

Executive Summary

In the chapters that follow, the Center explores various issues of importance to the relationship between the First Amendment and the media. Each chapter is written to answer three key questions surrounding these challenges to freedom of expression. First, what is the current state of the law regarding this particular tension between the First Amendment and the media? Second, what problems do the media face with regard to the current environment? Third, what solutions do we recommend to resolve these problems?

The first chapter deals with the constitutional crisis surrounding the Federal Communications Commission's enforcement of its "indecent standards." These rules were upheld in the famous case of a George Carlin radio broadcast in *Pacifica v. F.C.C.* The problem with the rules is that they can be and have been applied in an arbitrary and capricious manner. The solution we recommend is to revisit the *Pacifica* ruling and remove its ambiguity, if not reverse the ruling entirely.

The second chapter builds off the first by examining the attempt by some legislators to equate violence on the media with indecency and thereby make it subject to the same sanctions that apply to indecent broadcast material. While to date the courts have struck down such attempts at conflating violence and indecency, a recent report from the FCC's staff encourages just such a step. We find the proposal to be unconstitutional.

The third chapter examines another type of censorship, the introduction of the V-Chip to rate programs and to allow parents to control what their children watch. We conclude that the V-Chip is a useless bandage that was encouraged by members of Congress to assuage complaints from their constituents. Surveys indicate that parents do not understand the rating system. Furthermore, the V-Chip is not often used and it is easy to circumvent when it is used.

Chapter four focuses on the Internet. It reviews attempts by Congress to impose censorship of indecent material on the Internet and why the courts have undercut these efforts. The Internet remains one of the few new technologies of communication not to be censored by a government. We encourage the Congress and the FCC to keep it that way.

Chapter five turns the equation around and examines the media from the perspective of public access to it. It reviews the ways by which the government has tried to ensure access and examines the various ways by which access can be gained to various media. We encourage solutions that provide a genuine, responsible, civil, and open marketplace of ideas.

Chapter six moves to the corporate sphere and examines the impact of conglomeration on the news media. Ironically, we have moved from a time when there were only three independent news networks, to a time when there are many diverse news outlets but very few companies controlling them. We explore the danger of cable being so diverse that it allows citizens to isolate themselves in the echo chambers of their own ideological biases or to confine themselves to the world of entertainment. However, that is the right of an audience member. One cannot legislate that people watch the news with a critical eye. We do observe that alternate media, such as on-line bloggers, are providing correctives to ideologically driven programming. However, it would be helpful if citizens understood the difference between a news program and a character driven news and interview program which advances an agenda. CBS, NBC, ABC, PBS, CNN, and FOX all provide fairly objective news programming in their evening news; however, each also sponsors programming, normally interspersed with interviews, that has an ideological bent.

Chapter seven examines three cases of prejudicial remarks that surfaced in three different arenas under very different circumstances and intent. The cases examine reaction to the remarks of Michael Richards at a comedy club, the characterization of athletes on the Don Imus radio program, and a statement by Senator Joe Biden in the political arena that appeared to be condescending at best, and prejudice at worst. We argue that the media must be very careful about their sensationalization of these moments and their tendency to reduce them to sound bites. Such coverage is often inaccurate and has chilling effect on other critical commentary. We believe the best remedy to hate speech is education and analysis. Many people do not understand that they are uttering offensive remarks because they are unenlightened. In other cases, while condemnation is surely in order, we ought also to be able to learn from these situations in order to prevent them in the future.

These chapters have been written by the Director of the Center for First Amendment Studies, Dr. Craig R. Smith, and graduate fellows of the Center, each of whom receives a credit for their work at the head of the chapter. Dr. Smith also served as the editor of the report. The Center is grateful for the support of George and Beverly August, the Norris Foundation, the Freedom of Expression Foundation, and Southern California Edison, whose generosity made this report possible.