

- **B R Bloom** – I would like to conclude by making two points. Clearly, taxation and individual choice are not effective strategies for reducing exposure to second hand smoke. What has been remarkably effective has been local laws and regulations that are making smoking socially unacceptable. There were great protests in Dublin, New York and Boston that eliminating smoking in restaurants and bars would devastate the businesses; the data have confirmed precisely the opposite --- business increased, and there has not been a discernable detrimental economic effect of banning smoking from public places.

- In the 2004 Senate hearings on smoking in the movies MPAA Director Jack Valenti based his testimony on why the industry should not make any change in policy regarding smoking on the paramount importance of directorial freedom in films. Let me be clear --- we respect the importance of artistic and directorial freedom no less than we respect academic freedom in universities. Yet both of our schools [Harvard School of Public Health and Johns Hopkins Bloomberg School of Public Health] have made the hard decision to forswear accepting any funding for research from tobacco companies or related industries.
 - A little history on thinking about freedom of expression may be helpful. I do not pretend to be knowledgeable about the law, but in our efforts at Harvard, looking at some precedents was quite helpful. What I learned was that freedom of expression is not without limits, and first amendment freedom requires responsibility.
 - In a landmark Supreme Court decision in 1919, *Schneck vs US*, *Baer vs US*, written by that great Harvardian, Oliver Wendell Holmes (notable not least for the fact that it consumes only a single page), he wrote for the Court,

“But the character of every act depends upon the circumstances in which it is done. *Aikens v. Wisconsin*, 195 U.S. 194, 205, 206. **The most**

stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 439. **The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.**” (the emphasis is mine)

Needless to say, the irony will not be lost on this group that the example cited by Justice Holmes was “shouting fire in a theater.”

- Academics, no less than the motion picture industry, were devastated by McCarthyism. Between 1949 -51 the faculty of the University of California were required to sign a loyalty oath to intimidate them and to enable prosecution when desired. Thirty-two professors were fired, included the greatest professor I have ever experienced, the world’s expert on Hippocrates and Greek medicine, Ludwig Edelstein. As a result, previous understandings of academic freedom had to be redefined.
- In 1970, Academic Freedom was redefined by the American Association of University Professors, and the Association of American Colleges, to protect freedom of speech, and formally to indicate their intent to allow and encourage controversial views in the university.
- In 2000, a year after I became dean, the Harvard School of Public health voted as formal policy unanimously to forswear accepting money for research from the tobacco industry or tobacco-related industries.
 - One of the understandings that came out in our

discussions of academic freedom was that we could not, in conscience, be party to the hypothetical “Auschwitz Experiment”, arguing that, “We are scientists only measuring the temperature”. Scientists have greater responsibility than just measuring the temperature. We believe that filmmakers, too, need to take the consequences of their work into account and act appropriately.

- No one here in this room wants more censorship --- or, I presume, more addiction, premature death and disease.
- My faculty was willing to constrain their academic freedom even to get support for their research and even their ability to make a living and pursue their scientific passion. Your industry in 1984 accepted the principle of voluntary constraints on what it presents to children and youth, What we are asking you to do in the industry is surely not more demanding than my faculty was willing to do at the risk of some careers.
- No one has died from hearing the f-word, but 438,000 people in US and 5 million world-wide die each year from tobacco-related illness.
- We appreciate that movies are expensive, complex and demanding to make. If you are honest I think you will admit that most smoking in movies is both unnecessary and clichéd, and serves to make smoking socially acceptable to kids. To eliminate it will perhaps inevitably require a somewhat greater level of creativity, as have my faculty in pursuing other avenues for research support. But in an industry that can bring the creativity of a Matrix or Spiderman to the screen, we have no doubts that your members have the expertise and talent to rise to that challenge.

Let me summarize our Bottom Line:

Dan Glickman's letter to the State Attorneys General on Oct. 6, 2006 indicated that the MPAA was prepared to consider recommendations from the Harvard School of Public Health, and we are appreciative of this opportunity and responsibility. Based on the compelling body of available scientific evidence, we make a single, simple recommendation:

Take substantive and effective action to eliminate the depiction of tobacco smoking from films accessible to children and youths, and take leadership and credit for doing so. Don't ignore the issue or put a fig leaf on it, like a descriptor on DVDs, that would be the equivalent of the tobacco industry cynically putting smoking warnings on cigarette packages. For industry leadership to have real impact we would hope your message would be clear, simple, and publicly accountable. And we ask all the major studios and guilds to agree to use their leadership to make it their policy.

Thank you for not smoking.