

TUNE IN TO THE
SOUND OF DEMOCRACY

Justice Talking Radio Transcript

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The Federal Communications Commission has recently imposed record fines against television networks for airing indecent programming before 10 p.m. CBS stations face a \$3.6 million fine for airing a reenactment of a teen orgy in “Without a Trace.” PBS got fined for explicit language in an acclaimed series about blues music. But the FCC’s actions raise serious questions about what is indecent and the limits of the First Amendment. Join us for this week’s Justice Talking as we ask whether government efforts to police the airwaves violate free speech or are necessary to protect young viewers from harmful programming.

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MARGOT ADLER: From NPR this is Justice Talking. I’m Margot Adler. On today’s show: indecency and obscenity in broadcasting. Part of the job of the Federal Communications Commission is to monitor what goes out on the airwaves. Through complaints from the public, the FCC decides what crosses the line into indecent and unlawful. Recently the FCC has fined some television stations and their affiliates for indecent programming. Some argue that the Commission is overstepping its mandate to keep the airwaves clean and encroaching on the First Amendment right to free speech.

On today’s show we’ll talk about the line between indecency and censorship, from Janet Jackson’s wardrobe malfunction to the f-words in “Saving Private Ryan” heard on network TV.

UNIDENTIFIED MALE [clip from “Saving Private Ryan”]: Want your head blown off you fancy little **bleep**? Don’t you ever **bleep** touch me with those little rat claws again. Get the **bleep** back in formation.

MARGOT ADLER: More after the news.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. The FCC has recently been cracking down on television content it views as indecent. It levied one of the largest fines in its history, over \$3 million against CBS Television affiliates, for airing a racy episode of the detective drama "Without a Trace." This recent spate of fines raises questions about the role of the FCC in monitoring the airwaves and whether the government is taking a narrow view in determining whether television content is obscene or indecent.

On today's Justice Talking, we'll look at how the FCC's definition of indecency and obscenity has changed over the years, and we'll talk about what can and can't be said on television and radio. Should those rules still hold when there are so many other choices—satellite television, radio, and the Internet? We'll talk with an FCC commissioner who tells us what it's like to make these decisions, and I'll interview the director of a new film that looks at the good, bad and ugly uses of the f-word.

But first let's look at how the FCC and its rulings on indecency have affected the lives of two mothers, one who runs a public television station, the other a volunteer who has taken up filing regular complaints with the FCC. On March 11, 2004 the public television station KCSM in San Mateo, California, aired an episode of a seven-part film series called "The Blues." It explored the hey-day of Chicago blues with hip hop artist Chuck D and record producer Marshall Chess. The broadcast started at 8 p.m. Pacific Standard Time. About 42 minutes into the program, KCSM viewers saw and heard this:

UNIDENTIFIED MALE: You know you can tell a cat, look man really, you need to calm down and yo, no, **bleep** that man. Really if it comes down to it, I'll blow you out.

UNIDENTIFIED MALE: You had all these people from Mississippi and Arkansas coming to Chicago, and they had problems, they had to go to the...my father. You want to call him the plantation owner, then call him, who else... They would go to him to ask for advice.

UNIDENTIFIED MALE: I guess your father was like, well **bleep**, I'm looking out for you.

MARGOT ADLER: An uncensored version went out over the airwaves that night. Among those watching was a parent who was shocked and disturbed by the language in the scene, shocked enough to send a letter of complaint a week later to the Federal Communications Commission. The FCC agreed with and acted on that complaint earlier this year, fining KCSM \$15,000 for airing the indecent and profane material between 6 a.m. and 10 p.m., a time when children would be watching. Marilyn Lawrence, KCSM general manager, says she was surprised by the complaint and the subsequent fine.

MARILYN LAWRENCE: In our market, you know, we're in San Francisco, and the Bay Area is lucky enough to have four public television stations, three of which aired this series before us and there had been no complaints, no criticisms at all from the other stations airing it. So we had no belief that there was anything wrong with us airing it.

MARGOT ADLER: Lawrence also wonders what the difference is between this blues episode and the network broadcast of the film "Saving Private Ryan." In the World War II movie the f-word is heard more than a dozen times and it aired uncensored during prime time without FCC reprimand. In a 2005 ruling, the FCC stated that deleting offensive words in that film would have "diminished the power, realism and immediacy of the film experience for viewers." Lawrence argues that same logic should apply to a program about the history of the blues.

MARILYN LAWRENCE: I think people have the right to understand in a historical documentary that the language is only going to be used when it might be deemed appropriate. But when we think it's deemed appropriate, we should have the conversations with our children about how people talk that way or don't talk that way or shouldn't talk that way instead of banning it from others.

MARGOT ADLER: But for Kelly Turner, a mother of an eight-year-old, profanity is just that, profanity. If she had her way, the FCC would have fined ABC affiliates for airing "Saving Private Ryan" during prime time.

KELLY TURNER: What's the difference between "Saving Private Ryan" and airing, you know, an unedited version of you know "Die Hard" or another movie that has the same amount of profanity? I guess I don't really see a difference. Just based on the content of the film, I'm not sure that would make it okay to say those things.

MARGOT ADLER: Turner lives in Nashville and is a volunteer for the Parents Television Council. PTC is a media watchdog group that's attracted attention for being able to spur thousands of FCC complaints around what it considers to be indecent programming. In 2004 it mobilized over 60,000 complaints around Janet Jackson's infamous wardrobe malfunction during the Super Bowl halftime show. Turner's involvement with the PTC started with that controversial moment.

KELLY TURNER: It did go by quickly, and you think, oh my gosh, that was her breast on network television—just not the right time or place for that to happen.

MARGOT ADLER: At the time, Turner says, her daughter had just left the room and thankfully didn't see Jackson exposed. Turner avoids those kinds of close calls by using the tools available through her satellite cable service. She blocks any R-rated material and some channels altogether, like MTV and Comedy Central. Despite the control Turner has over the television, she says groups like the Parents Television Council are important for keeping network broadcasters in check no matter how few times the f-word is uttered or how few seconds the questionable material.

KELLY TURNER: How much longer will it last the next time or when Paris Hilton or Nicole Ritchie say the f-word on an awards show that is live? Do you go, well, it went by so quickly. I think there's a time when you have to say, now wait a minute, you've crossed my line, and just to let someone know, I'm watching you.

MARGOT ADLER: But for Marilyn Lawrence, the general manager of KCSM, the line isn't so black and white. She says that what some may consider indecent can for others be used as teachable moments.

MARILYN LAWRENCE: As a parent, you know, if I have a questionable program that I'm watching with my child, you know, I want to take the opportunity to talk about whatever was unique in that program, whether there was some nudity or language or whatever, to actually have the conversation that says whether or not we thought it was appropriate or not and why it was used.

MARGOT ADLER: Lawrence is hoping that the FCC will see things her way. She recently filed a petition asking the Commission to reconsider the \$15,000 fine against KCSM in the blues ruling.

MARGOT ADLER: To learn the history of the FCC and how it has monitored obscenity and indecency on the airwaves, I called Robert Hilliard, a communication professor at Emerson College, and co-author of "Dirty Discourse: Sex and Indecency in Broadcasting." Welcome, Robert.

ROBERT HILLIARD: Thank you; I appreciate being here.

MARGOT ADLER: We're talking about indecency in broadcasting and the FCC today on our show. First of all, how do you define indecency?

ROBERT HILLIARD: My definition is if any material clearly is harmful to people, their psyche, their understanding, then we ought to think twice about how to present that material. But that's not the definition that's been used; the definition that's been used is more specific. The FCC has three tests: "An average person applying contemporary community standards must find that the material, as a whole, appeals to the prurient interest. The material must depict or describe, in a patently offensive way, as measured by contemporary community standards, sexual or excretory conduct, and the material taken as a whole, must lack serious literary, artistic, political or scientific value."

MARGOT ADLER: Back in the 1970s there were several obscenity and indecency cases involving Pacifica Radio. Perhaps the most famous involved the comedian George Carlin and the seven words you can't say on radio. Tell us about that case and what the Supreme Court decided.

ROBERT HILLIARD: That was quite interesting because the complaint was brought to the FCC by a man with his young son. He happened to be driving in his car in New Jersey and picked up the Pacifica station from New York. But it was a program dealing with language, a study of language, and as part of that program, one might call it a documentary, there was a presentation of George Carlin's seven dirty words routine. The man was very unhappy and sent a letter to the FCC stating that hearing this program in the afternoon was not something that he was worried about, but his young son was driving in the car with him, and his young son heard this, and that he felt this kind of material should not be presented when children could hear it. As you probably know, the young son I think at the time was 14 or 15, and if that child had not heard those words by then, he must have been raised living in a closet somewhere. However, that's beside the point, because what eventually happened was that it did reach the Supreme Court.

MARGOT ADLER: And what did the Supreme Court finally decide?

ROBERT HILLIARD: Well the Supreme Court finally decided that one, under the Communications Act of 1934, the FCC did have the authority to take action against stations for indecent as well as obscene and profane material, and decided that second, in this particular instance, this case, the FCC was correct in finding that the material in the George Carlin routine was indecent. And then we waited for the other shoe to drop. We thought the Supreme Court would say, so here is our definition of indecency. And they said in effect, we shall judge all future cases on their merits.

MARGOT ADLER: When did the idea of a safe harbor come about and what exactly is that?

ROBERT HILLIARD: The safe harbor came literally out of the seven dirty words case, the specific case that we mentioned before. As I've mentioned, the concern was not that adults were listening, but that it was a time when children might be listening. So after the Supreme Court decision and a number of back-and-forth court cases in the federal courts, it was finally determined that there would be a so-called safe harbor. That is, the assumption was that between 10 p.m. and 6 a.m., children would not be listening. I'm not sure that's an accurate determination, but that's what they decided. So that between 10 p.m. and 6 a.m. so-called adult programming is permitted.

MARGOT ADLER: Thanks for talking with us today. Robert Hilliard is the co-author with Michael Keith of a book called "Dirty Discourse: Sex and Indecency in Broadcasting." He teaches at Emerson College in Boston.

MARGOT ADLER: Coming up: Is it the responsibility of parents to monitor what their children watch on television?

UNIDENTIFIED MALE: I don't think that parents have a right, though, to insist that their personal view of appropriate language be imposed on the rest of the country, and what can be broadcast over television.

MARGOT ADLER: Kids, parents and monitoring the airwaves—stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. On today's show we're talking about indecency on the airwaves, what's okay to air on network TV and radio. Joining me to talk about this are Tim Winter and David Greene. David Greene is the executive director of the First Amendment Project, an organization dedicated to protecting and promoting freedom of information, expression and petition. Tim Winter is the executive director of the Parents Television Council, an organization that monitors obscenity and indecency on television.

The FCC recently fined a number of broadcasters for indecent programming. CBS affiliates were fined over \$3 million for airing an episode of "Without a Trace" that included a teen orgy scene. Have you seen this episode?

DAVID GREENE: Oh my, yes.

MARGOT ADLER: Tim?

TIMOTHY WINTER: Well, it was a very long, protracted scene of writhing teenage bodies. And, it was certainly...I think the FCC accurately pointed out the length of time, the nature of the content in the context of the overall broadcast, and rightly found that it crossed the line of indecency by community standards.

MARGOT ADLER: Now this is one of the largest fines the FCC has ever issued. Are we going to see more of these huge fines David?

DAVID GREENE: I imagine we will. By all indications the FCC has said this signals a new strategy for them to really start enforcing indecency and profanity to a much greater extent than they had before.

MARGOT ADLER: Now a California public television station was fined for airing a documentary on the blues which used the f-word and the s-word and variations on those words. However the FCC did not fine ABC affiliates for airing "Saving Private Ryan," a violent war movie that contained repeated uses of those same words. Let's listen to a clip of the movie.

[MOVIE CLIP]

MARGOT ADLER: That was a clip of "Saving Private Ryan," a section that aired in the first 15 minutes of the movie. The FCC said that the context was different here and that the f-word and the s-word were okay because that language is used on the battlefield. Do you agree? Tim, why don't you answer first?

TIMOTHY WINTER: You know, I think there's a quote about tough cases make for tough law, and this is something that's...it's a very difficult issue. Even inside the Parents Television Council, the employees discussing that issue could not come to a consensus. There are times where obviously we understand the context is appropriate for material like that. Our concern is the time of day that the material airs.

MARGOT ADLER: David?

DAVID GREENE: I think one of the things that it points out is the problems of the FCC in making these judgments. What the FCC looks for from a legal point of view in defining indecency is whether something depicts sexual/excretory activity and then secondly, whether or not that depiction was patently offensive. And looking at whether it's patently offensive, what they'll consider is the explicitness, you know, whether it's repeated and then whether the material is pandering or titillating. And what they found here was that in "Private Ryan" it wasn't titillating or pandering, it was actually necessary to the artistic message.

MARGOT ADLER: Let's take another example: how the FCC ruled when Bono uttered a version of the f-word at the Golden Globe Awards in 2003. First of all, David, what happened?

DAVID GREENE: Bono won a Golden Globe award for writing a song that was used in a movie. When he accepted, he came up on the stage and said: "This is really, really f-ing brilliant." And many complaints were filed about this. Prior to the FCC's decision in the Golden Globe Awards, what the law the FCC had generally was that, single spontaneous, unplanned uses of the f-word in an exclamatory way, when it wasn't referring to the sexual act, it was just being used as an intensifier, would not be punishable as indecency. And that's what the enforcement bureau at the FCC held in this case as well. What the Commissioners did, which was very surprising, was overturn the enforcement bureau and say that we believe that even the spontaneous, single unplanned utterance was indecent and this is something that in the future that stations could be fined for.

MARGOT ADLER: Now let's talk about the f-word for a minute. Tim, hasn't the definition of that word changed? It's used all over the place and it no longer necessarily refers to sex.

TIMOTHY WINTER: It's tough to imagine anywhere in the United States of America that word isn't patently offensive by contemporary community standards, which is, again, the guidelines that the FCC adheres to. I don't, can't imagine anywhere in the country where that's acceptable. If a CEO is presenting to his shareholders the results of the year, or sitting around a dinner table would a parent allow the child to say pass the f-ing salt.

MARGOT ADLER: But in the boardroom it goes on all the time, right? In the locker room, on the battlefield—almost everywhere. In a sports stadium...

TIMOTHY WINTER: But not pumped into the living room of every home in the country.

DAVID GREENE: I would be surprised if it actually were not in the living room of many homes in the country. What the FCC requires from a legal standpoint is that if something that's going to be indecent, that it not just be offensive, but that it describes sexual or excretory organs or activities. And the f-word in many contexts, and perhaps most contexts now, simply doesn't do that.

MARGOT ADLER: Earlier this year, the WB Network pre-emptively edited some scenes from the "Bedford Diaries," which is a new drama about college students enrolled in a human sexuality class. The images included two girls kissing on a date and a girl with her hand down her pants. But the WB posted an unedited version of this episode on its website, outside of the reach of the FCC. So won't networks find a way to provide racy content to viewers anyway, and Tim do you think that this poses a problem?

TIMOTHY WINTER: Well, again, let's make sure we're segregating the broadcast medium versus other forms of distribution. The law of the broadcast indecency law only applies to broadcasts of course and only during certain times of the day, after 10 o'clock the WB could have aired whatever they wanted to air, as long as it was not legally obscene which of course is a much stricter standard.

MARGOT ADLER: So I guess what I'm wondering is: Do you think that the FCC should be able to extend its monitoring powers to cable, the Internet and other media platforms?

TIMOTHY WINTER: You're talking about a subscription service in satellite and cable and in other media, and you know, we're not talking about public airwaves or public property. So the short answer is no, but the more critical answer there is, the cable operators should not be able to force me to pay for very graphic, sexually explicit content, in a bundled package in order for me to get something like the Disney Channel for my daughter. I shouldn't be forced to pay for anal sex on the FX Network in order to get a high school musical on the Disney Channel for my daughter.

MARGOT ADLER: But on the other hand I should be able to pay for it if I want it?

TIMOTHY WINTER: Absolutely.

MARGOT ADLER: I'd like to ask both of you: As more and more programs go on other platforms—there's satellite TV, there's cable, there's pay-per-view, there's the Internet—is the FCC's role becoming less and less important? David?

DAVID GREENE: It certainly makes you look at the question a lot differently. You know, one of the things the FCC always talks about is the Pacifica decision, which was the Supreme Court decision that really, that affirmed the FCC's ability to define indecency in the way that it does and to create this period of time, the safe harbor from 6 a.m. to 10 p.m., where they could restrict programming to what was suitable for children. And they refer to that decision all the time, but one of the things that that decision really relies on is that these communications mediums are this very scarce resource. And that because

they're this scarce resource, the government has this ability to control them more. That is really just not true anymore; there is an abundance of communications mediums like this, and so not only do we have broadcasters having this ability to get their programming out there another way, but we also have one of the main rationales for giving the FCC this ability to restrict programming. That rationale really just doesn't exist anymore, so it really cuts both ways.

MARGOT ADLER: Tim, do you think that the FCC's role is becoming less important?

TIMOTHY WINTER: I think David accurately states the fact that in terms of broadcast, the FCC is less relevant perhaps today because of the shrinking size of the audience of broadcast, and that more people are going towards the Internet, towards satellite, you know, satellite radios, satellite television, cable, et cetera. The problem, though, and it continues with broadcast, is it is a public resource. It is...the broadcasters are borrowing the airwaves for free and are making billions of dollars in profit, which is great, you know, we love profit, profit's great. But, imagine any other business in the country being given public property to deliver their product to the living room of every home in the country and as long as there's a license for that broadcaster to use the airwaves, then that license should be enforced by somebody because clearly the broadcasters have no desire to abide by the terms of their license.

MARGOT ADLER: The FCC fines programs and networks for obscenity and indecency, but what about violence? I don't want my child to see blood and gore; I don't want him to see scenes of torture. How do you respond to my concerns, David?

DAVID GREENE: I would respond to this concern the same way I respond to the concerns about sexual materials, that the FCC is not in the role of playing parent or in the role of playing babysitter. Nor would it be an appropriate role for the government to be in the position of making these judgments for parents. If parents are concerned about content that their children are going to see on television, it's their role, it's the parents' role, to respond to that.

MARGOT ADLER: Let's talk for a minute about safe harbor. Tim, briefly tell us what it is and who is it meant to protect?

TIMOTHY WINTER: What the Congress has done in its law, and what the FCC enforces, and what the Supreme Court says is, within the limits of our constitutional protections is a sharing of the time resources. After a certain time of day, you can pretty much go nuts, do whatever you want to, and before a certain time of day, to have respect for the fact that there are many children in the audience.

MARGOT ADLER: Now, does the safe harbor work in an age of TIVO and video iPods?

TIMOTHY WINTER: Great question. You know the whole time-shifting thing of VCRs, iPods, Internet et cetera, the clock really oftentimes becomes more immaterial. But the likelihood of a child stumbling across a broadcast is when it's live. If it's recorded by a

parent, if it's recorded on TIVO or on a VCR and played back later, more likely than not the parent is going to be there—not necessarily so, but more likely. And I think, again, that's a very fair balance to draw.

MARGOT ADLER: Now David, don't you think that it's...that a parent has a right if they believe that their kids shouldn't hear the f-word, you know before 10 o'clock, that they're not exposed to it?

DAVID GREENE: Do I think they have a right to do that, I mean I think parents have the right to instill in their children their beliefs about what type of language they think is appropriate. I don't think that parents have a right though to insist that their personal view of appropriate language be imposed on the rest of the country, and what can be broadcast over television. We as... I'm a parent as well, and we as parents know how difficult it can be raising our children in a world where they're going to be exposed to things that we find unpleasant or distasteful or we disagree with. But we know that we have to deal with this everyday, and it's just part of raising our children, part of the challenge of it, part of the things we get by living in a society where there are other people who actually might have different opinions and views about things than we do.

MARGOT ADLER: Tim, I finally saw the Janet Jackson clip at the 2004 Super Bowl—I hadn't seen it originally—where her breast was exposed for a second. Viacom was fined \$3.5 million for this supposed wardrobe malfunction. I have to say, what was the big deal?

TIMOTHY WINTER: I'm saddened that you didn't think it was a big deal. I think most of America felt that was a very big deal. Tens, hundreds, a hundred million, I don't know how many the viewer levels were for the Super Bowl that day or that moment, but it was in the countless millions of people who sat down to watch a football game and they were exposed...they were affronted, really, with a striptease show, and a very, you know, very suggestive graphic sexual performance with a song that surrounded that momentary flash of the breast.

I don't think the earth spun off its axis after that exposure happened, but I think it was a clear symptom of a very, very deep problem which is utter disrespect for the law. Broadcasters who have refused...they have been fighting this law for decades, and they have steadfastly refused to abide by any standards of decency over, you know, the past few decades. And that was just another symptom of that.

MARGOT ADLER: I want to play you a clip from the "Family Guy." It's a cartoon that airs on Fox TV stations. In this episode, the father, Peter, is worried that he's not as well endowed as his son Chris, and in this scene Peter and his wife, Lois, are attempting to make love. They then leave their bedroom and walk into their son's room where Chris is asleep.

[SITCOM CLIP]

MARGOT ADLER: The FCC received a complaint about this 2005 episode and found that it wasn't indecent. I'd like to ask both of you if you agree with the FCC's ruling. Let's start with you, David.

DAVID GREENE: I certainly do agree. You know, again, I didn't see the program as it was aired and haven't seen the whole context, but you know just from hearing that clip, I don't believe that fits the FCC's definition of indecency.

MARGOT ADLER: And Tim, what do you think?

TIMOTHY WINTER: Probably no surprise, I would disagree with David. I think that by its nature the whole issue, and the dialogue, is, you know, very specific, and what's even more troublesome is, you know, it's in a cartoon program and children are naturally drawn to animated programs. The producers claim that they try to reach out to an audience of adults, not children, and yet their promotional material brags to advertisers about how young the audience is. So I think absolutely, in the context of this show, it should be considered indecent and it should have been broadcast after 10 o'clock.

MARGOT ADLER: Do you think our notions of obscenity and indecency change over time? In the 30s for example, the word damn was considered indecent. Will we look back on the FCC's actions in a couple of decades and think, how quaint? Tim?

TIMOTHY WINTER: I think you're exactly right. Things do change over time and I think that's why the law is as it is. It's not...it doesn't specifically say these words or these things. It describes in-context community standards, and I think that those standards do and should change over a period of time.

MARGOT ADLER: David.

DAVID GREENE: I agree. Our standards do change over time and not only do they become more permissive, they become restrictive as well. Indeed the word quaint, which you used, you know, has the same root that is considered to be, you know, positively indecent in every context now. So, we do change, but not only to being more permissive. We actually go backwards as well.

MARGOT ADLER: I'm going to have to look that up.

DAVID GREENE: Look at Chaucer.

MARGOT ADLER: Thank you very much both of you for joining me. Tim Winter is the executive director of the Parents Television Council, an organization that monitors obscenity and indecency television. David Greene is the executive director of the First Amendment Project, an organization dedicated to protecting and promoting freedom of information, expression and petition. Thank you so much.

DAVID GREENE: Thank you Margot.

TIMOTHY WINTER: Thank you Margot.

MARGOT ADLER: Coming up, we'll hear from an FCC Commissioner about how decisions are made on indecency. I'll also talk with the director of a new movie all about the f-word.

UNIDENTIFIED MALE: I mean, you can, you know, if you yell at the cab that almost runs you over, if you just say hey. But if you use the f-word, people, their heads snaps back.

MARGOT ADLER: The history and treatment of the f-word—don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. On today's show: indecency and obscenity in broadcasting. Where do you draw the line when it comes to the content you think the general public should see on network television and hear on the radio? Joining me to talk about the role of the FCC is Jonathan Adelstein. He has been an FCC Commissioner since 2002. The FCC receives thousands of complaints each year. One statistic I heard is that back in 2000 there were many fewer complaints than today. I asked him if that was true.

JONATHAN ADELSTEIN: Well the complaints have kicked up, but I don't know if it's because of the nature of the programming or because we now have these organized campaigns to make sure that we get mountains of complaints. There are actually organizations that are kind of setup to make sure that we do get a lot more complaints than we used to.

MARGOT ADLER: What percentage of the complaints that come in each year do you think are from concerned individuals who have no connection with any particular organization?

JONATHAN ADELSTEIN: I'm not sure what the percentage is. We certainly get a lot of both—some of it is spontaneous, some of it is organized—but we look into every complaint no matter what the source, because we need to chase down and basically enforce the law no matter who's complaining about it. And we really base our investigations on what we hear, so these organized campaigns actually do end up having an impact on what it is that we look into.

MARGOT ADLER: There have been four major broadcast networks that recently filed lawsuits in federal appeals court to challenge the FCC's recent indecency rulings against three of those networks. Talk a little bit about that.

JONATHAN ADELSTEIN: Well we've often had complaints lodged against us in court that we've exceeded our authority. As a matter of fact, the last time this was decided by the

Supreme Court was in 1978 in the so-called *Pacifica* case. And the Court told us that we needed to have a real restrained enforcement policy. They told us that we needed to walk a tightrope in exercising our regulatory authority, and I think it's something that we need to take into account. That decision, which is the basis of all of our indecent authority, was decided on a five-four basis. So it was very narrowly upheld, our ability to regulate indecency at all. So if we don't exercise proper restraint, there's a chance that we could actually lose one of these cases and we would find that our ability to regulate indecent material over the airwaves could be constrained going forward indefinitely, perhaps forever, until there's an amendment to the Constitution itself.

MARGOT ADLER: If we are moving more and more toward deregulation—there are certainly no more public service programs or at least many less than there were, certainly no requirements—how can the FCC still have the power to regulate for indecency?

JONATHAN ADELSTEIN: We only have the power to regulate for indecency over broadcasting. We actually have very limited and narrow authority that doesn't apply to, for example, cable or satellite, and that's because of these historical cases which were decided back when broadcasting was a much more influential part of our lives, and it wasn't nearly as carried over cable systems, over satellite systems. The courts based the decision on the pervasive nature of broadcasting, the fact that those broadcast signals, like the ones that are going today over NPR, are everywhere throughout the community. And people don't have the ability to stop that if they find something is inappropriate for their children. Remember, all this indecency regulation is to protect children, not adults. Adults actually have a constitutional right to have access to indecent material, but not over broadcast airwaves during those hours when children may be listening, because there's no way to filter it out.

MARGOT ADLER: Do you feel that this pervasiveness argument still is cogent, still is real now that we can take anything from anywhere whenever we want it?

JONATHAN ADELSTEIN: Well to some extent we're going to find out soon in federal court. I think that these decisions are going to make the case either for or against that. Certainly there's been a major shift, and the principle that the Court laid out was that because we're regulating protected speech—we're regulating speech that's protected under the First Amendment—that we needed to exercise this restraint and that we needed to use the least restrictive means, was their term, the least restrictive means necessary to prevent children from having access to this material. Now, least restrictive means, in an odd broadcast segment, might be blocking over cable. You can always block something that's coming over cable, or you don't have to subscribe to it. You can block over satellite. But you can't block something out that is coming over broadcast.

MARGOT ADLER: Stations are becoming more cautious in what they air because they're fearful of being fined by the FCC. Many ABC affiliates chose not to air "Saving Private Ryan," the World War II movie which was aired on Veterans Day in 2004. Some ABC stations did air it and no stations were fined. However, the film is filled with more than

20 mentions of the f-word. This is on a major television network. Why didn't any station get fined?

JONATHAN ADELSTEIN: We decided on the "Private Ryan" case that there was a context in which those statements were being made that was appropriate. There was warning that there was language that was going to be on that film that was not appropriate for children. There was no way to separate out that kind of use of language from the context of a movie about soldiers fighting a war. So we made that decision. Now to me, the question becomes, how do we distinguish that from a more recent decision that we made just about a month ago, that I dissented from, saying that there was a documentary on the blues that was produced by Martin Scorsese in which similar language was used and yet somehow it wasn't okay in the context of a documentary on the blues—it was called "The Blues: Godfathers and Sons"—but it was okay in the context of "Saving Private Ryan."

MARGOT ADLER: When Bono used the f-word during the 2003 Golden Globe Awards, no one got fined. Why not?

JONATHAN ADELSTEIN: That decision was the first time that we said that use of that word was not permitted on television. And because in previous decisions by the staff, not by the full Commission, we had basically allowed that to go forward, it was decided to be inappropriate by a narrow 3-2 majority, myself included, not to fine the station in that case, because they didn't have any way of knowing that the policy essentially changed.

MARGOT ADLER: And why did the policy change?

JONATHAN ADELSTEIN: Well the policy changed because you essentially had the Commission decide that this was not an appropriate use of that word in hours when children might be listening. It was something of a reversal from what the staff had earlier ruled. We got a lot of complaints about it. We got a lot of complaints that it was a fleeting use of the word, and that it had been consistent with previous FCC orders that came out from the bureau level. And we never reconsidered that and looked at it again before we moved forward and built on it to take even other words out of the context of what is permissible.

MARGOT ADLER: A couple of other instances that in reading about some of the recent FCC decisions I was wondering about, scenes of breast feeding, historic scenes of Greek athletes in the Olympic games. Were people fined because of those?

JONATHAN ADELSTEIN: No, those examples you gave I do not believe we have held to be indecent.

MARGOT ADLER: But they caused complaints?

JONATHAN ADELSTEIN: We certainly did get complaints on them, yes. We get a lot of complaints. I mean, the vast bulk of complaints we get we do not necessarily act on as being indecent.

MARGOT ADLER: So you don't believe that the FCC fines, which seem larger than they've ever been, are creating a new chilling effect, as some in the television community are saying?

JONATHAN ADELSTEIN: I don't know if it's the size of the fines or the very fact that we're doing it, but I am concerned that if we go too far—and I'm concerned that we have a little bit exceeded our mandate here—that it does have a chilling effect on free speech. I mean, people are rightly being much more careful; broadcasters I think are taking laudable steps to clean up the airwaves. When I first got to the FCC, there was virtually no regulation of this, and I participated in really trying to step up our enforcement and make sure people knew that we were going to enforce the law. But now I think it's gotten to the point where some of the decisions we're making are both confusing and overreaching, and potentially putting a real chilling effect on the ability of broadcasters to put on material that might otherwise be permissible.

MARGOT ADLER: As you look to the future and you think about all the technological changes that are coming to broadcasting and the influence of the Internet and cable and podcasting and everything else, do you think these decisions and rulings are going to shift because of that?

JONATHAN ADELSTEIN: I think it will shift in the long term. The reason is that principle of law that the Supreme Court has set as our guiding principle of the least restrictive means of limiting free speech. If there is a less restrictive means than the government basically banning it from a medium, then the courts have instructed us to do that. And as television goes digital and as all of these devices go digital, there's a much easier mechanism than government regulation, which is that the parents need to take responsibility for blocking that. On a digital broadcast, anything can be blocked. You can block any channel or any type of programming that you deem offensive, and I think as technology evolves, that power is going to move into the hands of parents. And in fact it already is largely in the hands of parents and I think parents need to take more responsibility, because the government simply can't substitute for the parents.

MARGOT ADLER: Thanks Jonathan.

JONATHAN ADELSTEIN: Thank you for having me.

MARGOT ADLER: Jonathan Adelstein is an FCC Commissioner who has served on the Commission since 2002.

MARGOT ADLER: Steve Anderson is the director and producer of a new documentary. He joins us from the Hot Docs Film Festival in Toronto. Steve, what's the name of your new film?

STEVE ANDERSON: The name of my film is **bleep**.

MARGOT ADLER: Let's hear a clip from the film. Here's comedian Billy Connolly on just how powerful the f-word can be.

[MOVIE CLIP]

MARGOT ADLER: That's a scene from Steve Anderson's new documentary about the f-word. The name of the movie is a word we can't usually say on public radio; we usually use a euphemism, "the f-word." Where did you get the idea for this movie and why did you choose this title?

STEVE ANDERSON: Well the idea really came from...I'm a writer to begin with, and I've always been amazed by or sort of taken with curse words and especially the f-word. It's a word that honestly you can use a noun, as a verb, as an adjective, as an exclamation. You can, you know, use it in almost every word in a sentence, you know: beep, beep, beep you, beeping beepers. You know, you can really say it in almost every word in a sentence. And I said it as a joke a couple of times after I did a previous film. I said hey, we should make, you know, a documentary about the word "f." You know, beep, beep...okay maybe with the hesitation in there we can get away with that.

But I got this funny look from people; they'd look at me and sort of smile, and suddenly I realized it really would be a good idea because we could do a documentary about this word, its history, the scandal that's always followed it. But then also use it as a catalyst to talk about some other things that are going on these days with freedom of speech and broadcast decency and the FCC and all that stuff. And it's really turned out that way.

MARGOT ADLER: Which turns out to be the topic of our show.

STEVE ANDERSON: Exactly.

MARGOT ADLER: So why is the f-word such a polarizing taboo word?

STEVE ANDERSON: You know, I think it's really the genesis of it, because it's still so associated with sex. What I always said when I was making the film is it's the word that's really at the center of the debate on free speech. There's words leading up to it that get worse and worse, but once you hit the f-word, then you know all "h" breaks loose and people have opinions on either side. Because there are words that are, you know, worse than the f-word, but this is the word that's really at the center of the debate.

MARGOT ADLER: Now your film explores the history and usage of the f-word. What was so interesting about its history as you did the research?

STEVE ANDERSON: There are a number of myths, you know, the acronyms that we often hear about. "Fornication under consent of the king" or "for unlawful carnal knowledge" are pure urban myths. One of them was, you know, first printed in Playboy magazine in

1970 and the honest answer is no one really knows where it did come from. It was first printed in the 1400s so it's been around for a long time. It's always been a graphic euphemism for sex. And it wasn't really until the First and Second World War that it really sort of broke out of its shell and we started using it in so many different ways.

MARGOT ADLER: What was the history, you know, around World War II and other wars? How did that become such a prevalent word in the military?

STEVE ANDERSON: Well I think that what it was was obviously men in battle are under extreme stress, extreme duress, and they needed a word or they needed some way to communicate with each other that got right to the point very quickly. And it's a word that helps that you do that. I mean, you can, you know, if you yell at the cab that almost runs you over, if you just say hey. But if you use the f-word, people, their heads snaps back.

MARGOT ADLER: It gets their attention, right?

STEVE ANDERSON: It gets their attention right away.

MARGOT ADLER: Now, was it difficult to get this film made? Was it difficult to get funding or to get a distributor?

STEVE ANDERSON: I wouldn't say it was difficult really at all. I mean, making any film is always a challenge. But when I told people that I wanted to make a movie about the word "blank," and I said it, people understood that right away. In an odd way, you know the f-word is high concept, people understand what it is right away. And it's a very low-budget film. I mean, we didn't spend, you know, a whole lot of money on it. You know, it was a challenge to get some of the people and we have a lot of great people interviewed in the film.

MARGOT ADLER: Well I wanted to ask you about that, you know, when you called people up, did people take you seriously when you called them up and told them you were making a documentary about the f-word?

STEVE ANDERSON: There has been a little reaction, you know, once we named the film what we named it. And honestly we didn't intend to name it that. All along it was called "the untitled f-word project." The only real honest thing we could do is call the film by the word itself. It definitely, obviously causes marketing problems and other issues. We can't even say the name of the film on your show here today without it being beeped and, you know, the name of the film is not a tone or a beep.

MARGOT ADLER: What was the most surprising thing you learned about the f-word through this whole experience of making this film?

STEVE ANDERSON: I really learned a lot about the FCC and the way the FCC handles this and I don't like the way they handle it, these days. They... it's a bunch of suits, people

sitting in Washington, and they're not elected. They are people that have been given the job by the president and they rule on each episode. For example, if we said the word "f" right here, people would complain. They only rule on complaints. And they rule about it in context. Now if we blurted it out here, I mean, you could argue that the context of this entire conversation is about the word itself, you know, and that could be acceptable. But what I'd really prefer, honestly, is that there's an actual law that says you cannot use these certain words between these certain hours, because then if I wanted to challenge that law, I could fight it in court.

MARGOT ADLER: Will we be able to see the film in theaters and when?

STEVE ANDERSON: Yeah, the film's going to be released in theaters in the fall. It's...we have to be careful what theaters we put it in; it's not probably going to open across the country in multi-plexes, but, you know, we have great expectations for the film and I'm really hopeful.

MARGOT ADLER: Steve Anderson is the director and producer of a new documentary called **bleep**.

MARGOT ADLER: Tell us what you think about today's topic. Do you think that there should be more or less monitoring of what goes out on the airwaves? You can share your thoughts on our website, justicetalking.org. While there you can also listen to past shows or sign up for podcasting our show. Thanks for joining me. I hope you'll tune in next week. I'm Margot Adler.
