

SOME THOUGHTS ON CHUCK LORRE: “BAD WORDS” AND “THE RAGING PARANOIA OF OUR NETWORK CENSORS”[†]

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My remarks today are based on an article that I am writing on the effects of the Federal Communications Commission’s (“FCC”) regulation of language from the mid-1960s until today. Today I will focus on producer and showrunner¹ Chuck Lorre, and some of his disagreements with the Columbia Broadcasting System (“CBS”) censors over the use of language, particularly on his popular television show *Two and a Half Men*.² Lorre has encountered a continuing series of problems with the CBS censors.³ Since the FCC’s increased willingness to find violations of its indecency standards through the “fleeting expletives” policy, adopted in 2004,⁴ CBS and other networks are understandably wary of allowing creative talent to use words and depict behavior that might trigger FCC scrutiny.

The ruling articulated in *Golden Globes* set forth policy holding for the first time that the agency could regulate unintentional or “fleeting”

[†] Chuck Lorre Prods., The Official Vanity Card Archives: Vanity Card 255, <http://www.chucklorre.com/index.php?p=255> (last visited Apr. 19, 2010). The phrase “bad words” is a tongue-in-cheek reference to, for example, a litany of “prohibited” words from George Carlin’s monologue *Filthy Words*, as noted by the U.S. Supreme Court in *FCC v. Pacifica Foundation*, 438 U.S. 726, 729 (1978). This speech is adapted for publication and was originally presented at a panel discussion as part of the Regent University Law Review and The Federalist Society for Law & Public Policy Studies Media and Law Symposium at Regent University School of Law, October 9–10, 2009.

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¹ A “showrunner” is the individual responsible for the day-to-day organization and production of a television show, as well as the “overall creative direction of a series.” CATHRINE KELLISON, *PRODUCING FOR TV AND VIDEO: A REAL-WORLD APPROACH* 12 (2006).

² See Edward Wyatt, *Success Softens the Show Runner*, N.Y. TIMES, Sept. 20, 2009, at MT1; *Two and a Half Men* (CBS television broadcast 2003), available at http://www.cbs.com/primetime/two_and_a_half_men/about/. *Two and a Half Men* airs Monday nights on CBS and stars Charlie Sheen as Charlie Harper, Jon Cryer as his brother Alan, and Angus T. Jones as Alan’s son Jake (the “two and a half men” of the title). Wyatt, *supra*.

³ Wyatt, *supra* note 2.

⁴ See Complaints Regarding Airing of the “Golden Globe Awards” Program (*Golden Globes*), 19 F.C.C.R. 4975, 4980 (2004) (“We now depart from . . . all . . . cases holding that isolated or fleeting use of the ‘F-Word’ or a variant thereof . . . is not indecent and conclude that such cases are not good law . . .”).

uses of patently offensive or profane language over the airwaves.⁵ According to the FCC,

By our action today, broadcasters are on clear notice that, in the future, they will be subject to potential enforcement action for any broadcast of the “F-Word” or a variation thereof in situations such as that here. We also take this opportunity to reiterate our recent admonition (which took place after the behavior at issue here) that serious multiple violations of our indecency rule by broadcasters may well lead to the commencement of license revocation proceedings, and that we may issue forfeitures for each indecent utterance in a particular broadcast.⁶

Fox Television Stations and other members of the media challenged the policy in the Second Circuit Court of Appeals, and won;⁷ the agency then appealed to the Supreme Court and obtained a reversal on the administrative issue.⁸ The Court sent the case back to the Second Circuit on the constitutional question: whether the “fleeting expletives” policy violates the First Amendment.⁹

What concerns many members of the media about the “fleeting expletives” policy is not simply that it implicates uses of profane or indecent language. If that were the extent of the policy, broadcasters might be able to anticipate the application of the policy or could at least put policies in place to address FCC concerns. One of the reasons Fox and other broadcasters have challenged the policy is reflected in an example of a “fleeting expletive” that violated FCC regulations. The original complaints, and a reason for the “fleeting expletives” policy, came about because of entertainer Bono’s use of the word the “F-word” at the Golden Globe Awards Broadcast of 2003.¹⁰ According to National Broadcasting Company, Inc. (“NBC”), Bono did not use the word in a “sexual” manner, but as an intensifier.¹¹ What he said, upon receiving an award for “Best Original Song,” was either “this is really, really f--ing brilliant,” or “this is f--ing great.”¹² The FCC’s Enforcement Bureau initially determined that Bono’s comment did not violate FCC regulations,¹³ but the agency overturned that order, determining that any use of the “F-word,” even a “fleeting” use, violates FCC regulations.¹⁴

⁵ *Id.*

⁶ *Id.* at 4982.

⁷ *Fox Television Stations, Inc. v. FCC*, 489 F.3d 444, 447 (2d Cir. 2007).

⁸ *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1812, 1819 (2009).

⁹ *Id.* at 1819.

¹⁰ *See Golden Globes*, 19 F.C.C.R. at 4975–76, 4976 n.4.

¹¹ *Id.* at 4976, 4978 n.23.

¹² *Id.* at 4976 n.4. In accordance with their policy, the editors of this Law Review have redacted the expletive at issue. The word appears unredacted in the FCC ruling cited.

¹³ *Id.* at 4976.

¹⁴ *See id.* at 4980.

Neither Congress nor the courts have ever indicated that broadcasters should be given free rein to air any vulgar language, including isolated and gratuitous instances of vulgar language. The fact that the use of this word may have been unintentional is irrelevant; it still has the same effect of exposing children to indecent language. Our action today furthers our responsibility to safeguard the well-being of the nation's children from the most objectionable, most offensive language.¹⁵

The FCC's "fleeting expletives" policy is an expansion of the rule established by *FCC v. Pacifica Foundation*, a Supreme Court decision that determined the agency had the power to regulate a radio (and, by extension, a television) broadcast that is indecent, but not obscene, under the powers that Congress gave it under 18 U.S.C. § 1464.¹⁶ The policy is still in place as of today, although the Second Circuit has reheard arguments challenging its constitutional validity.¹⁷

One reason we know that Lorre has had run-ins with the network over the use of language on *Two and a Half Men* is that he publicizes the disagreements. Unlike creative talent on other shows and other networks who might keep differences with network executives relatively quiet, Lorre has been quite vocal about his disagreements with both CBS executives and CBS censors. He mentions his disagreements in both interviews and on what he calls "vanity cards," which he posts both at the end of television episodes and on the Internet.¹⁸ Particularly because he makes his opinions available through his vanity cards, and because, to some extent, we can track the history of his disagreements through the cards as well as through some of the interviews he grants to the media, Lorre's positions on artistic integrity and First Amendment speech makes an interesting case study.

Lorre does not always devote his vanity cards to rants against the network censors. They may, for example, be musings on his personal life.¹⁹ But he may also talk about the latest argument that he had with the censors. If Leslie Moonves, the current President of CBS, does not like what Lorre has to say on a vanity card, Moonves censors the card so

¹⁵ *Id.* at 4979.

¹⁶ 438 U.S. 726, 738 (1978).

¹⁷ Mark Hamblett, *Court Questions Policy Penalizing "Fleeting Expletives"*, LEGAL INTELLIGENCER, Jan. 19, 2010, at 4. For a video posting of oral arguments, see *Fox Television v. FCC*, <http://www.c-spanvideo.org/program/291305-1> (last visited Apr. 19, 2010).

¹⁸ Wyatt, *supra* note 2. "Vanity cards" are Lorre's statements, shown for a few seconds at the end of episodes, commenting on the just-completed episode. See Katherine Rosman, *Hit TV Writer Has Brief Message for His Viewers*, WALL ST. J., May 14, 2008, at A1. He began showing them with his series *Dharma and Greg*. *Id.*

¹⁹ *E.g.*, Chuck Lorre Prods., *The Official Vanity Card Archives: Vanity Card 267*, <http://www.chucklorre.com/index.php?p=267> (last visited Apr. 19, 2010).

that it does not air.²⁰ But Moonves cannot censor the card on the web, which means that we can read Lorre's original writings.

What might occasion CBS's censorship of *Two and a Half Men*? In many cases, the words, phrases, or scenes the CBS censors object to seem to be content that does not fall easily on one side of a bright line or the other. Instead, the censors seem to object to the content the network and its standards and practices staff believe might give rise to complaints from viewers and advertisers, and possibly an eventual FCC inquiry. To avoid such a situation, the network prefers to err on the side of less-offensive rather than more-offensive language, avoiding jokes that might cause angry letters to the network, from a particular ethnic group, for example.²¹

Thus, Lorre finds himself at odds with the network over the need for the use of a particular word or phrase in a particular context. Like George Carlin before him, Lorre asks why a word or a phrase is objectionable in one situation but not in another, and suggests through the show that objectionable thoughts might be in the mind of the interpreter.²²

²⁰ *E.g.*, Chuck Lorre Prods., The Official Vanity Card Archives: Vanity Card 236, <http://www.chucklorre.com/index.php?p=236> (last visited Apr. 19, 2010). All censored vanity cards have a (c) after them to indicate that they are the censored version. Lorre also provides a link to the uncensored version; one need only type a "c" at the end of a censored card's IP address to gain access. *E.g.*, Chuck Lorre Prods., The Official Vanity Card Archives: Vanity Card 236(c), <http://www.chucklorre.com/index.php?p=236c>.

²¹ *See* Chuck Lorre Prods., The Official Vanity Card Archives: Vanity Card 251(c), <http://www.chucklorre.com/index.php?p=251c> (last visited Apr. 19, 2010) [hereinafter *Koreatown Card*]. The censored card explains a joke that was cut from the episode, which involved Charlie Harper's suggestion that his fiancée abandon her cat in Koreatown where someone might eat it. Says Lorre,

The point is when material like this has aired on CBS in the past, angry Korean Americans, no doubt sensitive about their culinary image, held angry meetings with network executives which made the network executives unhappy. That's it. That's why the joke was cut. No one at CBS wanted to go to another angry meeting that would make them unhappy. Now please understand, I'm not bringing this up because I'm upset about our show being censored. I'm way past that. Waste of time and energy. No, I just wanted my vanity card readers to know that they can influence the content of CBS, or any of the major networks, by simply making the appropriate executives unhappy. It's simple: flood the network with angry form letters and/or emails, demand a meeting, threaten a boycott of their advertisers, then have fun making the creative choices that best suit your tastes. But be careful. You will inevitably make someone angry, and they will damn sure make you unhappy. Which makes me happy.

Id.

²² *See* Christine A. Corcos, *George Carlin, Constitutional Law Scholar*, 37 STETSON L. REV. 899, 913–14 (2009) (noting that while some words are per se inappropriate, others become inappropriate due to the context in which they are spoken). Edward III is said to have remarked while dancing with the Countess of Salisbury, "Honi soit qui mal y pense."

If *Two and a Half Men* were not one of the most popular television shows currently airing,²³ Lorre's disputes with the censors would be interesting, but perhaps not as important as they are. Lorre, however, currently has two hit shows on the network (*Two and a Half Men* and *The Big Bang Theory*),²⁴ and has shown his ability to capture viewers (or "eyeballs," in television parlance).²⁵ In this way, he demonstrates his ability to communicate with a large segment of today's television audience.

Some of the same qualities that make *Two and a Half Men* popular—indecent language and edgy or "questionable" situations—also bring it to the network's attention because they attract criticism, and this criticism also serves Lorre's purposes. But Lorre and his writers are particularly interested examining the interaction of particular subjects on the show, and in how they can most effectively express those subjects through the use of language. Among those subjects are the effects of television and the media on children in today's society.²⁶ *Two and a Half Men* returns to this theme often, either through its consideration of Jake's preference for video games over reading, for example,²⁷ or the influence of advertising on children.²⁸ I am not suggesting that *Two and a Half Men* does not address other issues; certainly it does. Among them are Charlie and Alan's inability to find stable relationships, Charlie because of his immature behavior and Alan because of his rigidity and controlling ways.²⁹ But any suggestion that Lorre's sole interest is in vulgarity and sexual situations for their own sake, I think, overstates the case.

(Evil to him who thinks evil). THE MACMILLAN BOOK OF PROVERBS, MAXIMS, AND FAMOUS PHRASES 713 (Burton Stevenson comp., 1987).

²³ See Scott Collins, *CBS Skirts Sheen Scrutiny*, L.A. TIMES, Jan. 9, 2010, at D1.

²⁴ Rosman, *supra* note 18.

²⁵ DICTIONARY OF MEDIA STUDIES 84 (A & C Black Publishers 2006).

²⁶ Some groups, such as the Parents Television Council, believe that Lorre, who is also a parent, is their opponent on a number of issues. See *Two and a Half Men*—Parents Television Council Family TV Guide Show Page, <http://www.parentstv.org/ptc/shows/main.asp?shwid=1771> (last visited Apr. 19, 2010). I would suggest that he has a number of the same interests and the same concerns. But he disagrees about how to approach these issues, and how to resolve them. See Chuck Lorre Prods., *The Official Vanity Card Archives: Vanity Card 244*, <http://www.chucklorre.com/index.php?p=244> (last visited Apr. 19, 2010) ("The Parents Television Council has asked Apple Computers to stop advertising on *Two and a Half Men*. Their reasoning is, surprise, surprise, the show's adult humor. I thought I might use my vanity card to send another message to Apple Computers.").

²⁷ *E.g.*, *Two and a Half Men: Weekend in Bangkok with Two Olympic Gymnasts* (CBS television broadcast Sept. 19, 2005).

²⁸ *E.g.*, *Two and a Half Men: It Was Mame, Mom* (CBS television broadcast Mar. 7, 2005) [hereinafter *Mame, Mom*].

²⁹ *E.g.*, *Two and a Half Men: Crude and Uncalled For* (CBS television broadcast Feb. 1, 2010).

Lorre, like Carlin before him, is a satirist and observer of the social scene. One of his interests is the relationship between fathers and sons, and between young men and the other male relatives in their lives. He uses *Two and a Half Men* to focus on this issue:

At Warner Brothers, Mr. Lorre was asked to expand an idea for a show about two brothers, but he soon became intrigued by the idea of exploring the relationship between an aging bachelor playboy and his divorced brother's young son. With the help of Mr. Aronsohn, "Two and a Half Men" was born.³⁰

An issue Lorre is particularly interested in is the hypocrisy that he identifies surrounding the way American society deals with the raising of children. By "society," I am not referring only to parents, but to adults in general, and adults in all professions, including the media.

Two and a Half Men centers on two adult males (the "two" of the title) and a young boy. One of the men, Alan, is divorced and shares custody of his ten-year-old son, Jake, with his ex-wife, Judith. Having lost his home and most of his income in the divorce, Alan moves in with his bachelor brother Charlie, who lives a cheerfully hedonistic life in a beautiful beach house in Malibu. Jake spends weekends with them; the show follows the developing relationship of these men with the boy, as well as the men's relationships with the women in their lives, including Berta, Charlie's housekeeper, and Rose, a neighbor who is infatuated with Charlie.³¹

One recurring theme involves the extremely adult situations and language to which Charlie exposes Jake, and the attempts that Alan and Judith make to dissuade Charlie from this thoughtless behavior. As Charlie often says, he knows what he is doing; he just does not care. But as he slowly discovers, his developing relationship with his nephew actually makes him care. As many adults who are not parents but have close relationships with children (for example, aunts, uncles, cousins, close friends) discover, such relationships can be complicated. How do these adults deal with messages that their parents might not entirely approve of? How do they help children understand and absorb messages and images that might be a little too sophisticated for them? How do they help children develop as they grow, both intellectually and physically? Is the FCC's approach—to censor indecent, though not obscene, language that comes in over the broadcast airwaves—the one to follow? After all, children are likely to hear such language on the playground, even if they do not hear it in the home.

³⁰ Wyatt, *supra* note 2.

³¹ About *Two and a Half Men*, http://www.cbs.com/primetime/two_and_a_half_men/about/ (last visited Apr. 19, 2010).

Consider two examples from *Two and a Half Men's* first season, one from the first episode broadcast (the pilot),³² and the second from the last episode, *Can You Feel My Finger?*.³³ In the first example, Jake, who is visiting his father for the weekend, wakes up his uncle Charlie, who has a hangover. Charlie is not expecting to see Jake.³⁴ He has not considered that, by inviting Alan to share his home, he is also opening up his life to his young nephew.

Jake: Boy, is your eye red.
 Charlie: You should see it from in here. What are you doing here, Jake?
 Jake: My mom brought me. Will you take me swimming in the ocean?
 Charlie: Can we talk about it after my head stops exploding?
 Jake: Why is your head exploding?
 Charlie: Well, I drank a little too much wine last night.
 Jake: If it makes you feel bad, why do you drink it?
 Charlie: Nobody likes a wiseass, Jake.
 Jake: You have to put a dollar in the swear jar. You said "ass."
 Charlie: Tell you what, here's twenty. (*gives Jake the note*) That should cover me until lunch.³⁵

We can expect tension in the household often when Jake comes over for father-son visitation. Alan and his ex-wife Judith have certain rules concerning appropriate language to be used around their son, and Charlie has already violated at least one of them—not only that, but he gives Jake money to avoid the consequences. Will Charlie stop using vocabulary that Alan and Judith find objectionable? This question is unanswered for the couple, for the audience, and for the CBS censors because we suspect that "ass" is not the only non-socially standard word that Charlie uses, regardless of the company in which he finds himself. Thus, Jake is very likely going to hear such language, to wonder about it, and may very well start using it—in spite of his parents' objections.

Another example from the first season demonstrates the frankness that both Charlie and Alan want to employ when discussing "the facts of life" with Jake. Both men underestimate Jake's grasp of the situation. Charlie explains to Jake that he has made the decision to get a vasectomy because he does not want to risk having children out of wedlock, but he does not want to get married, and he does not want to stop having relationships.³⁶ Whether we agree with Charlie's moral

³² *Two and a Half Men: Pilot* (CBS television broadcast Sept. 22, 2003) [hereinafter *Pilot*].

³³ *Two and a Half Men: Can You Feel My Finger?* (CBS television broadcast May 24, 2004) [hereinafter *Feel My Finger*].

³⁴ See *Pilot*, *supra* note 32.

³⁵ *Id.*

³⁶ *Feel My Finger*, *supra* note 33.

position, we must recognize that he does want to take responsibility for the decision not to reproduce.

- Charlie: (to Alan) You're lucky I'm still talking to you after tossing my swimmers on the Coast Highway.
- Alan: What?
- Charlie: It's nothing. Thanks to you I have to reschedule the whole deal for this afternoon.
- Jake: What whole deal?
- Alan: It's not important, Jake.
- Charlie: Why shouldn't he know?
- Alan: OK—go ahead. Explain it to him.
- Charlie: Well, Jake, your Uncle Charlie is getting a vasectomy.
- Jake: Oh. What's wrong with the car you have now?
- Alan: Well done.
- Charlie: All right, let me try again. A vasectomy is a very simple operation.
- Jake: (*with an air of concern*) Are you sick?
- Charlie: No, no, no, no, no, I'm perfectly healthy. It's a procedure so that I don't have babies by accident.
- Jake: (*with an air of understanding*) Oh, yeah, like we had to do with Scout.
- Charlie: (*not understanding*) Scout?
- Alan: A dog we had—couldn't keep it in his fur. Keep going. You're doing great.
- Charlie: Uh, Jake, it's not exactly the same with people as with dogs.
- Jake: I know. Why don't you just use a condom?
- Alan: Guess he knows more than he lets on.
- Charlie: (*studying Jake intently*) You do, don't you?
- Jake: (*concentrating on his breakfast*) I hear things.³⁷

In this scene Lorre suggests that we cannot really control what children learn about the world. What we *can* do is discuss with them what they *do* hear and help them evaluate and assess what they hear. We can guide them through those interpretations.

Also significant is that as Charlie, Alan, and Jake discuss these matters, they do so around the kitchen table. Such a setting is crucial and it sends an important message. That message is clear: adults and children should talk about the important *and* the unimportant things in life; discussing what seems unimportant sets up the paradigm for discussing the important later on. Adults should try to talk to children and teenagers, even when, as happens in the later seasons of *Two and a Half Men*, the teenaged Jake simply does not want to talk to Charlie and Alan because he thinks, as many teenagers do about the adults in their

³⁷ *Id.*

lives, that Alan and Charlie are complete idiots.³⁸ Other discussion scenes include clips in which the adults and Jake sit on the couch, watching television and discussing the programs and commercial messages. Jake often asks questions about either the shows or the commercials, allowing the show's writers to comment on the influence that television itself has on families and the importance that advertisers have, both on networks and on the content of television shows.³⁹ Thus, although the network's censors object to a fair number of Lorre's jokes as anti-religious,⁴⁰ anti-ethnic,⁴¹ and even obscene,⁴² one might have to balance these objections against Lorre's purpose.

Further, some words that the censors disapprove of are actually completely innocuous and perfectly defensible words. But because they sound like words that are or might be on the FCC's "prohibited" list, the CBS standards and practices office raises objections.⁴³ Lorre then engages in arguments with the office over whether he can use the words for broadcast.⁴⁴ Lorre's position is that these words ought to be permitted even though they might raise thoughts or impressions in viewers' minds.⁴⁵ The censors and the network, however, would probably prefer to avoid objections from pressure groups, and a possible subsequent FCC

³⁸ *E.g.*, *Two and a Half Men: I Think You Offended Don* (CBS television broadcast Jan. 19, 2009).

³⁹ *E.g.*, *Mame, Mom*, *supra* note 28.

⁴⁰ *See* Chuck Lorre Prods., The Official Vanity Card Archives: Vanity Card 198(c), <http://www.chucklorre.com/index.php?p=198c> (last visited Apr. 19, 2010) [hereinafter Religion Card]. The censored version of this vanity card actually aired not on *Two and a Half Men*, but on *The Big Bang Theory* episode *The Loobenfeld Decay*. *The Big Bang Theory: The Loobenfeld Decay* (CBS television broadcast Mar. 24, 2008).

⁴¹ Koreatown Card, *supra* note 21.

⁴² *See* Chuck Lorre Prods., The Official Vanity Card Archives: Vanity Card 255(c), <http://www.chucklorre.com/index.php?p=255c> (last visited Apr. 19, 2010). This vanity card "encrypts" a word on the FCC's prohibited list as a phone number, and the network refused to allow it to be broadcast. *Id.*

⁴³ While no actual "list" exists, *see* Andrew D. Cotlar, *You Said What? The Perils of Content-Based Regulation of Public Broadcast Underwriting Acknowledgments*, 59 *FED. COMM. L.J.* 47, 58 (2006), the FCC publishes some general guidelines to aid consumers and the general public. *See generally* CONSUMER & GOV'T AFFAIRS BUREAU, FED. COMM'NS COMM'N, FCC CONSUMER FACTS: OBSCENE, INDECENT, AND PROFANE BROADCASTS (2008), <http://www.fcc.gov/cgb/consumerfacts/obscene.pdf> (discussing FCC policies on the airing of obscene, indecent, and profane material). CBS's Program Practices Unit has the mission "to insure the acceptability of the content of . . . CBS's program . . . material." *Panel III: An Industry Perspective on Television and Violence*, 22 *HOFSTRA L. REV.* 855, 855 (1994).

⁴⁴ Wyatt, *supra* note 2.

⁴⁵ *See generally* Chuck Lorre Prods., The Official Vanity Card Archives: Vanity Card 217(c), <http://www.chucklorre.com/index.php?p=217c> (last visited Apr. 19, 2010) [hereinafter Words Card] (introducing the card with the phrase "words that confuse the CBS censor," and thereafter listing the words, stating that, "[a]s you can see, context is everything").

inquiry. They wish to protect against the trauma of an inquiry, even though they may suspect that ultimately no sanction would issue.⁴⁶ We know about these disagreements because, as I indicate above, Lorre documents them.⁴⁷

To illustrate, consider a scene in *Two and a Half Men* in which Charlie, Alan, and Jake are sitting on the couch watching television. When a commercial for a drug for erectile dysfunction airs, Jake, wondering what the drug is for, asks his father and uncle. Alan is uncomfortable answering the question. He hems and haws, and finally Charlie explains that the product helps men get an erection. Jake still does not understand, and Charlie tells him, “They’re boner pills, Jake.”⁴⁸ Think about the word “boner.” Apparently the CBS censors finally approved of that word. On *Two and a Half Men* the audience hears that word, which is slang, but it also hears anatomically correct words such as “gonad,” “testicle,” and “penis.”⁴⁹ Indeed, Lorre’s writers use those words often throughout episodes. The CBS censors seem to have little or no problem with these words.

Yet they have problems with other words that are just as “correct” or acceptable in terms of standard English. While the exact objections to these questions are unclear, the problem might be that the words, when pronounced, might evoke offensive images in the minds of some—perhaps most—viewers. The censors have told Lorre and his writers that they cannot use these words on *Two and a Half Men*.⁵⁰ Lorre states on one censored card, “[t]onight’s vanity card is about censorship. It was censored. As always, you know where to look.”⁵¹

The words in question are “fecund,” which means fertile or fruitful; “titmouse,” which is a small, insectivorous bird; “coccyx,” which is the tailbone; “kumquat,” which is a small edible orange-like fruit, available in many supermarkets; “gobble,” which describes the sound that turkeys make; “guzzle”; “swallow,” which is both what humans do to food and drink and a kind of bird; “manhole,” a utility hole or maintenance hole to gain access to the sewers or underground; “fallacious,” which means mistaken; “lugubrious,” which means mournful; “angina,” which is a heart condition; “gherkin,” which is a type of pickle; “Uranus,” the problematic name of the seventh planet of the solar system, which can

⁴⁶ See Koreatown Card, *supra* note 21; Religion Card, *supra* note 40.

⁴⁷ See Wyatt, *supra* note 2.

⁴⁸ *Mame, Mom*, *supra* note 28.

⁴⁹ *E.g.*, *Two and a Half Men: Rough Night in Hump Junction* (CBS television broadcast Apr. 21, 2008).

⁵⁰ See *generally* Words Card, *supra* note 45 (stating that these are “words that confuse the CBS censor”).

⁵¹ Chuck Lorre Prods., The Official Vanity Card Archives: Vanity Card 217, <http://www.chucklorre.com/index.php?p=217> (last visited Apr. 19, 2010).

raise pronunciation problems; “masticate,” which means chew; and the name “Dick Butkus.”⁵²

As we can see, some of these words might raise red flags because of secondary meanings or because of pronunciation issues. If the FCC were to receive a certain number of complaints, it could initiate an investigation and ask CBS for an explanation of any language possibly categorized as indecent.⁵³ But as long as an actor does not mispronounce the word, and because the shows are taped, individual viewers determine the meaning. Should Lorre or the network be responsible if the actor pronounces the seventh planet’s name with the accent on the first syllable and a member of the audience interprets the name differently (with the accent on the second syllable)? This, of course, is part of Lorre’s issue with the network.

Does Chuck Lorre believe that all audience members are as interested as he is in deconstructing language and examining context? Probably not. Does he understand the network’s position? Of course he does. He is aware that viewers will take away certain impressions if they hear particular words in a particular context. He, like CBS, knows that words, like acts, can have more than one meaning. Indeed, on the vanity card where he lists the words over which he and CBS have a disagreement, he states, “As you can see, context is everything.”⁵⁴ But context is one of the issues he is most interested in exploring.

Lorre ultimately won the battle over the word “masticate,” and it became the center of an extremely funny and touching scene in the episode *Your Dismissive Attitude Toward Boobs*.⁵⁵ Jake is sitting at the kitchen table, chewing energetically, and Alan enters and asks him what he is doing. Jake responds, “I’m masticating.” Alan asks for clarification, and Jake responds, “It’s not what you think.” Alan responds, “What do I think?” The son says, “You *know*,” and Alan responds, “What do I know?” At this point Jake is at a loss. He knows another word sounds like “masticate” but he does not know what it is, and Alan does not tell him. He knows, or thinks he knows, that it is a “bad word” he is not supposed to say. Of course, the studio audience laughs at this point, but Alan does not laugh.⁵⁶ Why not? Alan would never laugh at Jake’s ignorance in these matters. It would undermine Jake’s confidence and suggest

⁵² Words Card, *supra* note 45. One of the words listed (“manhole”) does have a slang meaning as well, which may have been the origin of the CBS censors’ objection. Urban Dictionary, <http://www.urbandictionary.com/define.php?term=manhole%20cover> (last visited Apr. 19, 2010).

⁵³ See CONSUMER & GOV’T AFFAIRS BUREAU, *supra* note 43, at 2–3.

⁵⁴ Words Card, *supra* note 45.

⁵⁵ *Two and a Half Men: Your Dismissive Attitude Toward Boobs* (CBS television broadcast Oct. 10, 2005).

⁵⁶ *Id.*

disrespect. Alan has many faults, but disrespect for his child is not one of them.

Lorre's point here is quite important. The difference between the two words, "masticate" and "masturbate," is crucial. They are not the same thing, and Alan knows that. Lorre knows that. The CBS censors know that. Adults know the difference. Did Lorre really seek a cheap laugh here? Or was he hoping to point out that building trust between parent and child is more important than a cheap laugh? If his intent was the latter, how can he make such a point if he cannot use the word "masticate" on broadcast television?

Of course Chuck Lorre uses his television shows as a vehicle to critique both CBS for its lack of willingness to take a stand against pressure groups, and the FCC for its lack of clarity in promulgating clearer standards. He sees the critique as his role. The CBS censors are setting up a filter—perhaps more of a filter than necessary—to catch what might cause problems for their network, and to stave off complaints from lobbying groups and advertisers. That is their role. To raise these objections to such words is to make the same objections that George Carlin's detractors made to his famous *Filthy Words* monologue.⁵⁷ But, so far, I would point out that the advertising dollars are apparently staying. The show continues to be extremely popular, even in the wake of Charlie Sheen's recent domestic troubles.⁵⁸ Lorre continues to try to use analogies, homonyms, double entendres, code words, and other means as described above to get his messages to viewers, because among his goals as an artist is to examine the effects of language on children and families.⁵⁹ Because he is interested secondarily in examining the effect of words generally on his viewers, many critics of his work miss this point when they only look at the use of offensive language and circumstances on the show without considering the context.

What does Lorre's approach have to do with the FCC's "fleeting expletives" policy, and legally and administratively why might the policy continue to have such an impact on his work and the work of artists like him? Let us review some of the arguments that Fox and the other plaintiffs originally made to the Second Circuit concerning the reasons

⁵⁷ See Corcos, *supra* note 22, at 903 (citing Milagros Rivera-Sanchez & Paul Gates, *Abortion on the Air: Broadcasters and Indecent Political Advertising*, 46 FED. COMM. L.J. 267, 283 n.87 (1994)).

⁵⁸ See Collins, *supra* note 23.

⁵⁹ See generally Wyatt, *supra* note 2 (noting how the CBS Standards and Practices department tries to "rein in" Lorre's use of double entendres and "outright vulgarities").

that the policy is problematic—arguments that the broadcasters reiterated in the rehearing in January.⁶⁰

First, the FCC sanctions or permits indecent language, depending on the type of event.⁶¹ Language that is otherwise indecent might be permissible during a news interview.⁶² But such language during an awards show is not permissible, even though both events might be “live.”⁶³ Such uneven treatment leads to uncertainty. Second, the agency will apparently permit or sanction indecent language depending on its evaluation of the value of the speech. The FCC indicated that it would not sanction ABC’s airing of the film *Saving Private Ryan* because to insist that the network “bleep” the expletives “would have altered the nature of the artistic work and diminished the power, realism and immediacy of the film experience for viewers.”⁶⁴ Such an exception suggests that a film or television broadcast that qualifies as a critics’ favorite might safely explore the boundaries of indecency; popular television favorites that can make no such critical claims (or achieve no such acclaim) may have to tread more carefully. Again, differential treatment leads to uncertainty.

Finally, as language and society evolve, policy should evolve with them. More and more American households subscribe to cable, and are able to use filters to regulate the messages that they receive. Such filters allow families more choice and more ability to control messages. TiVo and other time-shifting devices enable them to control when they receive such messages.

Further, words change in meaning. Certain words that once had sexual or excretory meanings now no longer primarily or exclusively carry those meanings. We cannot preserve our language or our messages in amber any more than we can protect our children from words we would prefer they not hear or acts they not see. Through *Two and a Half Men* and his other work, Chuck Lorre wants to explore such words and acts and challenge us to think about the society in which we live and the ideas that permeate it.

⁶⁰ See *On America & the Courts: Fox Television v. FCC* (C-SPAN television broadcast Jan. 16, 2010).

⁶¹ See *Fox Television Stations, Inc. v. FCC*, 489 F.3d 444, 458 (2d Cir. 2007) (citing *Complaints Against Various Television Licensees*, 21 F.C.C.R. 13,299, 13,327–38 (2006)).

⁶² *Id.*

⁶³ Compare *id.* (noting the FCC’s willingness to excuse expletives occurring “during a *bona fide* news interview”), with *Golden Globes*, 19 F.C.C.R. 4975, 4982 (2004) (holding that the live broadcasting of the “F-Word” during the Golden Globe Awards was indecent).

⁶⁴ *Fox*, 489 F.3d at 458–59 (quoting *Complaints Against Various Television Licensees*, 20 F.C.C.R. 4507, 4513 (2005)).