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REMARKS

Television Values and the Values of Our Children

*Newton N. Minow**

MR. MINOW: I teach a class at Northwestern University. I have law students, journalism students and management students in the class. One of the requirements of the Kellogg school, the management school, is that the students fill out a questionnaire at the end of the semester about the professor. One time I looked at a questionnaire, and a student had written, "If I only had one hour to live in the rest of my life, I would choose to spend it in your class." I was so touched by that, I brought it home to show my wife. She has better eyes than I do, and she looked very carefully at it, and she said, "What is that little asterisk after that?" I wasn't sure, and I looked, and pencilled there was an asterisk and another on the bottom of the page. The asterisk read "see other side." I turned the page over, and it read, "because it would seem like eternity." I don't want this to seem like eternity today. I would like very much to have more of a discussion.

Incidentally, I am a graduate of DePaul University College of Law; although I didn't earn my degree, it was given to me as an honorary degree. You have to work for yours; I didn't. But I came here one time when one of my daughters, Martha, who is a professor at Harvard law school, was giving a lecture; and my wife and I came and it was very crowded. We got the last two seats. It turned out my seat-mate was an old friend. He is now a judge of the Illinois appellate court, Tony Scariano. And by chance, I happened to have lunch with him yesterday. I told him I was coming to DePaul, and he reminded me of what happened when Martha was giving her talk. My wife and I listened to Martha. We were just so proud of her giving her lecture. And when she finished, Tony turned

* These remarks were made during Mr. Newton Minow's speech on children, television and the First Amendment as part of the *Journal of Art and Entertainment Law* Speaker Series. The use of direct quotes is not necessarily intended to suggest these are the verbatim statements made by the parties; rather, they suggest that someone is speaking.

Hailing originally from Milwaukee, Wisconsin, Mr. Newton Minow completed his undergraduate and law degrees at Northwestern University in Chicago, and has since dedicated his career to serving the legal and civic communities. Before being appointed by President Kennedy to serve as chairman of the Federal Communications Commission, Mr. Minow clerked for Chief Justice Vinson of the United States Supreme Court. He is the recipient of numerous honorary degrees, honors and awards, both for his professional achievements and his many humanitarian contributions.

Mr. Minow currently serves as the Director of the Annenberg Washington Program in Communications Policy Studies of Northwestern University and is also counsel to Sidley & Austin in Chicago. He has authored several books and is credited with coining the phrase "vast wasteland," as associated with television's impact on society. Mr. Minow's most recent publication, co-authored with Craig Lamay, is *Abandoned in the Wasteland: Children, Television and the First Amendment*.

to me and my wife and said, "Newton and Jo, it gives me such pleasure to see you getting such 'nachas.'" That's the Jewish word for "pleasure." "Mazel tov." That means "congratulations."

I said, "Tony, how do you know so much Jewish?" He said, "How do I know so much Jewish? Don't you know about my son?" I said, "No, tell me." He said, "He is a nice, Italian Catholic boy, went to Brandeis University, fell in love with a Jewish girl, and he married her, and he became Jewish." He said, "I know more Jewish than you do." I said, "What happened to your son?" He said, "My son finished at Brandeis, then decided he wanted to go to law school at night at DePaul, and he worked for me in my suburban office on the south side during the day. And finally he got near graduation, and I said, "Son, are you applying for a job at a law firm?" "No." "Are you applying for a job with a company?" "No." "Are you applying for a job with the government?" "No." "Are you going to do public interest work?" "No." Finally, Tony said, "Well, son, how will you make a living?" He said, "Dad, all of my life I dreamed someday I would go to law school. If I pass the bar, and if you will have me, I want to spend the rest of my life practicing law with you, my father." Tony said the tears were streaming down his cheeks. He was so moved and touched he threw his arms around his son, and he said, "Son, this is the happiest day of my entire life. All my life I dreamed I would hire a smart young Jewish lawyer."

I am glad to see so many women here today. All three of my daughters are lawyers. And when I see this, I see how the profession is changing very rapidly.

I understand you deal a lot with sports law. I am a director of the Sara Lee Company. We have an advertising contract for television commercials with Michael Jordan. One day at the board meeting, I asked, "How much are we paying Michael for these commercials?" And the C.E.O. at Sara Lee, John Bryan, said, "Newt, you will sleep a lot better if you don't know. We have to sell a lot of underwear and cheesecake for what we are paying Michael." But if you watch, you will be seeing shortly the commercials for the Olympics. They are terrific, and every penny we pay him is worth it.

I am going to talk to you about my book, why we wrote it, what it was all about. Five years ago was the thirtieth anniversary of a speech I gave when I was appointed by President Kennedy as chairman of the F.C.C. I used a term which is still being quoted after all of these years: "vast wasteland." I paid no attention to it at the time. But I was invited by Columbia University to look back thirty years and to look forward thirty years about what I thought the great public policy issues were about television.

As a result, the American Academy of Arts and Sciences, a prestigious and important group founded by George Washington, Thomas Jefferson and John Adams, asked me to develop it into a book. I invited a young scholar who moved out here from Columbia to work with me. Our book came out last year. It is now going into paperback, and it will be used at a lot of colleges.

The book turned out to be very influential in Congress because one of the things we dealt with was the particular problem of children and television, the issues of the V-chip and issues of the First Amendment. After a lot of thought, we came to a fundamental conceptual framework in analyzing these issues.

There are three great values all of us treasure in this country. One is free speech; the First Amendment is our highest value. One is free markets, the ability to buy or sell anything to each other in the free market. Third, we value the protection and education of our children. Free speech, free markets, educating and protecting our children. The question is how do you reconcile, how do you balance, those three great values?

My judgment is that in the case of television, where children spend more time with television than they do in school and sadly more time in many homes than they do with their parents, we have gotten the balance out of whack. Free speech and free markets have gotten full attention, whereas the education and protection of our children have not.

My own interest in this began forty years ago, during the presidential campaign of 1956, when I was a young assistant to the Democratic candidate Adlai Stevenson, and my roommate in the campaign was Robert Kennedy. Because Bob Kennedy and I were the same age, we were often put together as roommates on the campaign trail. We had a lot in common. Our three children are the same ages as three of Bob and Ethel's children. We got to be good friends. When we got to Springfield, Illinois, Stevenson was to make a speech, and Bob said to me, "You and I have heard this speech two hundred times. I have never been to Springfield. I would love to see Abraham Lincoln's house. Do you think you can take me over there?" And I said, "Sure. Let's play hooky." We skipped his speech, and we walked over to Lincoln's house. On the way back, Bob said to me something I have never forgotten; he said quote, "When I was a child, there were three great influences on a child: the home, the school and the church." He said, "Now in my own home there is a fourth, and this is television." This was forty years ago.

What would Bob Kennedy say if he were here today? I think television's influence on our children is staggering. As far back as 1972, the Surgeon General of the United States found a connection between violence on the television and aggressive behavior in children. Television too often teaches our children that the way to solve a problem is with a gun, or with a slap or with violence. It affects the way we perceive people of other races. It shapes their fears and expectations about the future. Every afternoon when they come home from school, millions of American children turn on their television set to see what the adult world holds for them.

What do they find there? During one randomly selected week, January 31 to February 4, 1995, here is what they found. They saw a program about a thirteen year old girl who slept with twenty men; a seventeen year old who had slept with more than one hundred; both girls carried beepers; about transsexual prostitutes; about parents whose hate their daughters' boyfriends; about men whose girlfriends want too much sex; about white supremacists who hate Mexicans; about a woman who tried to kill herself nine times; about a sadomasochist couple who explained that instead of putting a ring on her finger they had his penis pierced; about a man who fathered four children by three women who couldn't stop cheating; and programs called "Dad by Day, Cross-Dresser by Night" and "Using Sex to Get What You Want."

If you don't believe me, I brought a six-minute tape which we will show you now, taken at random during the course of the day, of what kids see on television.

TAPE:

7:00 a.m. [Children's cartoon]: "Let's go." [Gunfire. Fighting.]

8:00 a.m. [Children's show]: [Fighting. Cuts man in half.] "That's that."

9:00 a.m. [Children's cartoon]: "Sorry for the wait." [Cartoon character's jaw falls off into coffee, and cockroaches crawl out of cup.]

10:00 a.m. [Children's show]: "Now try this on for size." [Shooting. Screaming.]

11:00 a.m. [Soap Opera]: "I never thought I could kill anybody. I didn't think it was in me. But killing you is going to be such sweet pleasure."

12:00 p.m. [News broadcast]: "Once, he was the football superstar with the beautiful wife and family; then, he was the murder suspect on the run being chased by police on a Los Angeles freeway. Now, he is at the center of the "trial of the century" charged with the murders of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman."

1:00 p.m. [Daytime talk show]: "So, you would have sex with fifteen people in one night, just to get to the drummer? 'Well, not necessarily just the drummer. Whoever else in the band who would also like to participate.' "

2:00 p.m. [Daytime tabloid news show]: "Now they are really pouring on the hot sauce with their own swimsuit calendar. 'I'll take any month I can get it.' Only twelve of the entire food chain make the final cut. But the waitresses say there is no competition to be the 'monthly special.' "

3:00 p.m. [Police show]: [Dead body lying on the street.]

4:00 p.m. [Action show]: [Man jumping off bridge.]

5:00 p.m. [Cartoon]: "I always do that. I scrub myself off — in the toilet. [Laughter.] Do you take a dump first? Yeah. Yeah." [Laughter.]

6:00 p.m. [Television police show]: "Come on woman! Get out of the car! Drop the gun! Let the woman go! Drop the gun! Drop the gun!" [Gunshots. Screaming.] "The gunman died at the scene."

7:00 p.m. [Puppet speaking through ventriloquist]: "I could take being slapped around by, maybe, a girlfriend or a hooker in leather — who gives you pain, but yet, it's pleasure in a naughty, forbidden, tingly way." [Laughter.] "Gee, my ears are getting hard."

8:00 p.m. [Television action show]: "I'm making a citizen's arrest. 'How are you going to do that, man?' " [Gunshots. Sirens.] "Call an ambulance. We'll get you to a hospital. 'It's too late.' "

9:00 p.m. [Television movie]: "Talk about your tale of two cities, huh! The county seat." [Girl in shorts bending over into camera. Cheering.] "Here we go! Shake it!"

10:00 p.m.: [Automatic gunfire. Men in military uniforms firing at police.]

11:00 p.m. [Television police show]: "What? 'I didn't say anything!' What'd you say? 'I didn't say anything, alright?' Huh? Huh?" [Screaming. Man sets woman on fire with match. Screaming.]

12:00 a.m. [Television show]: "Reggie! Reggie! Help me! Help me! [Man

saves woman from attacker.] ‘What’s the matter with you? Can’t you do anything right?’ ” [Man then throws woman against wall toward attacker.]

1:00 a.m. [Television movie]: [Men firing automatic weapons into crowded restaurant. Screaming. People falling down.]

2:00 a.m. [Television police show]: [Boy in hospital emergency room.] “I’m sorry, sweetheart. You’re too young to be shot, aren’t you little guy? ‘Yeah.’ [Moaning.] So, he’s got one, two, three, four.”

[End of tape]

MR. MINOW: That was not an unusual day. That was just picked at random where somebody watched with a tape recorder all day long, and that’s what your kids, my kids, everybody’s kids are seeing everyday.

Colin Powell, if you haven’t read his book, I recommend it very strongly to you. In his recent book, Colin Powell says that we seem to have lost our sense of shame as a society. Nothing seems to embarrass us, nothing shocks us any more. Spend time switching channels on daytime television, and you will find a parade of talk shows serving up dysfunctional people whose morally vacant behavior offers the worst possible models for television.

Why do we do this? In an ideal world, no American children would be left alone for long periods of time with only television for companionship. In an ideal world, every parent would be responsible, every parent would have the time, the financial resources, to control his or her child’s television viewing. And every parent would be as vigilant as one television producer who very proudly says he will not allow his children to watch any program he produces. It is okay for your children to watch it, but not for his children to watch it.

Broadcasters used to tell parents, “If you don’t like it, turn off the set.” Yet, when Congress, this year, passed the V-chip legislation, which you will recall the President signed only a few weeks ago,¹ broadcasters said that somehow violates the First Amendment, that the ability to turn off the television by a parent violated the First Amendment.

A group of women some years ago organized a national “Turn Off The Television Day.” And the president of the Network Television Association objected. “This is an infringement of the network’s First Amendment rights.” That’s why we wrote this book. What does the First Amendment have to do with all of this? Most important, the First Amendment is a restriction only on the government. It is not a restriction on editors. It is not a restriction on producers. It is not a restriction on directors. It is a restriction only on the government. People forget that.

When Time-Warner was criticized a year ago for producing and distributing rap records that advocated killing policemen, what did Time-Warner say in its defense? It said, “We have to protect the First Amendment.” What did the First Amendment have to do with that? That would be a legitimate argument only if the government had said, “Don’t do that with the rap records.” These were par-

1. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). President

ents and citizens complaining. It had nothing to do with the First Amendment.

When I was chairman of the Public Broadcasting Service years ago, we had a program . . . it was called *Death of a Princess*. It involved the murder of an Arabian princess, because she had been involved with a man whom the royal family didn't like. It created a great storm. Foreign governments complained that it was a docu-drama, that people wouldn't understand it wasn't a true story. The underwriters complained. And finally, I called the producer of the program. I said, "We will run your program, but we will couple it with a discussion after the program where people who have a different point of view will express their views." He said, "You are violating my First Amendment rights." I said, "I am afraid you don't understand the First Amendment." I said, "You are not the only person that's entitled to the First Amendment. Everybody is entitled to the First Amendment."

Some years ago, at Northwestern University, we had a professor who wrote a book saying the Holocaust never happened. I am a trustee of Northwestern. I called the president of the University. I said, "What will you do about that?" He said, "I can't do anything about that; he is exercising his First Amendment rights." I said, "Did it ever occur to you that you have the same First Amendment rights that he has as well? That you have the perfect right to say you don't agree with him?" He said, "I never thought of that."

The First Amendment is used to stop discussion rather than to promote discussion. And it would be a huge surprise to those people who wrote the First Amendment to see how it is cited now -- not to begin a discussion of public interest, but to close it.

NBC Nightly News broadcast an on-camera murder of a Miami woman by her estranged husband. NBC affiliates, the local stations, complained to NBC News. The network said, "The broadcast was protected by the First Amendment." Again, not the government complaining.

If there is ever a word that seems to have been overused in this country without understanding what it is, it is the word "censorship." Justice Potter Stewart, when he was on the Supreme Court, once said it all in one sentence. He said, "We confuse the right to say something, the right to do something, with whether it is the right thing to do."

We confuse the right. Now when you are in law school, what you concentrate on is learning people's rights. Learning people's rights. You don't concentrate on the moral issues, the different issues of whether it is the right thing to do.

When I was on the board of CBS, I was very concerned about the practice of the networks of projecting election results before the polls closed, because very often that deterred people, let's say on the west coast, from deciding if they should even vote. So I asked for a discussion of this at a board meeting. CBS News people came in with all of their computer charts and their technology, and they were explaining to us how they knew who won the election before the polls closed because of their exit interviews and everything that explained it. And I said, "Why do we do this?" The answer from the president of CBS News was, "We have a right to do this under the First Amendment." I said, "I know that. That isn't my question." I asked, "Why do we do this?" He said, "We have a

right to do this under the First Amendment.” I said, “Maybe I am not making my question clear. I am trying to find out why do we do this. Do we do this for competitive reasons? Are we afraid that NBC or ABC will call the election before we do?” They said, “No. We do it because we have a right to do it under the First Amendment.” Finally, I was losing my patience. I said, “You guys are like Pavlov’s dog. All you know is the First Amendment.” I said, “You have to explain to me why you think this is in the public interest to do so?” And the president of CBS News said, “Well, we know who won the election. We cannot sit on that information. We must share it immediately with the American people.” I said, “Well, if that’s the case, why do you say we will give you our projection right after the next commercial? Why don’t you do it before the next commercial if it is so important and so urgent?”

I never got an answer to that. But I am sure if I asked, the answer to that question would have been, “Because we have a right to do it under the First Amendment.”

The First Amendment is used today as a way to stop discussion rather than to advance it. And that’s why we dealt with this issue in the book.

The other big issue that we dealt with in the book is . . . and I have testified in the Senate about it . . . even though I am a lifetime Democrat, and it is interesting to me the one person who seems to have picked up the issue is Senator Dole . . . why we are giving away for free the broadcast spectrum to broadcasters without any commitment to serving the public interest for children. Why don’t we simply auction off the channels. If you read today’s *New York Times*, it is estimated that the next auction could bring in as much as seventy, that’s seven-zero, billion, with a “B,” dollars.

But the broadcasters say, “No, you should give them to us for nothing.” We say, “Why is that?” “Well, because we serve the public interest,” they say. I say, well, look at that six-minute tape, and tell me that’s serving the public interest for our children.

There is a big battle going on right now at the F.C.C., which wants more children’s programs. What I proposed to Congress came to me from a story I read . . . about a man who came to the United States as an immigrant, Stanley Newberg. He loved this country. He was very successful here in business, and when he died he left a will leaving all of his money to the United States of America. Five-and-one-half million dollars. The money went to the United States Treasury. It lasted exactly thirty-nine seconds.

We proposed to Congress that when they auction off the channels, they should take a certain percentage of the money and use it to hook up every school and library in the United States to the Internet, to all the new technologies.

We use the example of what Congress did in 1862, when it passed a law which created land grant colleges. At that time, the government started selling off public lands. A Republican senator at that time, in the midst of the Civil War, said they should set aside some of the land for the purpose of creating a land grant college. Out of that came seventy major American colleges, including M.I.T., Cornell University, University of Illinois and University of Wisconsin. The principle of that ought to be brought back here now.

Now, what shall we do? Other countries are dealing with this exact issue. Canada, in particular, led the way on the V-chip. I hope we will get into a discussion for a few minutes about the V-chip, what's involved. You saw what happened last week when the television industry, the movie industry and the cable industry all met at the White House with President Clinton, and said we will create a rating system like the movies, so that parents will at least have some forewarning this is an "X," or this is a family movie or whatever family programming.² That is a major change from what the people in the business were saying as recently as three weeks ago. They were saying they would never submit to that. They have recognized, I think, that public opinion, that parents, particularly in homes where two parents are working, or a single parent is involved, simply cannot supervise every moment of a child's television viewing. Simply cannot do it. In fact, ironically, if you believe the surveys, something like forty percent of children in America have a television set in their own room. Forty percent of children in America. That cuts across all economic levels as well. So, children are watching television, and parents must have some ability to have their hand on the remote control, or children will be simply subjected to this and worse all day long.

Is this harmful to children? Some people go so far as to say that it causes them to become violent and aggressive, or teaches them that the use of a gun or crime is acceptable. I am not sure I would go that far. But I do think it makes them accept violence as a way to solve problems. It makes them not shocked. As General Powell says, we have lost our sense of shame. And it seems to me that we have made a great deal of progress, but we are just beginning.

This spring, I am invited by the Business Council, that's the C.E.O.s of the one hundred largest companies in America, to speak to them about their role as advertisers. The biggest advertiser in the United States in dollars is Proctor and Gamble, which spends, believe it or not, something like twenty-five million dollars a week — a week — on television advertising. Proctor and Gamble has decided it will no longer sponsor some of the worst of the talk shows. Proctor and Gamble has walked away from that. Oprah, whom I know and admire a lot, has recognized that she now has the biggest classroom in America every single day, five days a week. She is determined to use that opportunity to deal with improving life for kids and not destroying life for kids.

With that, I am going to close with a favorite story that President Kennedy quoted only a week before he was killed. The story was about a French marshal named Lyautey who walked one morning through his garden with his gardener. He stopped at a certain point, and he asked the gardener to plant a tree at that spot the next morning. The gardener said, "But Marshall Lyautey, that tree won't bloom for one hundred years." The Marshall said, "In that case you better plant it this afternoon."

2. A meeting of broadcasters, cable television executives and hollywood studio representatives met with President Clinton at the White House to discuss the feasibility of a television rating system on February 29, 1996.

With that, I would be very happy to get a discussion, or argument, or questions or whatever is on your mind.

QUESTION: If the rating system is going to be used with the V-chip in a meaningful way to screen out pure garbage from violence and other content, then what about news content, or parts of a documentary or nature show. Could you comment what that rating system will mean?

MR. MINOW: It will be very difficult. News and sports are automatically, by definition, exempt. Some people say that news sometimes is the most violent thing of all. But, I think it is quite correct to exempt news and sports.

Where you get into very hard questions (the argument that the broadcasters sometimes have made), is if you define violence simply as the number of times somebody gets stabbed or shot, as opposed to whether violence is a part of a story — whether violence leads to some punishment or moral or change — if you don't do that, you really made a mess out of it. They say *Schindler's List*, for example, could be defined as being excessively violent. Here is a great and very important movie. So some sensitivity and sophistication in that rating system will be necessary.

I have known Jack Valenti for many years. I am just delighted he took the lead in this, because whether you agree or not agree with every movie rating, at least there is a basic system to put a parent on notice, if a parent pays attention. Other people say that the real problem is parents. And they are right. A lot of parents simply don't care. But for those parents who do care, I think the rating system will help.

QUESTION: Will the V-chip people be responsible for determining what's on TV?

MR. MINOW: Well, the people who are in the business very often make a mistake. What were the most popular programs on television? The most popular was the Cosby program [*The Cosby Show*]. There never was a harsh word, or a violent act, or anything of a sexual overtone in the Cosby program. Yet, it was number one in the country. Why do people make the kind of stuff that they do? If you talk to a lot of the writers, and I have, they say, "Well, we have a half hour, we have to end the program. In order to end the program, there has to be some violent act to come to a conclusion." Well, that's a hell of a reason. But that's what some of them think.

Second, they have the idea that the public really wants this. There may be parts of the public that want it. But certainly not all of us.

Other people say, if you have the rating system, things can get even more violent because people will have, let's say, an "X" movie on television, but at least people will know what's coming. So, I think it is a really hard question. I go back to what I said at the beginning about balancing free speech, free markets and protecting children. It is a balancing act. I don't know if we will come to a perfect balance, but I think the current balance is out of whack.

QUESTION: How would you change the current system?

MR. MINOW: I don't think we can or should change the concept of the First Amendment. What we should do is tell people that when they criticize, they have the same First Amendment rights as the people they are criticizing. The First

Amendment should not stop discussion, it should promote discussion. Now, whenever you criticize anybody, very often, they say, "Well, I have a First Amendment right to do that," and you are supposed to go in the corner and shut up. And that's exactly the wrong application of the First Amendment.

QUESTION: The government regulation is designed so the government can't make a regulation to inhibit free speech. How would you respond to the V-chip in terms of its regulating free speech? Could it be viewed as an intrusion by the government saying, "Alright, the market failed. Now, we have to take it into our own hands and regulate what you watch in your home." Isn't that what it is doing?

MR. MINOW: If the government got in the business of doing ratings, that would be a legitimate argument. But that's not the case.

QUESTION: But they are mandating a chip actually going into something that goes into your home?

MR. MINOW: And they are mandating there could be multiple rating systems. There could be the Christian Coalition, the Jewish Coalition, the Catholics, whatever. Then leave it up to the parents what to do. That's not the government telling them what to do.

If the government said, "We will do the ratings, the government official will say this is X, this is Y." Then there would be a legitimate argument that the First Amendment would be violated. That's not what will happen with the V-chip.

QUESTION: As a follow-up to that, are you familiar with the Denver public access case?³

MR. MINOW: Yes.

QUESTION: How do you feel about that?

MR. MINOW: They haven't decided the case yet. Well, you have to go back a step. What Congress did was to mandate that one or more channels would have to be available to anybody that wanted to use them and that the cable operator would have no control at all over what went on. What happened was you had a lot of nudity, you had a lot of "X" movies and so forth. If you went to New York, on cable, there would be stuff that would curl your hair. The complaints would go to the cable operator, and he would say, "Well, Congress required me to put on whatever people wanted." Because of that, one of the cable operators said, "Well, let me at least scramble that program. So the only people who will get it are people who actually ask to see it rather than having it simply come into your home." And that's the case that set the issue for the Supreme Court. The issue really is whether the mandate of open access to a channel precludes a cable operator from scrambling a program. My hope is the Supreme Court will say that the answer to that is no. The cable operator has some authority.

QUESTION: Isn't part of that mandate that they have to eliminate certain programming?

MR. MINOW: No.

3. Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C., 56 F.3d 105 (D.C. Cir.), cert. granted, 116 S. Ct. 471 (1995).
<https://via.library.depaul.edu/jatip/vol6/iss2/2>

QUESTION: Earlier you talked about the government. Explain the industry involvement.

MR. MINOW: You have to go to the beginning, when broadcasting began. When broadcasting began in this country, there was no regulation, so anybody who wanted to use a channel could do so. The result was staggering. There were five people using the channels, and you couldn't hear the radio. So the broadcasters went to the government in the '20s and said we have to have some regulation. The government said, "O.K., we will allocate channels." Let's say you appl[ie]d for a channel. They gave you a license, which meant you had the exclusive use of that channel, denying it to anybody else who wanted it. But, in exchange, you would serve the public interest. You didn't have to pay anything for the channel, but you would provide public interest programming. That was the deal. That has been in effect for sixty-odd years. Some think that we defaulted in defining what the public interest meant. Should the public interest have meant that a certain amount of time be allocated for children's programs? Should it have meant a certain amount of time be allocated for political discussion without candidates having to raise an enormous amount of money to buy time. There were all kinds of things. We never did that. So, the result has been that broadcasters have really had it both ways. They had the exclusive use of a channel without paying for it. And they had very little in the way of a corresponding obligation. That is why many people are saying now let's change that system. Let's auction off the channel, then they can do what they want with the channel, but at least some money will be going to the Treasury.

QUESTION: I guess my concern with the V-chip having its own rating system is that it can lead to children going somewhere else to view the program.

MR. MINOW: That's a very valid and legitimate point. Also, people think kids can operate the technology and parents can't. And, there was a wonderful cartoon in the *Sun-Times* the other day. The kids were supposed to be in bed, and the mother and father are downstairs trying to figure out how the V-chip works. The kids were yelling from upstairs, "First you push two, and then you push enter, then six." That's another very legitimate part of the problem. I am not saying this is a perfect solution.

QUESTION: Returning back to the spectrum issue. Would you advocate perhaps the abandonment of the comparative hearing process in deference to the auction process? How would you reconcile?

MR. MINOW: Well, in the book we advocate really a choice. We say a broadcaster should by law be given the choice: either be a public interest broadcaster, spell out what that means, then you don't have to pay for the channel; or if you don't want to do that, then you are going to be in an auction. One or the other. But you can't have it both ways.

I think what we've got now is a system which has failed, which has failed badly. I noticed the other day Howard Stern's company is buying thirty more stations; the government, which had such a hard time with Howard Stern, is letting him buy thirty more stations. If that is the case, you might as well let the market apply. What we've got now is essentially such a failure that it's a hypocrisy.

QUESTION: It seems like the focus is always the home, and in the ratings system, again, the focus is on the home. The parents see the ratings and then decide. But what if there's no real difference between the ratings in the morning and evening — we've kind of left the broadcasters, and what they are airing, out of the picture. Actually, it's still coming through into the homes.

MR. MINOW: Yes, but what we see now is that the broadcasters will do the ratings.

QUESTION: Again, though, it's left up to the parent to say okay, I see this, I am going to turn it off now. But then we have programs that say, "Warning: this material is . . ." But again, the kids are seeing these. I mean, it just doesn't seem to be a remedy.

MR. MINOW: The broadcasters accept this. The parent will have the option, not just on individual programs he chooses, but on whole channels. The broadcasters may say, I mean, the parent can say, "Well, there's too many violent programs on channel 32. I don't want my kid seeing channel 32." So, channel 32 goes out.

Now, the other argument I thought you were going to make is, well, the kid will go next door to the neighbors and see it, which is also why I say this is not perfect. This is a first step; it seems to be the first step toward trying to address what is a very basic problem. Every country is dealing with this problem. I had a very interesting discussion with the wife of the former president of Harvard, Sisella Bok. She has a unique claim to fame. She's the daughter, believe it or not, of a mother and a father who both won the Nobel Prize. It's pretty hard to find anybody to ever duplicate that. She is from Sweden. She has studied this issue as a Swedish researcher. The same thing is true in Australia. The same thing is true in Canada. The same thing is true in Germany. This is a universal, global problem, and each culture is trying to apply its standards to it. It's an issue in China. In Singapore, they are trying to block out the Internet. Singapore thinks there is too much pornography and bestiality. So every culture is trying to deal with this information explosion. I think that's why your *Journal* is particularly interesting, because over the next twenty, thirty, forty years, we will not really solve this. We will be trying to reconcile these competing values.

QUESTION: I agree with you that a lot of large production companies are very quick to use the First Amendment when people complain. But in all fairness to people like Time-Warner, in the case of the cop killer rap music, isn't that just their response to parents who are upset? But they are upset, and they are going straight to their government offices, local and national, and asking, "Hey, what can we do to stop this?" And this is Time-Warner saying, "Maybe before you make any knee-jerk reactions, remember there is a First Amendment here." Isn't it them saying to parents that we have a First Amendment right to say this? Isn't it them going to the government, "I know the parents are upset. I know that they are asking for you to do something. But, the government can't or shouldn't in this area."?

MR. MINOW: I think you are being kind to them, because in the case of Time-Warner, no public official, local, state or federal, was ever involved in that problem. Ever. Period. This was strictly a commercial issue. There were complaints

from citizens, complaints from stockholders at stockholders' meetings. The government's fingerprints were nowhere near it. I think it was used as a cop-out. Three of my friends are directors at Time-Warner, and I raised hell with them. And they said, "You know something? You're right." And they raised hell with the C.E.O., and he said, "You know, I never thought of it that way."

So, I think the First Amendment was used in that case as an alibi. And I go back to what Potter Stewart said: even if you have the right to do something, does that make it the right thing to do? Nobody asked that second question. Who was it? The French philosopher, Voltaire, who said, "I disagree totally with everything you have to say, but I will defend to the death your right to say it." I would turn that around and say, "I would defend to the death your right to say it, but I disagree with what you say and here's why." And nobody does that. The invocation of the First Amendment is a stopper, and it should not be.

That is the fundamental point. I hope. Professor Carter has got a new book out, and he has picked that up. I am hoping this one last residue will make people think again about what is the First Amendment.

If I stopped one hundred people on the street corner, and I said, "Does the First Amendment only apply to the government — only a limitation on the government?" Most people would say no. If one of you writes an article for the *Journal of Art and Entertainment Law*, and your editor says, "I want you to change this paragraph," does that violate your First Amendment rights? There are some people who would make that argument. There was a young man at the University of California in San Diego who decided he would walk around nude on the campus. And when the University spoke to him about it, he said, "I'm just exercising my First Amendment rights." The University said, "Oh, I guess that's right." But that is the madness to which we have gone with the First Amendment.

[Applause].

