us?

How about in 1970, in response to the T.V. ad ban, the industry promised not to try to reach kids by sponsoring televised sporting events? Are you kidding? How much fabrication do we need before we say enough is enough?

Or in 1982-83, during the Congressional hearings when the industry, the tobacco industry, promised and said: Look we are never going to market to kids; we are going to stop it.

You want a good example? With all respect to Michael Moore, who is a great attorney general from Mississippi, the State of Florida was the first state in the country to take the tobacco industry into an American courtroom and seek justice. We started a trial for 3 weeks. It was attended by our Attorney General, Bob Butterworth, and Lawton Chiles and it was in the third week of jury selection we settled that case for 13 billion dollars.

But we did something in Florida that had never been done in the history of this country. With all respect to the attorney generals from all the other 46 states in the multi-state agreement, the master settlement agreement that it is called, in 1997, for the first time we got the tobacco industry to concede First Amendment restrictions which we could never have gotten legally. We got education, we got prevention, we got the elimination of billboards around our schools. We retired the Marlboro Man permanently and we put Joe Camel in his grave. We did all that.

Florida was looked at and hailed as a landmark state. Mississippi then adopted those in the most favored nation provisions, adopted those restrictions on advertisements. We were home we were on our way. And in the agreement, which then served as the format, with all respect to all the remaining states in the country, in that agreement were the key provisions and the MSA took it a step further. It put the prohibition on the cinematic aspects and the use of movie products—excuse me, cigarette products in movies. We were on the way.

What I came to tell you is that I am ashamed of what my State has done. You see, if you look at Senator Wyden's State of Oregon, the great State of Oregon, you would learn -- and these figures I believe are accurate--that while they ranked 28th in receipt of tobacco revenue in terms of the

settlement moneys, the State did not do too badly, but in prevention spending ranked 35th. It is something that can be bettered. It is something that can be worked on.

The great State of Nevada -- and I am sorry Senator Ensign is not here. I am going to see his father Saturday night when I go watch another one of Floridians, Roy Jones, defend the light heavyweight championship of the world in his town of Las Vegas. But I am sorry he is not here because I would have complimented him. Here he is. Senator Ensign, I was just going to compliment because your State of Nevada ranked 40th in the receipt of tobacco settlement funds, yet ranks 25th in spending those fund for prevention programs. It is something to be applauded.

But I am here today, as Senator Nelson alluded to, and I would comment and commend Senator Nelson once again. Back in '97, '98 when Senator Nelson was our insurance commissioner he did something that demonstrated courage. He bounded in a vote of two to one with Lawton Chiles as the Governor and made a decision to divest the State of Florida of hundreds of millions of dollars that were invested in the tobacco industry. We now in the State of Florida have reinvested those tobacco funds.

I will wrap up, but I want to show you one thing, Senator Ensign. I want to show you-- can I have that chart please? I want to show you where the great State of Florida, which was a landmark state in tobacco prevention and the number four State in receipt of revenues, now ranks in this State for prevention funding. We are now 44th in the country. We have gone from 4th in revenue to 44th in prevention.

I have Joe Scarfone. I just want to introduce him for the record so you can see a face of these young people we are talking about. Joe Scarfone from Florida

Senator Ensign [presiding]: Mr. Yerrid, could you wrap up.

Mr. Yerrid: Yes sir. I just want to say that this program is a disgrace in Florida. If we don't have some way, with all respect, Senator Ensign, to at least cause voluntary compliance in spending to increase in prevention, we cannot withstand the prohibitions.

Thank you sir.

Senator Ensign: Thank you.

I would also like to remind our witnesses that appropriate use of language only when you are testifying for the United States Senate would be appreciated. Thank you.

We will go to a round of questioning. I will start with myself now. I have just a couple of brief comments on some of the testimony that has been presented today. I think it has been excellent. I think it has been a very healthy exercise that we have had today.

Mr. Burton, when you talked about the directors I thought what you said was excellent about the directors needing their freedom of expression. I could not agree more strongly with that but I also you talked about the responsibility. There is, I agree with you, this visual medium-- Mr. Valenti, when you talked about the way that a director can take you through the full realm of the emotions, that cannot be understated, and because of that there is a responsibility that comes with this power.

Freedom -- our founders talked about this. Freedom, you can't just have freedom without personal restraint. As a matter of fact, the less personal restraint -- and I am kind of paraphrasing

here, but our founders talked about: The less personal restraint, the more people that you will have rise up to put laws on people. That is why we are calling for personal restraint; we are calling for personal responsibility.

You have not heard me say one word about government action here other than having a public hearing having raising this issue up, is all that I have talked about. I have not talked about proposing legislation. I have not talked about any of that. I have talked about the need to raise this up, first of all so parents understand the significance.

Dr. Glantz, Dr. Dalton, parents are not aware that there are scientific studies out there that back up many people have a gut feel for, that smoking does influence -- smoking in movies does influence. By the way, I would say not only smoking in movies but I would say smoking by celebrities on MTV and VH1 and the like. You know, they see people up there, you know you go to a concert and you see your favorite rock musician up there smoking. I would call on those people also to have personal responsibility to understand the kinds of effects that they are having on young people.

We just have to ask ourselves the question: If you knew what your behavior was doing, was going to influence in a negative way that would cost somebody their lives -- it is kind of like asking a question, if I knew that if there was a good chance my behavior would affect teenagers in such a way that they would get AIDS, do I have a social responsibility to check myself? I think the answer is yes. There is no question about it. That is really what today's hearing is about, is to bring that out.

Having said that, to get to the questions, Mr. Valenti, I want to start with you. I want to have this for the record. When you have talked about not wanting to put all of these other things in movies

or in the rating system, to garble it up, when we were out in California. Rob Reiner, if you don't mind me quoting him, because I think this is pretty accurate -- he can write in if I am wrong on this, but pretty accurate -- when he talked about cussing in movies-- and we were off the record so he could use the actual words -- cussing in movies never killed anybody; smoking does.

He very much puts that personal restraint, personal responsibility on the movies that he makes. Occasionally he feels that he has to put it in for historical accuracy, whatever it is.

Having said that, why do you support using language in the rating system, not as far as R-rating things but in the informative rating system so that people can make decisions on whether to watch something? Why is that good but something about tobacco use not good?

Mr. Valenti: Mr. Chairman, first before I begin, Dr. Glantz indicted the entire motion picture industry without one sliver of evidence. When I sue you for malpractice, I want Steve Yerrid to be my lawyer; I just want you to know that, malpractice for the use of language, sir.

Having said that, your question deserves a good answer. I am going to give you the best that I have. It may not be suitable. This rating system, which I invented on November 1st, 1968, has lasted in this marketplace almost 36 years. Nothing lasts that long, Mr. Chairman, unless it is providing some kind of a benefit for the people that it aims to serve, in this case the parents of America.

We take surveys all the time --

Senator Ensign: Mr. Valenti, I want to get to the essence of the question. That has been modified. You have modified it over the years. Why is it ok to modify it for nudity, for language, but it is

not ok to modify it for tobacco, the number one preventable, easily preventable health problem in this country?

Mr. Valenti: The answer – I am sorry if I was too verbose, I will try to make it compact. Our surveys tell us that the three things that parents in America are most desperate to have their young children avoid are: language, particularly from the South where I lived, from Texas all the way up to North Carolina along the southern r. Language is one of the things they most find offense, the use of God's name in vain for example. In urban centers it is violence that disturbs parents; and in other parts of the country it is sexuality.

Very seldom unless it is triggered, have we had anybody raise a ruckus about smoking. If we put an R rating on smoking or we said we will give you some information on smoking, the environmental people would come, out as well the cruelty to animals, as well as the alcohol people, the alcohol abuse people. And there are a lot of people who are now looking at obesity and diet.

I cannot tell you how many people want to be recognized in the rating system. I have strived over the years to keep it simple, to keep it uncluttered, not burden it down. That is the reason why we do not do it.

Senator Ensign: Well, Mr. Valenti, if I may be fair, let's take the cruelty to animals. I am a veterinarian. Hollywood has responded to that. Let us face it, I mean: In this movie no animals were used. We know that every single movie that uses animals has that as a tag line. Hollywood would, and American and actors and directors -- you have censorship on cruelty to animals. You will not allow that. Whether the director thinks it or not, you don't allow that. We know that.

So this is, though 400,000 people a year are dying because of tobacco use. I don't understand why you can object from a social responsibility aspect to providing more information, like a T rating when there is tobacco, and maybe having and encouraging your members and theater owners coming out and saying that for public service announcements, especially because of the studies now. We have scientific studies on this -- why you would not want to encourage more social responsibility, doing PSA's and the like in the theaters, along with the tobacco rating.

Mr. Valenti: I encourage PSA's in the theaters. However that is not my turf. That is the National Association of Theater Owners, and indeed I think I have put in touch Attorney General Curan, Attorney General Blumenthal, Attorney General Sertlip, Attorney General Sorrel, to meet with the theater owners on that very subject.

I am saying to you that I want to make sure this rating system does not be cluttered up with a lot of other people who have equally passionate views about being recognized in the ratings. I have gone through this, Mr. Chairman. I am not giving you evidence without out proof. I have lived this for 38 years and I understand it very well.

Senator Ensign: Well, Dr. Dalton, in your study, when you were doing your study and you saw the effect that it was having with children, what would be your recommendations? I know that is not your role, to affect public policy, but you saw the effects of this. What would be your recommendations as somebody, as a social scientist studying the correlative effects or causative effects, whatever it is? What would be your recommendations coming forward to the movie industry, maybe just as a concerned citizen?

Dr. Dalton: Senator, I think I am probably better qualified to answer that question as a parent, since we did not specifically look at policy implications in our study. But I will tell you as a parent of 12-year-old twin boys I do use the rating system and I use it a lot, and I appreciate the information that it gives me.

But as I understand it, the intent of the rating system is to inform parents of material that may be inappropriate for children. And now we have evidence that smoking is inappropriate for children. Granted, it is new evidence and probably most parents are not aware of that, and over time that will change and hopefully will create public demand for the rating but I think we have a responsibility to inform parents of the content of movies.

Senator Ensign: And I will close because my time is up and I recognize Senator Wyden. Mr. Chairman, if you want to take another half an hour or so, it is all right by me.

Senator Ensign: No. I just want to make one last point, and that is, Mr. Valenti, when you do your surveys most parents are not aware of this evidence. I would say the vast majority, 90-plus percent, are not aware. So, if we formed our policies up here just purely based on public opinion, we would be very poor leaders. Sometimes public opinion is shaped by the policies that you implement.

Once again, I would appeal to the MPAA's and the rest of everybody involved at any aspect of this on their level of social responsibility.

Senator Wyden: Thank you Mr. Chairman.

Let me start with Mr. Valenti, a gentleman whom I find that I agree with virtually all of the time. But I think he knows that I do not think this is an area where enough is being done.

I want to begin with the fundamental offer you made about we need more education, we need to make people more aware. No question about that. How many more meetings are going to be needed? And in particular, what measures are you using to determine that some progress is being made here?

In other words, you have asked to keep government out. No member here is running around with bills in their pocket. But would seem to me that we ought to be able to hear the industry is measuring progress in this area by A, B, and C, and we review it every year. Start, if you would, by telling me just how you all are measuring your progress as an industry in this effort to better protect the health of our children?

Mr. Valenti: Good question, Senator Wyden. I think as a result of the educational programs of the DGA and us – this is not, we did not just do this but Attorney General Curran or Senator Ensign. We have been working on this for some years. I will give you some evidence. In 2003 the American Legacy Foundation, which was funded by the nationwide tobacco settlement, issued national survey results finding that 23 percent of high school students said that they had smoked tobacco in the preceding month, a drop of 28 percent since the last time the survey was conducted. Similar data from the Centers of Disease Control, morbidity and mortality report in November 2003, the last available review of tobacco use among middle and high school students in the United States during the period 2000 to 2002, “Current use”, said the Centers for Disease Control, “Current use of any tobacco product among” –and I quote—“ high school students declined significantly, from 34.5 percent” –

Senator Wyden: If I might, Mr. Valenti, that is not responsive to the question about movies.

What is the movie industry doing to measure progress? I know there is a debate with respect to whether young people, whether tobacco use in young people is going down. But I would like to have, since you want the government to stay out, what is the measure by which we can assess whether the movie industry is making progress as an industry itself?

Mr. Valenti: Well, if the movie industry is to be blamed for the upsurge in smoking of teenagers, can we not take some credit for the decline of 34.5 percent to 28.4 percent cigarette use down from 28 to 22 percent? I mean it is a no win situation Senator. If Dr. Dalton's study is correct-- and she and I will talk about that later -- than the movie industry is to blame. Here we show from the Centers of Disease Control and others cigarette smoking among youngsters is going down.

Senator Wyden: I will not try to ask the same question a third time, but I will hold the record open because I would like to have some indication of what the industry, the movie industry, is doing to measure progress in reducing the glorification of tobacco in movies. We can have a debate about the overall figures, but since you want the government to stay out -- that is certainly a reasonable point to try to convey from your perspective -- I need to know what is the industry doing that I can measure over a 2, 4-year period to actually reduce the incidence.

Second, so we are clear on this question about parents, if I and others who have been involved in this effort can persuade parents to write you scores and scores of letters like they did on language, will you look at ways to do with more with respect to tobacco in movies?

Mr. Valenti: I do not have to tell you in public life, sir, as I have been for the last 40 years, to trigger e-mails today is the simplest thing in the world and it happens all the time. I am saying to

you that when I get a thousand e-mails all with the same letter, same words, I know that somebody has said send this in, so they do.

We try to track it with surveys with parents to find out what they think about the rating system, how it can be improved. Mainly their concerns are language, violence, and sensuality.

Senator Wyden: If we can get the word out to the parents, I can be quite certain in fact that they will communicate to you that they feel strongly about this as well.

Let me ask you about this point you made with respect to the artistic issue and particularly you cited movies involving the times, 15, 20, 30 years ago, before we knew all that we know about public health and the risk of smoking. What is the case for having so many characters smoke in films made about the times in which we live? In other words I can see how one would argue that if you are trying to convey something about military life say in the 50's or something like that you want to portray it accurately. But now, at a time when we are trying to educate young people, what is the case for having so many characters smoke in films made about the times in which we live?

Mr. Valenti: Well if I were a director I would be like Rob Reiner. I probably would not have any smoking in my film. I would find another way to depict character. But I am not a director.

Senator Wyden: Well it goes back to my point. I think the ball is in your court, Mr. Valenti. I have been involved in this issue for a lot of years and I didn't come here to introduce a whole package of bills. But I guarantee you that if something is not done by the industry there are certainly going to efforts. I mean, you have my friend Senator Ensign who certainly is no wild-eyed person from the far left.

Mr. Valenti: Hardly.

Senator Wyden: -- speaking pretty bluntly. So the ball is in your court, and I just hope that you all will seize it and it will be dealt with that way, without the Congress, because a lot of us -- the one thing we are persistent in we will stay avid until we get it done. I mean people clap me on the back in all that in 1994 and said we turned the corner. We have not done anything of the sort.

Every time we close a window in terms of trying to protect young people, another window opens,

So, I am anxious to work with you, but the ball is in the industry's court and we have got to see progress. I am going to hold the record open so that us specifically how the industry, the movie industry, is measuring progress in terms of reducing the roll of smoking in the movies.

Mr. Valenti: May I respond, Senator --

Senator Wyden: Of course.

Senator Wyden: by saying that there are so many legalities of human behavior that cause death, how do we deal with all of that? Do we have responsibility for drunk driving? Do we have a responsibility for murder by guns? Do we have a responsibility for car accidents for people, or alcohol abuse? How do we deal with all these social facts, which cause tragedy and death and despair?

The rating system cannot be, cannot be a religious or public policy. It is just trying to get parents some idea about the three things they most care about, and that is -- also drug use, we do rate for drug use, and we rate for thematics. If there is something that has something, say a theme like incest that is in the shadows of this movie, we rate for that as well. But to start talking about

things that kill people. There are so many things in this country; we are not capable of bearing that burden.

But to start talking about things that kill people -- there are so many things in this country. We are not capable of bearing that burden.

Senator Wyden: No quarrel about the proposition that there are lots of ills out there and you cannot solve them all. This happens to be one of the most preventable. The reason that you have three United States senators going at this in a bipartisan way is that a lot of this is relatively low-hanging fruit. I mean we know that this kills young people. We know we can prevent it. We either try to prevent it early or we play catch-up all through their lives.

You are absolutely right, you cannot turn out the legislative sausage-maker and cure all the ills but when it comes to prevention, we think this is one you can get and that is why we feel so strongly.

Thank you, Mr. Chairman.

Senator Ensign: Senator Nelson.

Senator Nelson: Thank you, Mr. Chairman.

Well, Mr. Valenti, I want to make a suggestion that you can implement before you retire this fall after a most distinguished career in the movie industry of some 4 decades. There seems to be consensus at this table as well about PSA's and especially PSA's being run at the time as you are settling into your chair, digging into your popcorn, and drinking your soft drink

A PSA helping kids that are so impressionable might well be something that you can start before your career comes to that glorious day of retirement of which you have so many accolades and just deserved. This would be another jewel that you cut put in your crown of many jewels. I would commend it to you for your consideration.

Mr. Valenti: That is why I think Attorney General Curran and others met with the National Association of Theater Owners, who have sole responsibility for what goes on their screens before and during. I think that the Attorney General did meet with the head of the National Association of Theater Owners.

Senator Nelson: Well, if it is going to happen it is going to be because you are pushing it, I suggest.

Dr. Glantz: Why do you think that changing in the rating of a movie --let me start over. Why do you think changing the rating of a movie is really going to have an effect on lessening tobacco use?

Dr. Glantz: Well, before I answer that, Senator, can I just offer a couple of quick comments on earlier statements? Would that be in order?

Senator Nelson: Of course.

Dr. Glantz: First of all, just for the record I would like to apologize for offending the Senate's sensibilities by using the "f" word but that was done quite consciously to make the point that the use of a word will get you an R rating and, while many people are offended by it, it does not kill anybody. And again, all we are asking the MPAA to do is to treat smoking at least as seriously as it does language.

I would like to also add-- and I will enter this into the record, the American Legacy Foundation actually did a national random digit dialing call last May of 2800 adults and 46 percent of them answered yes to the following question: "As with violence and sex, movies with smoking in them should be rated R." 46 percent of all adult parents said yes and 49 percent of the non-smoking parents said yes. So, Mr. Valenti, I would suggest that the evidence of substantial parental concern is there.

Two other quick points I would like to make is, in the same CDC report that Mr. Valenti quoted showing the reduction in youth smoking, the CDC also said that if there had not been a big increase in smoking in the movies there would have been a bigger reduction in youth smoking. So since you consider that an authoritative source, I would read the whole thing.

Finally, I just want to take exception to Mr. Valenti's statement that I slandered the movie industry by making statements with no evidentiary base about the ties to the tobacco industry and the payoffs. Those are in a paper published by Curtis Beckinson and myself. It has been entered into the record and I will be happy to provide a copy.

Senator Nelson: Okay, now my question.

Dr. Glantz: with regard to your question—

Senator Nelson: Let me restate it so it is very clear. Why do you think an R rating is going to change the behavior?

Dr. Glantz: I think an R rating will -- it is very simple. If movies are rated R, kids are less likely to see them. Their parents are less likely to give them permission to go, and if they try to go against their parents' will; only about half of them could buy tickets. And that is why you need an R rating rather than something such as a PG-13 T. It would simply reduce the exposure.

If you look at Dr. Dalton's work and the other work, you have what is called the linear dose-response relationship. The more smoking kids see, the more likely they are to smoke. And we would cut the exposure by 60 percent Senator Nelson: I have got to move on.

Dr. Glantz: That is the answer.

Senator Nelson: Mr. Burton, do you agree?

Mr. Burton: Well, senator, I am not an expert on the rating system and the affect that a change in the rating might have on behavior.

Senator Nelson: Would the Directors Guild support such a rating?

Mr. Burton: I am not certain. I would be happy to take this issue back to the DGA and have us look at it. I will though say as a former teenager the rating system never prevented me from seeing a movie that I wanted to see. In fact, it was quite the opposite. When I was a teenager, if it was rated R I probably wanted to get into it even more fervently if it was slightly out of my age range.

Senator Nelson: All right. Mr. Yerrid, dramatic testimony. The red shows what the settlement is each year in the State of Florida. The blue that you can't even see at the bottom of the chart, the year that Florida had \$562 million in settlement, which was '98-'99, it put 70 million in, close to the CDC target.

Mr. Yerrid: that is correct, sir.

Senator Nelson: But now last year, when there was \$490 million, the State of Florida put it only a million into prevention programs. This year, when there is \$400 million in the settlement, they are only putting in a million again.

Why do you think that the state legislatures to finding it acceptable to decrease funding in this area, which was clearly a part of the tobacco settlement agreement?

Mr. Yerrid: Well, legislatures traditionally have failed and provided no real change. I would like to just follow up with what Senator Ensign and what you have said and everyone else. We all have an obligation as parents, we have an obligation as teachers, we have an obligation to do one thing that your PSA suggestion to Mr. Valenti was so taken to address. That is, to educate the people about the risks that are going to assumed.

What addiction does is precludes choice. Once these 10-year-olds and 11-year-olds get hooked, you can talk to them forever but the chances are they are going to stay addicts.

I am just suggesting to you that what we gave our word on in the tobacco settlement was that we would give youth a chance by educating them on the ills of tobacco usage. So if we don't the PSA, they walked into that movie theater at least with the armament we could provide an educational basis that says: Oh, smoking is bad for you; gee, smoking can kill.

The baby boomers, we are burying our parents because they didn't know better. Our generation knows better. We have an obligation to pass this knowledge on.

So, what has happened -- and I hate to say this in a public forum, but I guess I will. What has happened we have become addicted to tobacco money. There is almost an insidious subliminal desire for the tobacco companies to succeed, because you do understand that tobacco settlement is geared toward consumption. So, that if we are successful in the prevention programs, all the States will not get any more money in tobacco settlement. We do understand that, just so it is put out there to the American people.

In fact, if people smoke they will die about 7 years earlier than they would otherwise die. So actually the State in a kind of very perverted way wins because there are no retirement age elderly benefits that need to be paid to these smokers. In addition, they get all the taxes.

So what this shows is in fact an absolute acknowledgment that the tobacco industry is alive and well, it is back. And if you got billions of dollars being spent on a spin message that says, hey kids, come on and try smoking, and you have zero dollars being spent on the educational side, guess who wins? The hundred of billions of dollars, not this one million

In our state we have \$640 million a year spent by the tobacco companies on advertisements. Right now the legislature in its infinite ignorance, not wisdom, has appropriated \$1million dollars. It is a crime to these young children.

Senator Nelson: Mr. Chairman, I would just conclude that by saying that this is a serious policy issue for us because by expenditure of Federal funds, not only through Medicaid, which share, as the Attorney General testified, but also through Medicare. The increased cost of health as a result of tobacco addiction is something that from a financial standpoint we have to be enormously concerned about.

Thank you.

Senator Ensign: Thank you, Senator Nelson.

As we conclude, I want to follow up just a little bit because I did not get, with my time, Mr. Burton, to discuss with you because I think it is important for people to understand this aspect, and then I hope that this is one of the things that you will take to the directors as well, because even the historical accuracy -- I still think that that even needs to be asked the question. It may be accurate but is it necessary?

An example. As a matter of fact, I thought the director of “Sea Biscuit” which was one of my favorite movies last year-- it was just a phenomenal movie and I loved it, loved everything about it. There was smoking in that movie, and as a matter of fact, the jockey and the owner -- and I started looking back. That may have been historically accurate. The owner for instance, that Jeff Bridges played, his character may have been accurate. But really, was it a necessary part? I don’t know that it was necessary. I did not see it add or take away anything from his character.

The jockey at the point where he started drinking and started having problems that added something to the character because it was negative and kind of brought it down. But those are the kinds of questions that we want directors asking themselves, and actors --not just directors, actors, producers-- asking themselves: With the facts now in the health studies to back up and know the consequences, now is it really necessary even though it may have been historical?

There are a lot of things about people we don’t put in that would be historically accurate because they may not add or take away whatever from the story. That is the question, just if you could respond to that?

Mr. Burton: Senator, that is exactly the tenor of the conversation that the DGA attends to have with its membership in terms of these written materials. The whole issue, the June issue of the Directors Guild of America magazine is going to be devoted to this issue. It is the center of the next issue of the DG magazine. In our membership meetings, and especially, as I said, in our peer- to- peer groups, we are going to send this message so that directors can be sensitized to the issue.

I absolutely agree with you, there are times when it may in fact be historically accurate but not necessary. And it is those times that directors need to be informed on this issue so that they might make a decision that carries with it the certain responsibility that we have where this power is concerned.

Senator Ensign: Well, I appreciate that comment, and that is the -- as Senator Wyden talked about, I would encourage the MPAA, the Directors Guild, all of the people involved in the movie industry to measure what you are doing for us, so that we can periodically have these hearings. I hope that the scientific community will do more studies that give us more evidence of the effects. And when good things are being done let us study whether they are effective.

I am still hoping that the Motion Picture Industry will think about, as we have new technologies -- I know the directors are not crazy about some of the new technologies coming out there where, I guess there is a new DVD player out there that will allow you to block certain content. But --

Mr. Burton: Alter.

Senator Ensign: Alter certain content.

Mr. Burton: Alter content, Senator.

Senator Ensign: Yes. But the fact is technology is out there and you are not going to stop that. The bottom line is that, can we protect children with the responsibilities, with the various things that we are going to be doing. That is the bottom line, and without hurting the creative abilities where it takes away from the movie I guess is the best way to say it.

Dr. Glantz Senator Ensign, could I?

Senator Ensign: Let Mr. Burton respond.

Mr. Burton: Senator, I would like to go on record, and I hope I am not speaking out the side of my next here and I don't believe that I am, but if the attorneys general and Mr. Valenti are

successful at convincing the National Association of Theater Owners to engage in a process of public service announcements, I know that myself and other director members would be happy to donate our services pro bono in an effort to make these spots of the highest quality possible.

Senator Ensign: Excellent.

Mr. Burton: I feel very confident that sort of suggestion would be really embraced at the DGA.

Senator Ensign: That is the kind of things we were looking for out of this hearing, so I appreciate it.

Dr. Glantz, we will give you the last comment.

Dr. Glantz: I would just like to pick up on –

Senator Ensign: As long as it is something I agree with.

Dr. Glantz: I think it will be, actually.

I think that the example of “Sea Biscuit” that you raise is a very interesting one, because the smoking was presented in “Sea Biscuit”, a PG-13 film, as necessary for historical accuracy. Now I was not around back then but I would bet the jockeys and the people hanging around horses used a lot of language, which was probably inappropriate for the United States Senate. But, there was no foul language in that movie at all.

The reason was, had they included it, which probably would have made the movie more realistic from an historical perspective, it would have received an R rating. And the writers, the producers, and the directors made that decision because they wanted a youth-rated film. And I submit that if you had an R rating for smoking, “Sea Biscuit” would have been essentially the same movie, but in addition to not having foul language there would have been no smoking and that in aggregate

would dramatically reduce the exposure to children and the number of kids who start smoking, without inhibiting anybody's creative freedom.

Senator Ensign: Well, I want to thank the entire panel. I think it has been a very healthy discussion. I hope we get a lot of press coverage on this, mainly to educate parents. That is really what this thing was about, was to bring up the awareness level of this hearing. And I appreciate everybody testifying. Thank you.

