

**The Media Institute
Friends & Benefactors Awards Banquet
October 22, 2003**

(As Prepared for Delivery)

Thank you, Patrick, for that kind introduction. And thank you for inviting me to speak to you tonight.

I have a special memory of this annual dinner. It was the first "D.C. Event" that I went to as a new associate, just a month after I moved to Washington almost ten years ago. I'd like to think that the partners I was working for invited me because they sensed the deep respect and appreciation I have for the First Amendment. In reality, though, I know that I just happened to be the first associate they asked who owned a tuxedo.

Since that first dinner, I have had the greatest admiration for the Media Institute and its mission. I grew up as the fourth of five children, and the First Amendment was rarely adhered to in my family. My voice was definitely stifled by my 4 siblings. I therefore welcome every opportunity to defend freedom of speech. Indeed, I did not realize at the time that this would be the most important preparation for my experience as the fourth of five Commissioners. Unfortunately, debate about Commission items too often is strikingly similar to fights over who controls which television channel will be watched.

My experience as a child also taught me perhaps the most important lesson regarding free speech. For even when I was able to garner the attention of my parents, I quickly learned that unless I had something unique or compelling to say, competing voices soon would drown mine out.

And therein lie the most important premises underlying the government's role in media regulation: First, while the First Amendment protects one's right to speak, it does not guarantee that people will listen to you. Second, competition among voices is ultimately the best method of ensuring that the most important information is heard.

Our Constitutional rights to free speech and a free independent media are the backbone of our democracy. Together, they allow individuals to criticize our social, political, and military leaders, thereby fostering a thriving media marketplace. And that thriving media marketplace, in turn, reinforces our democracy by facilitating the expression and publication of diverse viewpoints.

We see evidence of how important freedom of speech is to democracy when we look at countries around the world. In pre-war Iraq, for instance, all news outlets were controlled by Saddam Hussein. Since the Iraqi people have been liberated, this censorship has been lifted, the people are free to speak, and news organizations have flourished. Iraq now has hundreds of news outlets, including radio stations, TV stations, and newspapers representing the widest array of political views. Foreign publications,

radio, and television broadcasts are now available. *The Times* of London has reported that “every day in Iraq a few more newspapers start publishing, taking advantage of the first freedom of speech most Iraqis have ever known.”¹

Americans have known free speech from the inception of our country. We have benefited from an American media that is as independent, diverse, and thorough as any in the world. But we should never get complacent. Listen to these findings from a recent survey:

- 63 percent of adults said that people should not be allowed to say things in public that might be offensive to racial groups.
- 58 percent of adults said that people should not be allowed to say things in public that might be offensive to religious groups.²
- And at the local library, the *Harry Potter* books are currently the most challenged titles. Many seek to censor this popular series on the contention that it promotes magic and witchcraft.³ Personally, I find the prospect of censoring a youthful looking bi-spectacled male truly frightening.

In the face of such sentiments, it is clear that maintaining a strong First Amendment is an ongoing challenge. Everyone in the audience, and the Media Institute specifically, should be commended for the work that you do.

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I am particularly pleased to help honor Dennis FitzSimons and Brian Lamb tonight. These two men have spent their careers furthering the goals the Media Institute embraces: freedom of speech, a competitive media industry, and excellence in journalism. They also represent the challenges that government and industry inevitably face as regulations approach First Amendment rights. When the media industry is given more freedom, it can produce programming—particularly news and public affairs programming—of even higher quality. At the same time, the media industry must be mindful of the tremendous power it has and the responsibility to the public that comes with such influence.

As many of you know, Dennis FitzSimons argued persuasively for the repeal of the decades-old government restriction on the common ownership of newspapers and broadcast stations. For almost 30 years, the Commission has prohibited the same entity from owning both a newspaper and a broadcast station in the same market. Adopted in an era with little cable penetration, no digital broadcast satellite systems, no local cable

¹ Anthony Browne, “Flurry of papers heralds new freedom,” *The Times* (London), May 20, 2003.

² “Comedy and Freedom of Speech,” A Survey conducted by the First Amendment Center and the University of Connecticut with the U.S. Comedy Arts Festival (2002), available at <http://www.freedomforum.org/templates/document.asp?documentID=15810>.

³ J. Krug and B. Becker, “Harry Potter Continues to Top Annual List of Challenged Books,” in *The First Amendment and the Media 2002*, 287 (Richard T. Kaplar, ed., 2002).

news channels, few broadcast networks and fewer broadcast stations, and no Internet, the rule was based on a market structure that bears almost no resemblance to the current environment. Indeed, because of these marketplace changes, we already had revised all of our other media rules since the “newspaper/broadcast” ban was adopted. As a result, for years, newspapers were the *only* media entities prohibited from owning broadcast stations in the markets they served. Regardless of how large the market was or how many newspapers or broadcast stations were present, this prohibition remained.

As Dennis was able to articulate, such a government ban raised serious First Amendment concerns. And perhaps most important, Dennis was able to demonstrate concretely how Tribune had used common ownership to produce higher quality news – and more of it. For instance, by sharing costs, the Tribune newspaper and television station in Chicago were able to afford to send reporters to Iraq to cover the war. These reporters were able to contribute both written reports and on-air footage. And the two news organizations were able to provide consumers with detailed, first-hand reporting rather than rely on wire services.

With Dennis’ help, the Commission finally recognized that such benefits frequently accrued to local communities where cross-ownership had been permitted. In its recent media ownership order, the Commission acknowledged that newspaper/broadcast combinations often result in a significant increase in the production of local news and current affairs, as well as an improvement in the quality of programming. With more and better news, citizens are more likely to become engaged in the issues of the day. And we all benefit from the more vibrant debate in the marketplace of ideas.

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As with Dennis, there are many reasons to honor Brian Lamb’s contributions to free speech and excellence in journalism. From its inception, C-SPAN, the network Brian founded, has shined a spotlight on our government and the political process. C-SPAN has brought all of us – the citizenry – that much closer to the decision makers. C-SPAN therefore encourages us to become more active participants in our democratic system.

Importantly, C-SPAN is not at the mercy of commercial advertisers needing a certain audience rating. Nor is it subject to the budgets and politics of government funding. Rather, the cable industry funds C-SPAN as a public service contribution. Brian had the wisdom to seek financial support from this sector, and the cable companies had the good sense to do what was right. And both made sure to keep government out of the picture.

C-SPAN is a great example of the media industry taking a positive step for free speech and the marketplace of ideas. The cable industry didn’t wait for government to try to require it to cover its hearings. It didn’t wait for government to try to regulate how much of its capacity need be devoted to public hearings. The cable industry (thanks to

Brian's urging) acted on its own, and in the public interest. The industry recognized that, as its voice in the homes of Americans grew, so, too, did its corporate responsibilities.

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The First Amendment gives the media much freedom and poses a formidable barrier to government regulation of content. In part because of this freedom, modern media is pervasive and plays an integral role in today's society. Most of us are dependent on the media for the majority of our news, information and entertainment. I believe that with this great influence comes great responsibility.

Recently, many people have expressed concern about the content of today's media entertainment. There is a general concern that media companies too often play to the lowest common denominator. The FCC is fielding an increasing number of such complaints. The survey I referenced earlier included a few additional statistics:

- When asked whether the media has too much freedom or whether there is too much government censorship, 51 percent of those surveyed said the media does have too much freedom.
- 43 percent said that the government should regulate what appears on television.
- 41 percent said that comedians should not be able to perform a comedy routine on broadcast networks if "many may consider [it] offensive."
- 19 percent of those surveyed said that comedians *should not* be able to perform the same routines *even on subscription cable channels* like HBO, Cinemax and Showtime.⁴

These statistics suggest that a majority of adults may think the balance between the First Amendment and regulation may be tilting the wrong way with respect to today's media entertainment. And a substantial minority is affirmatively calling for more, not less, content regulation.

I am concerned by these trends and calls for the government to be *more* involved in the business of regulating the content you choose to provide. But neither should you abuse the freedom you have.

First Amendment concerns require that the FCC tread carefully in the area of content regulation in order to avoid trampling on free speech rights. At the same time, the media must be mindful of the tremendous power it has to mold young minds and influence their audiences generally. As the trustees of the nation's airwaves, licensees have a duty to serve the public interest and to avoid programming that is gratuitously offensive, lewd, or vulgar. Certainly, programs have recently been broadcast that no one in this room wants to defend.

⁴ "Comedy and Freedom of Speech," *supra* note 2.

The media has immense power to shape and influence the hearts and minds, and this power should not be wielded lightly. Ultimately, responsible behavior and self-restraint keep the calls for government intervention at bay. Embrace your First Amendment rights, but do so responsibly.

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I'd, again, like to congratulate Brian and Dennis for your excellent contributions to the media, the public, and the public interest. And thank you again for inviting me to speak to you tonight.