

Remarks by Commissioner James H. Quello
Before the
Women's Economic Club
Point-Counterpoint: Censorship or Social Responsibility?
Sex and Violence on Television
Detroit, MI - March 19, 1996

Thanks for giving me this official opportunity to visit my hometown and my home state. It is particularly gratifying to be invited by the influential Women's Economic Club of Detroit and by an articulate, nationally known FCC nemesis, Terry Rakolta.

Even years ago as a former VP-GM of WJR, I never made it to the Women's Economic Club. My home town claim to fame then, and perhaps even now, was due to my placing the likes of talented J. P. McCarthy, Jimmy Launce, Mike Whorf and Karl Haas in important time slots at WJR. As you know, J. P. developed into a legendary radio personality -- I lost a longstanding valued friend and Detroit lost a great talent and community booster with his untimely passing.

Another reason I always look forward to visiting here. It always reminds me that my home town and home state were directly responsible for my being appointed to the FCC in 1974. I only made it through the unwavering support of Congressman, later President, Jerry Ford, Senate Republican Whip Bob Griffin, Senator Phil Hart (the building is named after him), Congressman, later Communications Chairman John Dingell, my Congressman Lu Nedzi, and Congresswoman Martha Griffiths, the most influential female voice in Congress at that time.

Big John Dingell is the only one of these stellar leaders still active in government so he has to bear the brunt of responsibility for my 21 year independent performance at the FCC.

I wonder if Detroiters or suburban Detroiters fully appreciate that Big John is the influential national Democratic leader in Congress as the ranking Democrat on the powerful House Commerce Committee. He played a leading role in framing the historic Telecommunications Act which will bring advanced technology, improved, varied services and, eventually, lower prices to the consumer. Detroit and Michigan can be proud of having an effective national communications leader in Washington.

However, we are not here today to expound on the historic 1996 Telecommunications Act as fascinating as that complex subject may be.

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We are here today to hear opposing views on a subject of more immediate concern to the American public -- brutal violence and glamorized, explicit sex on broadcast TV and cable available to children. Government actions to curb excesses and to legislate time constraints to provide a safe harbor for children have resulted in controversial debates and court challenges. Other contentious issues that could trigger First Amendment challenges are the V-chip legislation and implementing the Children's Television Act with government-mandated quantitative quotas for children's educational/informational programming.

We are fortunate today to have two nationally recognized exponents with different views on these contentious issues. The opening speaker will be Terry Rakolta, President of Americans for Responsible TV, a friend but frequent tormenter viz. "You FCC Commissioners are hopeless on your own -- we have to file legal petitions to get anything done." Terry is a widely publicized and effective leader in the public activists' fight against excessive glamorized sex and violence on TV.

Terry's opponent in today's debate is Howard Simon, Executive Director, ACLU-Michigan, a distinguished leader of an organization committed to a strict First Amendment approach to program content issues. I find myself sometimes in disagreement with the ACLU's somewhat libertarian interpretation of First Amendment rights, but I respect their legal expertise and their consistent defense of First Amendment principles for everyone and everything big or small.

(First, an aside about a nationally famous or infamous controversial indecency issue -- Howard Stern (ad lib if time and circumstances permit).)

As to my own First Amendment viewpoints, I guess some would classify me as a mugwump -- a fence straddling bird with his mug on one side and his wump on the other.

I was previously classified by someone several years ago as a political mugwump because of my bipartisan beliefs that FCC issues should be not influenced on whether you are a Democrat or a Republican. I believe we should all do our best to reach independent common sense practical results in our regulatory deliberations. There is no place for political advocacy in an independent agency with important rule making and adjudicatory responsibilities.

So, too, some might classify me as a communications policy "mugwump" on First Amendment issues. For example, I believe government mandating three quantitative hours per week of specific types of government-approved programs is a bad idea. Because it would necessarily involve requiring broadcasters to show a pre-ordained amount of governmentally-prescribed programming, I believe it would violate the First Amendment. Even if it does not, however, I would still oppose program quotas because they're bad policy. Why? Because, to bureaucrats intent on

regulating, one program quota is never enough. An FCC that requires three hours of children's programming today can, in the wink of a bureaucrat's eye, require five hours of political programming tomorrow -- that's the real, hidden danger of program quota schemes.

On the other hand, I approve and Courts have supported time constraints to provide a safe harbor for children against indecent programs. This type of "safe harbor" approach strikes me as less First Amendment-intrusive, because it doesn't force a television station to broadcast anything. I have repeatedly stated in speeches and official statements that it is a quantum leap to try to justify government-mandated, specific quantitative times for government pre-approved children's educational/informational programs because of previous Court approved time constraints to provide a safe harbor for children from indecency (6 AM to 10 PM).

The Court may be tested again on the Hollings Bill initially approved by an overwhelming 16 to 1 vote of the Senate Communications Committee. The bill would legislate time constraints to provide children a safe harbor against violence similar to the Court approved indecency time constraints.

However, many communications legal minds believe legislated violence restrictions will face a much more severe Court test because of lack of an established definition and difficulty in implementation. So, eventually the violence issue will be decided by Congress and the Courts, not by the FCC or by this Commissioner who tends to support safe harbors.

In the meantime program producers, broadcast and cable executives are again exhorted to exercise more responsibility and self regulation in meeting the public outcry against TV violence and explicit sex. I look forward to hearing the viewpoints of our panelists today on this issue.

Anyway, today we have two articulate advocates with strong beliefs who in no way could be characterized as fenced straddling, First Amendment mugwumps.

Terry is strictly on the side of law and order and regulations to restrict TV violence and sexually explicit programs for dissenting adults as well as for children. She frequently articulates that the airwaves belong to the public and serving the public interest is paramount, not broadcasters' rights. She seems to believe First Amendment rights were primarily intended to serve governmental and political purposes of a free society. Her free speech and freedom of the press beliefs do not extend to vulgar loose talk or brutal violence on the airwaves.

ACLU's Howard Simon is forcefully on the other side of the First Amendment fence, skillfully defending and prioritizing First Amendment rights for program content and practically all purposes.

So Terry Rakolta for openers, please give us your viewpoints and actions on the contentious subjects on everyone's mind of TV violence and explicit sex. Allow me to impose these questions --

Didn't you win national acclaim for effective citizens' action rather than filing legal petition to deny to a government agency? Isn't direct citizen action with advertisers and broadcasters (1) More effective and justifiable? (2) Less Costly? (3) First Amendment risk free? (4) Reduces government cost by eliminating litigation involvement?

Now, it's your turn, etc.

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OPTIONAL REMARKS
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First a little aside about a nationally famous or infamous indecency issue not specifically scheduled for today -- the fining of Infinity Broadcasting for Howard Stern violations. In any discussion of indecency, people are always curious of what happened and why.

Terry's Americans for Responsible TV decided to expand into radio. They launched an effective fight about four years ago against the indecency on the Stern radio program. Bottomline result: Infinity Radio Broadcasting, Stern's licensee, was fined a record one million seven hundred and fifteen thousand dollars. Also, press reports stated the delay caused by the FCC legal processing of ART's petition to deny the transfer of a Los Angeles station cost Infinity an estimated additional 11 million dollars.

As a former beat-up combat veteran of WW II, subject to all varieties of gross expressions, I should be the least likely to lead a fight against indecency on the air.

However, Howard went too far. Explaining my position at a Radio Television News Directors Association event, I said Howard Stern had a First Amendment right to be wrong, a right to ridicule government officials and a right to be an insufferable smart-ass. However, he did not have a right to violate established laws against indecency and that's where he crossed the line and got into trouble.

On another occasion, he also elicited an Army type comment from me that was tolerated by, but not totally acceptable to fellow panelist Mormon Terry Rakolta. I said "I wouldn't be surprised if some day a lightning bolt comes from out of the sky and hits Howard right in the crotch." Acceptable or not, it was widely quoted in the press.

I'm afraid the FCC attacking Howard Stern resulted in making the program more popular than ever. It had the same effect as banning the book in Boston years ago that made the book an automatic best seller.

Howard has cleaned up his act somewhat, but his program is still not for the squeamish. He seems to be doing well on a seven second delay and compliance with management directives. From audience surveys, he has enough raw talent even with a moderated approach to be number 1 or 2 in his markets with young demographics and he is doing it now without putting his licensee at risk. ✓