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Abstract

On October 30, 1973, a New York radio station broadcast comedian George Carlin's recorded monologue, "Filthy Words,"' which consisted primarily of the repetitive use of seven four-letter words depicting sexual or excretory organs and activities, which could not be said on the public airways.

KEYWORDS: rights, dirty words, FCC

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On October 30, 1973, a New York radio station broadcast comedian George Carlin's recorded monologue, "Filthy Words,"[1] which consisted primarily of the repetitive use of seven four-letter words[2] depicting sexual or excretory organs and activities, which could not be said on the public airways. The recording was played near the close of a regularly scheduled noon-time talk show on Radio Station WBAI (FM) to highlight the preceding topic of discussion concerning the attitude of contemporary society toward language. Immediately prior to the broadcast, listeners were advised that the recording included language which might be offensive, and those not wishing to hear it were asked to "change the station and return to WBAI in fifteen minutes."[3]

On December 3, 1973, the Federal Communications Commission received a complaint from a father who had heard the broadcast while driving in his car with his young son.[4] He wrote that, although he might understand the "record's being sold for private use, I certainly cannot understand the broadcast of same over the air that, supposedly, you control."[5] This complaint succinctly poses the problem: To what extent does the F.C.C. control the programming content broadcast by the stations it licenses?

Section 29 of the Radio Act of 1927,[6] in its prohibition against

1. The monologue was from the Album "George Carlin, Occupation: FOOLE", Little David Records. Citizens Complaint Against Pacifica Foundation Station WBAI(FM), N.Y., N.Y., 56 F.C.C. 2d 94, 95 (1975).

2. *Id.* at 99. There were seven words complained of: "fuck," "shit," "piss," "motherfucker," "cocksucker," "cunt" and "tit." *See* Appendix for text of the broadcast.

3. *Id.* at 96.

4. This was the only complaint lodged with either the F.C.C. or WBAI concerning the broadcast. Pacifica Foundation v. F.C.C., 556 F 2d 9, 11 (D.C. Cir. 1977).

5. F.C.C. v. Pacifica Foundation, 98 S.Ct. 3026, 3030 (1978).

6. 44 Stat. 1172-1173 (1927).

> Nothing in this Act shall be understood or construed to give the licensing authority the power of censorship over the radio communications or signals transmitted

censorship, unequivocally denied the Commission any power either to edit proposed broadcasts or excise any material considered inappropriate for the airwaves.[7] "This prohibition, however, has never been construed to deny the Commission the power to review the content of completed broadcasts in the performance of its regulatory duties."[8]

The courts, both during the period between the original enactment of the 1927 provision and its reenactment in the Communications Act of 1934,[9] and after, have consistently interpreted the provision the same way.[10]

Following its usual practice regarding the review of completed programming in the wake of a complaint,[11] the F.C.C. forwarded the complaint to WBAI licensee, Pacifica Foundation, to give it an opportunity

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by any radio station, and no regulation or condition shall be promulgated or fixed by the licensing authority which shall interfere with the right of free speech by means of radio communications. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication.

7. 98 S.Ct. 3026, 3033 (1978).

8. *Id.*

Zechariah Chafee, defending the Commission's authority to take into account program service in granting licenses, interpreted the restriction on "censorship" narrowly: "This means, I feel sure, the sort of censorship which went on in the seventeenth century in England—the deletion of specific items and dictation as to what should go into particular programs.

2 Z. CHAFEE, GOVERNMENT AND MASS COMMUNICATIONS 641 (1947).

9. KFKB Broadcasting Ass. v. Fed. Radio Commission, 47 F. 2d 670 (D.C. Cir. 1931). The court held that it was within the Commission's power to deny license renewal to the station based on its evaluation that many of the programs broadcast served private interests of the licensee. The licensee was controlled by a doctor who in the course of a medical information program, often prescribed mixtures prepared by his pharmaceutical association.

Trinity Methodist Church, South v. Fed. Radio Commission 62 F. 2d 850 (D.C. Cir. 1932). The Commission refused to renew a license basing its decision on broadcasts by a minister who frequently referred to pimps and prostitutes and made bitter attacks on the Catholic Church.

10. *See, e.g.*, Bay State Beacon, Inc. v. F.C.C., 171 F. 2d 826 (D.C. Cir. 1948); Idaho Microwave, Inc. v. F.C.C., 352 F. 2d 729 (D.C. Cir. 1965); National Assn of Theatre Owners v. F.C.C., 420 F. 2d 194 (D.C. Cir. 1969) *cert. denied*, 397 U.S. 922 (1970).

11. The F.C.C. attempts to maintain a complete file on the licensee presenting all sides of an issue which may have arisen during the course of a license period. When the renewal application is submitted, this file will provide some basis for the Commission's action regarding the license. (Broadcast station licenses are issued for a period of three years.) In re Applications of Pacifica Foundation, 36 F.C.C. 147, 148 (1964).

for reply and comment. Pacifica's reply discussed its view of the validity of the broadcast. George Carlin was described as a "significant social satirist . . . [who] finds his material in our most ordinary habits and language . . . ."[12] In explanation as to why the particular broadcast was made, the reply stated:

> In the selection broadcast from his album, he shows us that words which most people use at one time or another cannot be threatening or obscene. Carlin is not mouthing obscenities, he is merely using words to satirize as harmless and essentially silly our attitudes towards those words . . . .. George Carlin often grabs our attention by speaking the unspeakable, by shocking in order to illuminate . . .[13]

The F.C.C. did not share the view that such material merited exposure on the public airwaves and issued a declaratory order to that effect.[14] The Commission based the order on the authority granted it by 18 U.S.C. § 1464 (1970), which provides: "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more that $10,000 or imprisoned not more than two years or both." It found further statutory support in 47 U.S.C. § 303 (1970) which directs the Commission to "generally encourage the larger and more effective use of radio in the public interest . . . as public convenience, interest, or necessity requires."

No sanctions were imposed, but the Commission directed that the order be associated with the station license file. Receipt of any subsequent complaints would have forced the Commission to decide whether it should utilize any of the available sanctions granted it by Congress.[15]

Within the framework of the order the Commission reformulated its definition of "indecent" in connection with Section 1464.[16] The

12. 56 F.C.C. 2d 94, 96 (1975).

13. *Id.* at 96.

14. *Id.* at 99. Such a order is viewed as a device to facilitate settling a controversy between a listener and a station. Reconsideration of the Commission's action is available, and if controversy remains judicial review may be sought immediately.

15. The Congress has specifically empowered the F.C.C. to (1) revoke a station's license, (2) issue a cease and desist order, or (3) impose a monetary forfeiture for a violation of § 1464. 47 U.S.C. § 312 (a) § 312 (b). § 503 (6)(1)(E) (1970). The F.C.C. can also (4) deny license renewal or (5) grant a short term renewal. 47 U.S.C. § 307, § 308 (1970).

16. 18 U.S.C. § 1464 (1970). "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000. or imprisoned not more than two years or both."

previous definition of "indecent"[17] was offered by the Commission in 1970 in *In Re WUHY-FM*[18] when it said that the standard in the broadcast field should be that "the material broadcast is (a) patently offensive by contemporary community standards; and (b) is utterly without redeeming social value."[19]

Subsequent Court decisions, specifically *Miller v. California,*[20] furnished the basis for redefining "indecent." The Commission pointed out that "the concept of 'indecent' is intimately connected with the exposure of children to language that describes in terms patently offensive, as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at the times of day when there is a reasonable risk that children may be in the audience."[21] The *Miller* standard which protects language with serious literary, artis-

17. The F.C.C. definition was based on the obscenity standards of Roth v. U.S., 354 U.S. 476 (1957) and Memoirs v. Massachusetts, 383 U.S. 413, 418 (1966). At that time the community standard was held to be a national standard. Jacobellis v. Ohio, 378 U. S. 184 (1963). For the difficulties encountered by the Supreme Court between the *Roth* and *Memoirs* decisions, *See Note,* 75 YALE LAW JOURNAL 1364 (1966).

18. 24 F.C.C. 2d 408, 409 (1970). Here, a taped interview with rock singer Jerry Garcia of "The Grateful Dead" was broadcast between 10:00 and 11:00 P.M. on a program with "underground" orientation. Garcia's expression of his views on life in general was laced with some of the words under consideration in *Pacifica* used as adjectives, expletives or substitutes for phrases. Examples are: "I must answer the phone 900 f————n times a day, man." "That kind of s——t." "Political change is so f————g slow."

19. *Id.* at 412.

20. 413 U.S. 15 (1973). In *Miller,* the matter of sending unsolicited sexually explicit material through the U.S. mails, in violation of a California statute, was examined. A definition of obscenity which marked a retreat from *Roth* and *Memoirs* was announced:

> The basic guidelines for the trier of fact must be: a) whether "the average person, applying contemporary community standards" would find that the work, taken as a while, appeals to the purient interest, *Roth* supra at 489, b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and c) whether the work taken as a whole, lacks serious literary, artistic, political, or scientific value.

Id. at 15. The *Memoirs* test of "utterly without redeeming social value" was rejected as was the national standard criteria from *Jacobellis.* This latter holding is further strengthened in Hamling v. United States, 418 U.S. 87 (1974).

The *Miller* Court suggested two definitions of conduct which would constitute "patent offensiveness:" (a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated. (b) Patently offensive presentations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals. *Id.* at 25.

21. 56 F.C.C. 2d 94, 98 (1975).

tic, political or scientific value will be considered except when children are in the audience.[22]

In reaching this conclusion, the Commission reiterated its view that the pervasive and intrusive nature of the broadcast media provide the rationale for closer scrutiny of material that might be suitable for some other form of expression.[23] The Commission outlined four important considerations to illustrate why broadcasting requires special treatment:

> (1) [C]hildren have access to radios and in many cases are unsupervised by parents;
> (2) [R]adio receivers are in the home, a place where people's privacy interest is entitled to extra deference, . . .
> (3) [U]nconsenting adults may tune in a station without any warning that offensive language is being or will be broadcast and
> (4) [T]here is a scarcity of spectrum space, the use of which the government must therefore license in the public interest.[24]

Utilizing the new definition of indecent and considering the special nature of the broadcast media, the Commission sought to channel rather than prohibit the broadcast of such language with its order. The implication was that a different standard might conceivably be used when fewer

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22. *Id.* Pacifica stated in 1964 in its license renewal application that "it is sensitive to its responsibilities to its audience and carefully schedules for late night broadcasts those programs which may be misunderstood by children, although thoroughly acceptable to an adult audience." 36 F.C.C. 147, 149 (1964).

The Commission, in its discussion of the relevance of a broadcast's being unacceptable for children cited also to Sonderling Corp. affirmed sub. nom. Illinois Citizens Committee for Broadcasting, et al v. F.C.C., 515 F.2d 397 (D.C. Cir. 1975). This is "the first judicial decision upholding the F.C.C.'s conclusion that the probable presence of children in the audience is relevant to a determination of obscenity." 56 F.C.C. 2d at 94. Here the Commission dealt with two programs on radio call in shows which were broadcast during daytime hours in which oral sex was a topic of discussion. One exchange is cited by the F.C.C. as follows:

> Female listener: . . . of course I had a few hangups at first about—in regard to this, but you know what we did—I have a craving for peanutbutter all that (sic) time so I used to spread this on my husband's privates and after a while, I mean, I didn't even need the peanut butter anymore.
> Announcer: (laughs) Peanut butter, huh?
> Listener: Right. Oh, we can try anything-you-know-any, any of these women that have called and they have, you know, hangups about this, I mean they should try their favorite-you-know, like, uh. . .

515 F.2d at 401, n.4.

23. 56 F.C.C. at 97.

24. *Id.*

children were in the audience and the program had some literary, artistic, political or social value.[25]

COURT OF APPEALS RULES FOR PACIFICA

Those who had hoped that a definition of "indecent" might finally be authoritatively construed by the courts in connection with Section 1464,[26] were to be disappointed when the United States Court of Appeals for the District of Columbia relied on Section 326 of the Communications Act to vacate the Commission's Order.[27]

The Act provides:

> Nothing in this act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.[28]

The three judge court was split. The two judges comprising the majority concurred on the result but did not reach the conclusion by the same route. Judge Tamm, who wrote the opinion, reasoned that the *Miller*[29] obscenity standard as utilized by the Commission in its order, required a finding that the subject matter of the Carlin broadcast was protected speech under the first amendment,[30] and he therefore viewed the action of the Commission as censorship under Section 326. He went on to say that, even assuming the F.C.C. might regulate non-obscene or "indecent" speech, the order was overbroad for failure to take context into account[31] and vague for failure to define the class it sought to

25. *Id.* at 98.
26. *See* note 16 *supra.*
27. Pacifica Foundation v. F.C.C. 556 F.2d 9 (1977).
28. 47 U.S.C. § 326 (1970).
29. 556 F.2d 9, 16 (1977). *See* note 19 *supra.*
30. U.S. Const. Amend. 1 (1791):
> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

31. Judge Tamm interpreted the order as, in effect, creating a sweeping ban when there is a reasonable risk that children will be in the audience. An amicus brief indicated that large numbers of children are in the audience until 1:30 a. m. and indicated the number of children does not fall below one million until 1:00 a.m. 556 F.2d, at 14. He

protect.[32]

In his concurring opinion, Judge Bazelon addressed the first amendment question. He reasoned that Section 326 prohibits all censorship of broadcast programming content by the F.C.C. but that Section 326 is limited by Section 1464,[33] which in turn must be limited by the first amendment.[34] He then looked to the standards of protection in other media to determine if the unique characteristics of broadcasting justified the expansion of governmental regulation.[35] The factors he considered included privacy in the home,[36] the protection of unconsenting adults,[37] the threat of a flood of filth on the airwaves,[38] the significance of the technological scarcity of spectrum space,[39] and the presence of children in the audience.[40] Despite this multilevel examination, Judge Bazelon also determined that there was no justification for creating a new area of regulated speech and found the order of the Commission to be unconstitutional.[41] Thus, the order was held impermissible as

emphasized that under this order works of Shakespeare and portions of the BIBLE might not be considered suitable. 556 F.2d at 17.

32. *Id.* at 17. Judge Tamm questioned which children the Commission was trying to protect by its order, since age of minors is not mentioned as a factor, although it is considered a significant factor in analyzing capacity for individual choice. Rowan v. Post Office, 397 U.S. 728 (1970). Nor did the captive audience theory impress Judge Tamm. He found it persuasive only where it is impractical to avoid exposure, and apparently he did not consider a twist of the dial an impractical measure. Lehman v. City of Shaker Heights, 418 U.S. 298 (1974).

33. *See* note 16 *supra.*

34. 556 F.2d at 18. The first amendment to the Constitution provides in part: "Congress shall make no laws . . . abridging the freedom of speech or of the press".

35. *Id.* at 20.

36. *Id.* at 25, citing to Rowan v. Post Office Dept., 397 U.S. 728 (1970). which held individuals may require mail advertisers to remove their names from mailing lists and to stop sending lewd or offensive materials.

37. 556 F.2d at 25, Citing to Erznoznik v. City of Jacksonville, 422 U.S. 205 (1925). An ordinance making it a public nuisance for a drive-in theater to show films containing nudity where the screen was visible to the public was held invalid. The public, if offended, must avert its eyes. This measure is advised in Cohen v. California, 403 U.S. 15, 91 (1971) where an individual was prosecuted for entering a courthouse wearing a jacket with the words, "Fuck the Draft" on the back.

38. 556 F.2d at 29. This fear was considered unrealistic in view of the economic impact of a public which considers itself overwhelmed by objectionable programming.

39. *Id.*

40. *Id.* at 28. Citing to Ginsberg v. New York, 390 U.S. 629 (1968), where a New York Statute prohibiting knowing sales to minors of materials which appeal to purient interests was upheld on the basis that children lack the full capacity for choice.

41. 556 F.2d at 30.

censorship, and the words were not to be stripped of protection without consideration of content or redeeming value.[42]

Judge Leventhal, the lone dissenter, chided the majority for treating the F.C.C. order as though the broadcast of any of the "seven dirty words" was prohibited when it held only "that the language *as broadcast* was indecent and prohibited by 18 USC 1464."[43] He pointed out that the Commission had indeed channeled its order in that it specifically stated that the prohibition of the "broadcast of 'filthy words' considered indecent, particularly when children are in the audience" would not force on the general listening public only those ideas "fit for children."[44] He felt that the early afternoon hour of the broadcast was vital to the order.[45]

As he construed the order, it reflected an effort to define the word "indecent" in terms of the same underlying considerations which prompted the decision of the Supreme Court in *Miller*.[46] In summation of his position, Judge Leventhal said:

> As a judge of what the Constitution calls an 'inferior court,' my duty is to apply *Miller* unless and until the Supreme Court modifies it . . . It leads me to affirm the F.C.C.'s effort to apply *Miller* in the context of daytime broadcasting—when the protection of children is a compelling state interest.[47]

SUPREME COURT REVERSES FIVE TO FOUR

On appeal to the high Court,[48] in the opinion of a majority of the Justices, Carlin's own estimation of his words as those ". . . you couldn't say on the public, ah airwaves, um, the ones you definitely wouldn't say ever . . ."[49] prevailed.

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42. *Id.* at 21.
43. *Id.* at 31.
44. *Id.*
45. *Id.*
46. *Id.* at 32. Even the dissent in *Miller* abstained from discussing state power over distribution of obscene material to juveniles. Judge Leventhal felt that the decision pointed out that "exposure to children marks a special enclave in the law of freedom of publication."
47. *Id.* at 37.
48. F.C.C. v. Pacifica Foundation, 98 S.Ct. 3026 (1978). Strong dissent was registered by Justices Brennan, Marshall, Stewart and White in two opinions authored by Justice Brennan and Justice Stewart.
49. *See* Appendix for text of the broadcast.

The Court, limiting the scope of review, found no effect of adjudication, rule making or promulgation of regulations in the Commission's Order.[50] Justice Stevens, writing for the majority, stated the Court's policy of confining its review to judgments, not statements in opinions, thus avoiding deciding unnecessary constitutional questions which might be raised by such statements.[51] The Court's examination was confined, therefore, to the specific fact situation of the case: Was the Carlin recording indecent as broadcast? Whether or not the Commission's declaratory order was to be upheld hinged on the determination of that issue. To answer the question, the Court examined the two statutes which were prominant in the opinion of the lower court and posed two additional questions: Was the Commission's action censorship within the meaning of 48 U.S.C. § 326?[52] May speech which is not obscene, nevertheless, be restricted as "indecent" under 18 U.S.C. § 1464?[53]

The Court did not take issue with the traditional Commission practice of reviewing completed broadcasts in the course of its regulatory activity[54] and noted that until this case the Court of Appeals for the District of Columbia had consistently agreed that this type of review was not the sort of censorship at which Section 326 was directed.[55] The Court pointed out that "[a] single section of the 1927 Radio Act was the source of both the anticensorship provision and the Commission's authority to impose sanctions for the broadcast of indecent or obscene language,"[56] and, therefore, Congress plainly intended to give meaning to both provisions. Justice Stevens concluded that Section 326 did, indeed, allow the Commission to sanction licensees who broadcast obscene or indecent language.[57]

50. 98 S.Ct. at 3032.

51. *Id.* at 3032, 3033.

52. 48 Stat. 1091; 47 U.S.C. § 326 (1970).

> Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

53. 18 U.S.C. § 1464 (1970). "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years or both".

54. 98 S.Ct. at 3033. *See* note 9 *Supra.*

55. *Id.* at 3034.

56. *Id.*

57. *Id.* at 3035.

The Court then examined the meaning of "indecent" as it related to Section 1464 to determine if the F.C.C. could sanction non-obscene language. Pacifica argued that the meaning of "indecent" was subsumed by the definition of obscenity delineated in *Miller*.[58] If this argument had been accepted, the absence of prurient appeal would have been critical in determining the validity of the Commission's order. The Commission had determined that the manner and content was patently offensive and indecent, but distinguished the latter concept from obscenity on the basis of lack of appeal to prurient interests.[59] Pacifica relied primarily on the Supreme Court's interpretation of "indecent" under Section 1461[60] in *Hamling v. United States*[61] where the words "obscene," "lewd," "lacivious," "indecent," "filthy" or "vile" were taken as a whole and limited to "obscene." The majority distinguished the two statutes, however, pointing out that Section 1461 deals primarily with printed matter in sealed envelopes traversing the mails while Section 1464 deals with the content of public broadcasts.[62] While the standard as to the mails does require a showing of obscenity,[63] the Commission has repeatedly interpreted Section 1464 to encompass more than the obscene.[64] Based on prior decisions and the history of Section 1464, the Court rejected Pacifica's argument and concluded that prurient appeal was not a component of indecent language.[65]

58. *See* note 19 *supra*, for discussion of *Miller* standards.

59. 556 F.2d at 98. Pacifica did not argue that the components of the Commission's indecency definition were not present in the Carlin Broadcast.

60. Section 1461 is directed at "mailing obscene or crime inciting matter — every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device or substance . . ."

61. 418 U.S. 87 (1974).

62. 98 S.Ct. at 3036.

63. 418 U.S. 87 (1974).

64. [W]hile a nudist magazine may be within the protection of the First Amendment . . . Similarly, regardless of whether the 'four letter words' and sexual description set forth in 'Lady Chatterley's Lover,' (when considered in the context of the whole book) make the book obscene for mailability purposes, the utterance of such words or the depiction of such sexual activities on radio or TV would raise similar public interest and § 1464 questions.

Programming Policy Statement, 44 F.C.C. 2303, 2307 (1960). *See also* WUHY-FM, 24 F.C.C. 2d 408, 412 (1970); Sonderling Broadcasting Corp., 27 R.R. 2d 285, on reconsideration, 41 F.C.C. 2d 777 (1973), aff'd on other grounds sub nom, Illinois Citizens Committee for Broadcasting v. F.C.C., 515 F. 2d 397 (1975); Mile High Stations, Inc., 28 F.C.C. 795 (1960); PalmettoBroadcasting Co., 33 F.C.C. 250 (1962).

65. 98 S. Ct. at 3036.

Finally, Justice Stevens addressed the constitutional attacks made by Pacifica. By refusing to step outside the bounds of the specific "factual context," the court rejected Pacifica's first contention that the breadth of the Commission's interpretations required reversal whether the broadcast of "filthy words" was protected or not.[66] The Commission had apparently emphasized the narrow scope of its order to the satisfaction of the Court, thus the Court was unwilling to rule on the basis of hypothetical situations which might or might not arise in the future.[67]

The Court also found its ruling to be consistent with *Red Lion Broadcasting Co. Inc. v. F.C.C.*,[68] where it rejected an argument that the Commission's regulations defining the fairness doctrine were so vague as to abridge the broadcasters' freedom of speech.[69] The Court dismissed concerns of self censorship in the context of this controversy with the observation that "at most, however, the Commission definition of indecency will deter only the broadcasting of patently offensive references to excretory and sexual organs and activities"[70] and felt that the effect would be one of form, not content, since there are very few thoughts that could not be expressed by less offensive language.[71]

Pacifica's insistence that the first amendment forbids curtailing the right to broadcast material which is not obscene led the Court to examine the effect of the content, the context, and the medium of delivery on any interpretations of speech as protected or not. The opinion stopped short of finding a general power to regulate the broadcast of "indecent" speech in any circumstances but did not indicate that such a notion was abhorrent or even implausible.[72]

In outlining the limitations which have emerged, the Court cited to *Shenck v. United States*,[73] the earliest case of significance in which the problem of protected speech arose. There Chief Justice Holmes observed that only where a "clear and present danger" to the public wel-

66. *Id.*

67. *Id.* at 3037. "Invalidating any rule on the basis of its hypothetical application to situations not before the court is 'strong medicine' to be applied 'sparingly and only as a last resort.'" Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973).

68. 395 U.S. 367 (1969).

69. *Id.* The Court rejected the notion that broadcasters would respond to the vagueness by refusing to present controversial political and social programs.

70. 98 S. Ct. at 3037.

71. *Id.* at note 18.

72. *Id.* "[I]f the government has any such power, this was an appropriate occasion for its exercise."

73. 249 U.S. 47 (1919).

fare arose could expression be prohibited.[74] The Court proceeded to note other instances of expression where regulation has been considered appropriate;[75] for example, "fighting words,"[76] distinctions between commercial speech and other varieties,[77] libels against private citizens as opposed to public officials[78] and obscenity which might be wholly prohibited.[79] In this analysis, the specific matter of the "seven dirty words" arose again, and the Court found no rationale for protection on a content basis. The Court recognized that the government must remain neutral in the marketplace of ideas and found no political idea or opinion at issue. It characterized the monologue as a point of view and offered it no special protection.[80] Two instances were cited in which one of the seven words was afforded protection,[81] but the Court recalled there was

74. *Id.* at 52. This case involved the wartime mailing circulars to draftees urging noncompliance and insubordination. Justice Holmes wrote:

> We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force . . . . The question in every case is whether the words 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.

75. 98 S. Ct. at 3038.

76. *Id.* Citing to Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) as the first in a line of cases where the state interest in preventing violence curtailed the speaker's rights: "the fear was that the provocativeness of the speech would so enrage either the immediate addressee or audience generally so that violence might result." *See* GUNTHER, CONSTITUTIONAL LAW, 1164 (9th ed. 1975).

77. 98 S. Ct. at 3038 citing Bates v. State Bar, 433 U.S. 350, 381 (1977). *See also* Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978).

78. 98 S. Ct. at 3038 citing Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

79. 98 S.Ct. at 3038 citing Roth v. U.S., 354 U.S. 476, *rehearing denied,* 355 U.S. 852 (1957) sparked the controversy concerning first amendment protection of obscenity. *See also* Miller v. California, 413 U.S. 15 (1973), *rehearing denied,* 414 U.S. 881 (1973). *See* note 19 *supra.* C.F. Young v. American Mini Theatres, 427 U.S. 50 (1976) where an ordinance seeking to contain the showing of explicit "adult" movies by means of zoning regulations was upheld.

80. 98 S.Ct. at 3038. The Court in Note 22 offered no reason why it could not accept Carlin's monologue as satire, but hints that, if it could, protection might be in order.

81. *Id.* at 3039 citing Hess v. Indiana, 414 U.S. 105 (1973), a reversal of a disorderly conduct conviction. The Court noted that the words, "We'll take the fucking street later, or again," were not obscene when uttered by an anti-war demonstrator after

no dispute as to the "vulgar," "offensive" or shocking quality of the language and merely assumed *arguendo* that the Carlin language would be protected in other contexts.[82]

The Court noted that the broadcast media have historically received the "most limited first amendment protection."[83] This may be readily observed if the status of newspaper publishers is contrasted to that of broadcasters in the matter of fairness in presenting issues to the public.[84] Although newspaper publishers need not provide space for replies from those they criticize,[85] broadcasters must provide reasonable free time for reply to the targets of their criticism.[86] The Court examined the two qualities of the broadcast media which make them unique: the pervasuve presence in the lives of all Americans, especially considering the privacy of the home,[87] and the accessibility to children, even those too young to read.[88] In the eyes of the Court the fact that individuals may merely turn the dial to the "off" position or another station does not offer enough protection to the unwilling listener in his home.[89] What the Court saw as more important, however, was the policy of supporting "parents' claim to authority in their household and the government's interest in the well being of its youth."[90]

The Court found the Commission's examination of context and its use of the nuisance theory appropriate. The opinion emphasized the variables such as time of day and the content of the program in which the questionable language is used. In addition, audience composition and the differences between radio, television and even closed circuit television must be considered. The opinion concluded by alluding to Mr.

police had cleared the street. *See also* Cohen v. California, 403 U.S. 15 (1971), *See* note 25 *supra.* The Court in *Cohen* rejected the argument that unwilling viewers would be offended by a jacket bearing the words "Fuck the Draft" as there was no evidence that anyone had objected.

82. 98 S.Ct. at 3039.

83. *Id.* at 3040.

84. *Id.*

85. *Id.* citing to Miami Herald v. Tornillo, 418 U.S. 241 (1974).

86. 98 S. Ct. at 3040 citing Red Lion Broadcasting v. F.C.C., 395 U.S. 367,, 390 (1969). In application of the fairness doctrine, the Court said "[i]t is the purpose of the first amendment to preserve an uninhibited marketplace of ideas . . . rather than to countenance monopolization of that market, whether it be by the government itself or a private licensee . . . ."

87. 98 S.Ct. at 3040.

88. *Id.*

89. *Id.*

90. *Id.*

Justice Sutherland's characteristic of nuisance as "merely a right thing in a wrong place, like a pig in the parlor instead of the barnyard"[91] and held that "when the Commission finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene."[92]

In his concurring opinion, Justice Powell, joined by Justice Blackmun, considered the channeling of the order is an effort to protect children in the audience most appropriate.[93] He agreed that the unique qualities of broadcasting and the resulting limitations placed on the media's first amendment protection, as well as its widespread availability in the home and to young chidren, were basic to the decision. He conceded that the listener may tune out and that broadcasters may warn before the program begins, but Justice Powell was particularly concerned with the unsuspecting listener who has no warning. The covers of books and records or the marquees of theaters were considered to offer a warning, but the unwilling broadcast listener might be required to "absorb the first blow" of offensive speech.[94] In public, this might be acceptable, but the listener in the home required special consideration.[95] He considered it sufficient protection that the Carlin material is available at live performances and on records and that it is not entirely prohibited from the airwaves.[96]

Justice Powell departed from the majority in order to take issue with the extent to which the majority examined the content of the broadcast. In his opinion, the Justices of the Supreme Court are not the sole arbiters of "valuable" speech and the resulting degree of protection, and that "line(s) may be drawn on the basis of content without violating the government's obligation of neutrality in its regulation of protected communications."[97] It appears that it was Justice Powell's belief that the

91. *Id.* citing Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926).

92. 98 S.Ct. at 3041.

93. *Id.* at 3044.

94. *Id.* at 3045.

95. *Id.* at 3046. Justice Powell did not brush aside the argument of Butler v. Michigan, 352 U.S. 380, 383 (1957), that adults will be reduced to listening only to what is appropriate for children, and instead said it is a problem to be reckoned with, but not with the result that the Commission should have no power to regulate this type of broadcast.

96. *Id.* at 3046. In addition to the late evening hours, Justice Powell writes that there is no apparent prohibition of the broadcast of "discussions of the contemporary use of language at any time during the day." Curiously this is how Carlin's broadcast is characterized by Pacifica and the Court of Appeals. 556 F.2d 9 (1977).

97. 98 S.Ct. at 3046, 3047 quoting Young v. American Mini Theaters, 427 U.S.

Commission's order would have been more appropriate if it were specifically a regulation of time of broadcast.

The four dissenters unanimously disagreed with the majority's broad interpretation of "indecent" in Section 1464.[98] The Court had recently construed the descriptive language of Section 1461 in *Hamling v. United States,*[99] the dissenters saw no rationale for departure from that rule. They felt "indecent" had the same meaning as "obscene" as defined by *Miller,*[100] and that this was not a novel construction.[101] They also noted that the F.C.C. had indicated it followed this construction as to the 47 U.S.C. § 223 (1968) prohibition of "obscene, lewd, lascivious, filthy or indecent" telephone calls.[102] Furthermore, although Section 1461 and Section 1464 were not enacted together, they were codified together in the 1948 Criminal Code obscenity chapter, and the dissent read them as prohibiting nothing *more.*[103] That the Carlin monologue was not obscene was, in the opinion of the dissenters, undisputed. Therefore, they reasoned that the Commission had no statutory authority to ban the broadcast.[104]

Justice Brennan was not so temperate in his dissenting opinion where he was joined by Justice Marshall.[105] In fact, in his opinion, whether or not the pig was obscene, the majority had burned the house to roast it![106] He deplored what he viewed as a step toward the

50, 63-73 (1976) where the Court held "regulation of the places where sexually explicit films may be exhibited is unaffected by whatever social, political or philosophical message the film may be intended to communicate".

98. 98 S.Ct. at 3055. Justice Stewart's dissent, in which Justices Brennan, White and Marshall join.

99. 418 U.S. 87 (1974). The words "obscene," "lewd", "lascivious", "indecent", "filthy" or "vile," were taken as a whole and construed to mean "obscene."

100. *See* note 19 *supra* for Miller discussion and standards.

101. 98 S.Ct. at 3056. Justice Stewart cites to Dunlop v. U.S. 165 U.S. 486, 500-501 (1897), and Manual Enterprises v. Day, 370 U.S. 478, 482-484, 487 (1962).

102. 98 S.Ct. at 3056 note 7. When the Federal Communications Act was amended in 1968 to prohibit "obscene, lewd, lasvicious, filthy or indecent" telephone calls, Pub. L. 90-299, 82 Stat. 112, 47 U.S.C. § 223, the F.C.C. indicated that it thought this language covered only "obscene" telephone calls. *See* H.R. Rep. No. 1109, 90th Cong., 2d Sess., 7-8 (1968).

103. 98 S.Ct. at 3056.

104. *Id.* Two additional points are addressed in the footnotes of the dissenting opinion. First, the F.C.C.'s attempted use of 47 U.S.C. § 303(9) failed as an independent basis for its action. Second, the general rule of levity in construction of criminal statutes supported the dissent's position.

105. 98 S.Ct. at 3047.

106. *Id.* at 3049.

"homogenization of radio communications"[107] and could find no justification for the majority holding, given either the intrusive nature of the broadcasting media or the presence of unsupervised children in the audience.[108] Justice Brennan wrote that "the invasion of a privacy interest must be affected in an intolerable manner before government action in prohibiting discourse is justified."[109] Additionally, the action of the individual in listening, even in the home, should more properly be viewed as having an affirmative component, as a "decision to take part . . . in an ongoing public discourse."[110] This is a situation far removed from the "intrusive modes of communiation, such as sound trucks," [since] '[t]he radio can be turned off' . . . —and with a minimum of effort."[111] The *Pacifica* decision reflected, in his opinion, an improper balancing of interests totally unsupported by precedent. He noted that *Rowan v. Post Office Department*,[112] on which the court relied, left the decision as to the offensiveness of material, and whether or not such material may come into the home, entirely in the hands of the individual householder.[113]

Undeniably, he felt, the government has a special interest in the well-being of children; this has been provided for by the "variable obscenity" standard of *Ginsberg v. N.Y.*[114] The subsequent *Miller* decision has not been specifically related to the *Ginsberg* formulation, but Justice Brennan insisted that controlled speech, even as to children, must have some significant erotic content.[115] He felt that "[t]he Court's refusal to follow its own pronouncements is especially lamentable since it has the anomalous subsidiary effect, at least in the radio context at issue here, of making completely unavailable to adults, material which may not constitutionally be kept even from children."[116]

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107. *Id.* at 3048.

108. *Id.* In Justice Brennan's opinion, there are no "limiting principles" by which to maintain either standard.

109. 98 S.Ct. at 3048, quoting Cohen v. California, 403 U.S. 21 (1971).

110. 98 S.Ct. at 3048. *See* Note, *Filthy Words, the F.C.C., and the First Amendment: Regulating Broadcast Obscenity*, 61 VA. L. REV. 579, 618 (1975).

111. *Id.* at 3049, citing Lehman v. City of Shaker Heights, 418 U.S. 298, 302 (1974).

112. 397 U.S. 728 (1970). liSee note 34 *supra.*

113. 98 S.Ct. at 3049.

114. *Id.* at 3050, citing 590 U.S. 629 (1968), Justice Brennan noted the adoption of a standard in that case "that permits the prurient appeal of material available to children to be assessed in terms of the sexual interests of minors."

115. 98 S.Ct. at 3050.

116. *Id.*

Justice Brennan was disturbed by what he termed the lack of principled limits for the two major elements on which the decision was based. To what extent may control in the name of intrusion into the home and the protection of children evolve? If taken to the logical extreme, much of what was considered appropriate might be subject to regulation,[117] and he was not content to rely on either the judgement of the F.C.C. or the ability of the Court to assess the worth of the various types of speech.[118] "I would place the responsibility and the right to weed worthless and offensive communications from the public airways where it belongs and where, until today, it resided: in a public free to choose those communications worthy of its attention from a marketplace unsullied by the censor's hand."[119]

Justice Brennan pointed out that words chosen to express an idea may be, in a sense, interwoven with the idea itself and that, in purging the words, a censoring of the idea will result.[120] He also believed the majority's reliance on *Young v. American Mini Theatres*[121] was in error since *Young*, unlike *Pacifica*, had "goals other than the channeling of protected speech."[122] No apparent object other than the channeling of speech existed in the Commission's order, and while *Young* did not restrict the access of the material in the marketplace, Justice Brennan believed the order in *Pacifica* totally prohibits broadcasters from sending or listeners receiving the material.[123]

Finally, he deplored the "ethnocentric myopia" of the Court for a

117. *Id.* at 3051: *i.e.*, The rationale could justify the banning from the radio of many great literary works, repress a good deal of political speech such as the Nixon tapes, and even some parts of the BIBLE.

118. *Id.* at 3052.

119. *Id.*

120. *Id.* at 3053, referring to Justice Harlan's opinion in Cohen v. California, 403 U.S. 21, 23, 25 (1971).

> [M]uch linguistic expression serves a dual communicative function . . . In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated.

121. 427 U.S. 50 (1976). The Court in *Young* found zoning ordinances seeking to contain exhibition of potentially offensive material in the interest of maintaining the integrity of the neighborhood to be an acceptable form of regulation.

122. 98 S.Ct. at 3053.

123. *Id.* at 3054. As with the words themselves, Justice Brennan believed that the choice of the medium of delivery lies outside the hands of the government.

decision which he felt reflected a lack of sensitivity to at least some of the subcultures in our nation.[124] Justice Brennan felt the holding might be likely to affect broadcasters in serving some minority groups and, consequently, Justice Brennan finds the character of the holding reflected "another of the dominant culture's inevitable efforts to force those groups who do not share its mores to conform to its way of thinking, acting and speaking."[125]

IN THE WAKE OF THE DECISION

The decision strikes down a major effort by the broadcasting establishment to stake out new first amendment protection for that media.[126] *Broadcasting* magazine, the major journal of its industry, editorially deplored and was astonished by the court ruling which, in its opinion, had created a substitute for the eroded justification of "scarcity" of broadcast facilities to give the government hands on control. Armed with the criteria of broadcasting's pervasiveness and its unique access to children, future regulators have been practically invited to intrude in broadcast operations.[127]

The National Association of Broadcasters fears that with *Pacifica* under its belt, the F.C.C. will not stop with the seven dirty words and the original list of words will be expanded, further abridging broadcasters' first amendment freedom.[128] That fear may not be unrealistic. Georgia legislator Julian Bond recently announced plans to file a suit against the F.C.C. for failing to act on his complaint that a gubernatorial candidate used the word "nigger" in his political advertising. Bond attempted, unsuccessfully, to intervene in the *Pacifica* case to have the word included as the eighth dirty word. Although Bond is opposed to such censorship, he feels that if there are seven proscribed words, why not eight?[129]

124. *Id.* Several studies were cited which indicated that in the Black vernacular at least such words as "fuck" and "bullshit" have no obscene or even derogatory component except in certain contexts.

125. *Id.* at 3054.

126. The whole commercial broadcasting industry intervened in the action in support of Pacifica to argue against the "F.C.C.'s authority to create a new constitutional exception for the prosecution of the broadcasting industry". BROADCASTING July 10, 1978, at 58.

127. *Id.*

128. *Id.* at 21.

129. INSIDE RADIO, August 14, 1978, at 1.

The Court emphasized the narrowness of the holding. The F.C.C., both in speeches and in the recent decision on a Morality in Media complaint against WGBH-TV, Boston, has indicated that it will follow the Court's insistence that the ruling was narrow. Commissioner Tyrone Brown in a July 23, 1978, speech to the Oklahoma Association of Broadcasters said that the Commission would not use *Pacifica* "as an excuse for increased intervention" in programming decisions.[130] This pledge was backed up by the Commission's July, 1978 decision to renew the license of WGBH-TV,[131] rejecting the complaint filed by Morality in Media of Massachusetts regarding allegedly obscene and indecent material broadcast by the station.[132] In rendering the decision the Commission stated: "We believe that we should construe the *Pacifica* holding consistent with the paramount importance we attach to encourage free ranging programming and editorial discretion by broadcasters . . ."[133] The WGBH decision, according to F.C.C. Chairman Charles D. Ferris, "should show that the F.C.C. is not going to become a censor . . . hopefully it will prevent an outpouring of audience complaints based on occasional words."[134]

While the Commission disavows that the *Pacifica* decision will serve as a basis for more program control, it remains to be seen whether or not the decision will be invoked by the F.C.C. and the other regulatory agencies in proceedings now in progress.[135] Is it true that, in the words of Chairman Ferris, the holding of the *Pacifica* decision is so narrow that the likelihood of its being invoked "is about as likely to occur as Halley's Comet,"[136] or will *Pacifica* stand as marshall for a forming parade of horribles?

Fran Avery Arnold
Cara Ebert Cameron

130. BROADCASTING, July 24, 1978 at 32.

131. 43 R.R. 2d 1436 (1978).

132. *Id.* The Commission held that the examples cited by MMM did not meet either the Supreme Court's definition of obscenity or "indecent" as the Court held its ruling did not extend to the occasional use of an expletive. The words complained of as indecent were broadcast twice in one program aired after 11:00 P.M. and one word was broadcast in a play at 5:30 P.M. The Commission said late night programming was not included within the Pacifica Ruling, nor would the broadcast of one word be included.

133. *Id.*

134. BROADCASTING, July 24, 1978, at 32.

135. Specifically both F.C.C. and F.T.C. inquiries into children's television programming and advertising.

136. BROADCASTING, July 24, 1978, at 31.

APPENDIX

The following is a verbatim transcript of "Filthy Words" prepared by the Federal Communications Commission.[137]

"Aruda-du, ruba-to, ruba-to. I was thinking about the curse words and the swear words, the cuss words and the words that you can't say, that you're not supposed to say all the time, cause words or people into words want to hear your words. Some guys like to record your words and sell them back to you if they can, (laughter) listen in on the telephone, write down what words you say. A guy who used to be in Washington knew that his phone was tapped, used to answer, Fuck Hoover, yes, go ahead. (laughter) Okay, I was thinking one night about the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever cause I heard a lady say bitch one night on television, and it was cool like she was talking about, you know, ah well, the bitch is the first one to notice that in the litter Johnie right (murmer) Right. And, uh, bastard you can say, and hell and damn so I have to figure out which ones you couldn't and ever and it came down to seven but the list is open to amendment, and in fact, has been changed, uh, by now, ha, a lot of people pointed things out to me, and I noticed some myself. The original seven words were, shit, piss, fuck, cunt, cocksucker, motherfucker, and tits. Those are the ones that will curve your spine, grow hair on your hands and (laughter) maybe, even bring us, God help us, peace without honor (laughter) um, and a bourbon. (laughter) And now the first thing that we noticed was that word fuck was really repeated in there because the word motherfucker is a compound word and it's another form of the word fuck. (laughter) You want to be a purist it doesn't really—it can't be on the list of basic words. Also, cocksucker is a compound word and neither half of that is really dirty. The word—the half sucker that's merely suggestive (laughter) and the word cock is a half-way dirty word, 50% dirty—dirty half the time, depending on what you mean by it. (laughter) Uh, remember when you first heard it, like in 6th grade, you used to giggle. And the cock crowed three times, heh (laughter) the cock—three times. It's in the Bible, cock in the Bible. (laughter) And the first time you heard about a cock-fight, remember—What? Huh? Naw. It ain't that, are you stupid? man. (laughter, clapping) It's chickens, you know, (laughter) Then you have the four letter words from the old Anglo-Saxon fame.

137. 98 S. Ct. at 3041. Printed here with permission of Uptight Enterprises and Little David Records.

Uh, shit and fuck. The word, shit, uh, is an interesting kind of word in that the middle class has never really accepted it and approved it. They use it like crazy but it's not really okay. It's still a rude, dirty, old kind of gushy word. (laughter) They don't like that, but they say it, like, they say it like, a lady now in a middle-class home, you'll hear most of the time she says it as an expletive, you know. it's out of her mouth before she knows. She says, Oh shit oh shit, (laughter) oh shit. If she drops something, Oh, the shit hurt the broccoli. Shit. Thank you. (footsteps fading away) (papers ruffling)

Read it! (from audience)

Shit! (laughter) I won the Grammy, man, for the comedy album. Isn't that groovy? (clapping, whistling) (murmur) That's true. Thank you. Thank you man. Yeah. (murmur) (continuous clapping) Thank you, man. Thank you. Thank you very much, man. Thank, no, (end of continuous clapping) for that and for the Grammy, man, cause (laughter) that's based on people liking it man, yeh, that's ah, that's okay man. (laughter) Let's let that go, man. I got my Grammy. I can let my hair hang down now, shit. (laughter) Ha! So! Now the word shit is okay for the man. At work you can say it like crazy. Mostly figuratively, Get that shit out of here, will ya? I don't want to see that shit anymore. I can't *cut* that shit, budd. I've had that shit up to here. I think you're full of shit myself. (laughter) He don't know shit from Shinola. (laughter) you know that? (laughter) Always wondered how the Shinola people felt about that (laughter) Hi, I'm the new man from Shinola. (laughter) Hi, how are ya? Nice to see ya. (laughter) How are ya? (laughter) Boy, I don't know whether to shit or wind my watch. (laughter) Guess, I'll shit on my watch. (laughter) Oh, *the* shit is going to hit *de* fan. (laughter) Built like a brick shit-house. (laughter) Up, he's up shit's creek. (laughter) He's had it. (laughter) Up, he's up shit's creek. (laughter) He's had it. (laughter) He hit me, I'm sorry. (laughter) Hot shit, holy shit, tough shit, eat shit, (laughter) shit-eating grin. Uh, whoever thought of that was ill. (murmur laughter) He had a shit-eating grin! He had a what? (laughter) Shit on a stick. (laughter) Shit in a handbag. I always like that. He ain't worth shit in a handbag. (laughter) Shitty. He acted real shitty. (laughter) You know what I mean? (laughter) I got the money back, but a real shitty attitude. Heh, he had a shit-fit. (laughter) Wow! Shit-fit. Whew! Glad I wasn't there. (murmur, laughter) All the animals—Bull shit, horse shit, cow shit, rat shit, bat shit. (laughter) Vera reminded me of that last night, ah (murmur). Snake shit, slicker than owl shit. (laughter) Get your shit together. Shit or get off the pot. (laughter) I got a shit-load full of them. (laughter) I got a shit-pot full,

all right. Shit-head, shit-heel, shit in your heart, shit for brains, (laughter) shit-face, heh (laughter) I always try to think how that could have originated; the first guy that said that. Somebody got drunk and fell in some shit, you know. (laughter) Hey, I'm shit-face. (laughter) Shit-face, *today.* (laughter) Anyway, enough of that shit. (laughter) The big one, the word fuck that's the one that hangs them up the most. Cause in a lot of cases that's the very act that hangs them up the most. So, it's natural that the word would, uh, have the same effect. It's a great word, fuck, nice word, easy word, cute word, kind of. Easy word to say. One syllable, short u. (laughter) Fuck. (Murmur) You know, it's easy. Starts with a nice soft sound fuh ends with a *kuh.* Right? (laughter) A little something for everyone. Fuc*k* (laughter) Good word. Kind of a proud word, too. Who are you? I am FUCK. (laughter) FUCK OF THE MOUNTAIN. (laughter) Tune in again next week to FUCK OF THE MOUNTAIN. (laughter) It's an interesting word too, cause it's got a double kind of a life—personality—dual, you know, whatever the right phrase is. It leads a double life, the word fuck. First of all, it means, sometimes, most of the time, fuck. What does it mean? It means to make love. Right? We're going to make love, yeh, we're going to fuck, yeh, we're going to fuck, yeh, we're going to make love. (laughter) we're really going to fuck, yeh, we're going to make love. Right? And it also means the beginning of life, it's the act that begins life, so there's the word hanging around with words like love, and life, and yet on the other hand, it's also a word that we really use to hurt each other with, man. It's a heavy. It's one that you save toward the end of the argument. (laughter) Right? (laughter) You finally can't make out. Oh, fuck you man. I said, fuck you. (laughter, murmur) Stupid fuck. (laughter) Fuck you and everybody that looks like you (laughter) man. It would be nice to change the movies that we already have and substitute the word fuck for the word kill, wherever we could, and some of those movie cliches would change a little bit. Madfuckers still on the loose. Stop me before I fuck again. Fuck the ump, fuck the ump, fuck the ump, fuck the ump, fuck the ump. Easy on the clutch Bill, you'll fuck that engine again. (laughter) The other shit one was, I don't give a shit. Like it's worth something, you know? (laughter) I don't give a shit. Hey, well, I don't take no shit, (laughter) you know what I mean? You know why I don't take no shit? (laughter) Cause I don't give a shit. (laughter) If I give a shit, I would have to pack shit. (laughter) You wouldn't shit me, would you? (laughter) That's a joke when you're a kid with a worm looking out the bird's ass. You wouldn't shit me, would you? (laughter) It's an eight-year-old joke but a good one. (laughter) The additions to the list.

I found three more words that had to be put on the list of words you could never say on television, and they were fart, turd and twat, those three. (laughter) Fart, we talked about, it's harmless It's like tits, it's a cutie word, no problem. Turd, you can't say but who wants to, you know? (laughter) The subject never comes up on the panel so I'm not worried about that one. Now the word twat is an interesting word. Twat! Yeh, right in the twat. (laughter) Twat is an interesting word because it's the only one I know of, the only slang word applying to the, a part of the sexual anatomy that doesn't have another meaning to it. Like, ah, snatch, box and pussy all have other meanings, man. Even in a Walt Disney movie, you can say, We're going to snatch that pussy and put him in a box and bring him on the airplane. (murmur, laughter) Everybody loves it. The twat stands alone, man as it should. And two-way words. Ah, ass is okay providing you're riding into town on a religious feast day. (laughter) You can't say, up your *ass*. (laughter) You can say, stuff it! (murmur) There are certain things you can say its weird but you can just come so close. Before I cut, I, uh, want to, ah, thank you for listening to my words, man, fellow, uh, space travelers. Thank you man for tonight and thank you also. (clapping, whistling)"