Media Law Resource Center, Inc.
MLRC 2007 Annual Dinner
MS. SANDY BARON: Good evening, ladies and gentlemen. I'm Sandy Baron. I'm Executive Director of the Media Law Resource Center. My job is to welcome you, encourage you to sit down, pour yourself a glass of wine, sit back, but mostly sit. I want to thank you all for coming to our annual dinner. It's wonderful to see you all. Great. Thank you. On behalf of all of us, I want to thank Media/Professional for their sponsorship of the reception that preceded the dinner and for their consistent, extraordinary underwriting of this wonderful party. Now, cut it out guys 'cause we want to introduce you to our Brennan Award Winner and you have all got to be paying some attention. Come up here and help me. Folks, it's our honor tonight to be able to bestow the William J. Brennan, Jr. Defense of Freedom Award on David Fanning, creator and consistent executive producer of the PBS documentary series Frontline. To present the award, I want to introduce Ralph Huber. Ralph, as many of you know, is Chair of the Board of Directors of the Media Law Resource Center, representing Advance
Publications, a charter member of the MLRC.

Ralph.

MR. RALPH HUBER: Good evening. On behalf of the Board of Directors and staff of the Media Law Resource Center, I want to welcome you to our annual dinner. It's always a pleasure to see all of you. Tonight, we will be presenting the William J. Brennan, Jr. Defense of Freedom Award, which is not something we do every year. This award was established to honor those whose actions have advanced the cause of freedom of expression. And it is given in the name of the first recipient, the honorable William J. Brennan, Jr. He was an impassioned voice for the principles of free speech and the Brennan Award serves as a symbol and celebration of the principles of the First Amendment. Our recipient tonight is David Fanning, the creator and executive producer of the PBS documentary program, Frontline. Frontline began in 1983 and since then has aired over 500 documentaries – investigative pieces – on subjects as wide-ranging as the war in Iraq to the authenticity of Shakespeare's dramas. Frontline is the only regularly scheduled investigative documentary
series on broadcast television today. It has
won all the major journalism awards out there,
and not just once but many times over. It has
been a consistent platform for the best
independent producers in the business. It runs,
week after week, documentaries that are
engaging, informative and entertaining all while
remaining true to the highest ideals of
journalism. David Fanning was there at the
beginning. As creator of Frontline, he has been
its guiding light since day one, marshalling not
only the best in reporting but the resources and
station support needed in the eclectic, even
eccentric, world of public broadcasting. From
the beginning, Frontline has tackled – and hit
hard – the most pressing issues of the day: the
AIDS epidemic, the war on drugs, global warming,
the war on terrorism, the wars in Afghanistan
and Iraq, religion, crime and consequences. And
it persevered, thrived even, through changing
administrations and changing views of the value
of public television. Frontline has also taken
up issues of particular importance to the Media
Law Resource Center and its members, including
reporter's privilege, reporting on national
security issues and the changing media landscape. Under Mr. Fanning's direction, Frontline has reported issues with intelligence and has not shied away from issues that others might have not thought suitable for television. And it has supplemented its on air coverage with an in-depth website, a first of its kind dating back to 1995, that takes the viewer into transcripts of interviews, primary documents and analysis. And so we honor David Fanning tonight for his contributions to the public dialog and for sustaining long-form television. But before we present the Brennan Award to him, let's look at some clips from Frontline programming over the years. [video presentation] Ladies and gentlemen, it is my pleasure to present the William J. Brennan, Jr. Defense of Freedom Award to David Fanning.

MR. DAVID FANNING: Thank you. Dear me.

MR. HUBER: Caution.

MR. FANNING: Thank you, Ralph, distinguished members and guests of the Media Law Resource Center. Thank you all, for this extraordinary honor. From the moment I was first told about this I was, quite frankly,
dumbfounded. I still am. You might recognize
the feeling. What's a kid from Port Elizabeth,
South Africa, doing here in New York City
accepting an award in the name of a famous
justice of the United States Supreme Court?
Well, I remember that kid when he first came
here in 1964 with something called American
Field Service, AFS. I was fortunate to live
with a family for a year and attend high school
in Newport Beach, California. It was a tough
assignment. My first week in this big
California high school was exhilarating and
terrifying. No more so than when I was asked to
join the AP English class. They wanted me
because they were reading *Cry, the Beloved
Country*. I'll never forget their faces when I
had to admit to them that I had never read it.
I hadn't been allowed to read it. It was a
banned book in South Africa. And so, as an 18-
year old, I read the great novel about my
country, here in the United States, and I
struggled to answer their questions to try to
unpack the politics of apartheid and the
psychology of an oppressive, authoritarian,
police state. More than anything else, though,
I was amazed that I could even have that conversation, that I could talk about these things without fear. It was my first, great lesson in American democracy, about what my high school civics class soon taught me was something called the First Amendment. It is in many, many ways the reason that years later that I would leave South Africa and then London and come back and make my life here. So this is very precious. This award, in the name of a man who did more than anyone to strengthen the First Amendment, to protect the individual from the hand of government and to protect the full-throated conversation of democracy. It is humbling to share it. This honor is, of course, for Frontline and that's not any single person. It is a collective work and conscience of an enormously talented group of journalists, producers and reporters that have over 25 years done the hard work of making the documentaries. I've had the privilege of encouraging them. They, in turn, have taught me much. I learned long ago that the best of them are passionate and obsessive people who are driven to get the answers to questions. People who will spend six
months, a year or even more to chase down the facts, the interviews, the documents, the archive and capture the moments that make it possible to weave a narrative, to shape a story, that can hold an audience, an argument that can challenge the intellect and a revelation that can make the powerful uneasy. I'm frankly in awe of what they do. The great reward of my job has been to spend time in conversation and in their editing rooms. And to understand some of what it takes to do really good work. I can't name them all here. The list is too long and it would be unfair to leave anyone out. But the credits speak for them and this is their award. And on their behalf, I can say that this commitment by public broadcasting to allow us the time and the resources to make Frontline is never taken lightly. We know how precious it is. And we all promise to keep trying to make it better. There are many other people I would like to thank for this award but it starts, really, with my colleagues at WGBH, the public television station in Boston. Let me tell you about them. I came to WGBH in 1977 to start an international documentary series called World.
What I found there was a culture of inquiry, a place that was interested in ideas. The man who hired me, Peter McGhee, had been one of the creators of a program called The Advocates, in which two teams developed the arguments on either side of a tough question. He had executive produced a series called Arabs and Israelis, made by two teams of documentary producers, one Arab, one Israeli, bringing their work together in the editing room. So WGBH was an extraordinary place and that spirit of intellectual debate and respect for a wide range of opinion under the good of the journalism that I found there. But it was also a place that respected conclusions, honestly come by, journalism as an obligation to fairness, but when it uncovers uncomfortable truths, it has an obligation to publish without fear or favor. In 1980, I produced a program for World called Death of a Princess, which made very serious charges against a senior member of the Saudi royal family. It in effect accused the King's elder brother of murder. It caused an uproar at the time and led to the breaking of diplomatic relations between Saudi Arabia and Great
Britain. There was a serious threat of similar action here in the United States. It was a time of oil shortages and the State Department and members of Congress leaned very heavily on PBS to cancel the broadcast. At WGBH, my management was faced with their own pressures. The major underwriter for Master Piece Theater was Mobil Oil, which took out ads in the New York Times protesting the program. Not only did WGBH not flinch, but in case the pressures got too powerful on PBS in Washington, they actually booked time on the satellite so that we could feed the program directly out of Boston for anyone in the system who wanted to broadcast it. In the end, PBS held their ground and the program went out. I've never been prouder of the place I work for. As Peter McGhee said later, it put a chock behind the wheel of public television. It proved that system could withstand great political pressure and in many ways made it possible to propose a much larger continuing series of investigative documentaries, which in 1983 became Frontline. There have now been close on 500 films and I know that my colleagues and I couldn't have
imagined that we'd be around for 25 years.

One of those colleagues was most doubtful.

Every year, he was convinced that we'd barely get through the next season that we would almost certainly not get refunded and besides, next week's program was in a whole heap of problem: trouble. He is, of course, a lawyer. His name is Louis Wiley and he is the Executive Editor of Frontline. I sometimes call him my consigliere.

Lou had come to WGBH straight from Yale and Georgetown Law to work on The Advocates. When I met him in 1977, I wouldn't let him leave my office and we have worked together ever since.

Lou has been our editorial conscience and our toughest critic. He's the man who takes every script line by line, who reviews every picture, who asks the toughest questions. He's been the fiercest defender of our right to publish and been most outspoken on the big issues, like protesting the FCC's interference in our content and at the same time carefully handling the outraged viewer and the scared broadcaster with tact and civility. Lou has patiently taught me what little I know about media law, about libel and fair use, privacy, and the protections of a
free press. If this award honors any single
person, it should be Louis Wiley. Next month,
he is retiring from Frontline and so it's
fitting he's here tonight to share this. Lou,
please step up. By the way, he's not gloomy all
the time and he's a delightful companion. We're
not going to let him go far and I've told him he
has to remain of counsel to Frontline. Both Lou
and I owe thanks to our legal colleagues at
WGBH. To Eric Brass, who carefully reviews the
films and always adds a little editorial
comment, and Jay Fialkov and Sue Kantrowitz and
of course our old friend and colleague Neil
Rosini, who's been one of our outside counsels
for the life of the series and whose book, The
Practical Guide to Libel Law, sits on my desk.
Thank you, Neil. What distinguishes all of my
legal colleagues is this: that they've always
made it very clear that they want to help us
publish. Their support has been our strength.
These are tough times for journalism. We spent
a year and a half researching and reporting a
series called News War, which was broadcast
earlier this year. Lowell Bergman tirelessly
crisscrossed the country doing interviews and
what he found was a perfect storm, that not since the Nixon administration has there been this level of hostility leveled at news organizations from the government. But unlike the Watergate era, this time around the press is more vulnerable, facing unprecedented economic pressures, conservative court decisions that hinder a reporter's privilege and increasing distrust from the public. In the second program, Lowell and producer Raney Aronson looked at the decision by both the Washington Post and the New York Times to publish leaks, national security secrets in spite of intense pressure from the White House. As Bill Keller told us, the President of the United States said, if you publish this story, you will have blood on your hands. It's a stern reminder that this is wartime and a critical time for the press. So it's a time to remember what Justice Brennan wrote, that quote, as adamant as my country has been about civil liberties, it has a long history of failing to preserve civil liberties when it perceived its national security threatened. Of course, he went on to say that after each perceived security crisis
ended, the United States has remorsefully realized that the abrogation of civil liberties was unnecessary but it has proven unable to prevent itself from repeating the error when the next crisis came along. Against the backdrop of an unstable and fearful world, there will be another crisis and more of those confrontations between government and the press. We will be looking to you. As lawyers, it's your job to keep reminding us of Justice Brennan and the lessons of the law. And our job is to try to tell the country about them with clarity and courage. That's the great lesson for this once young man from South Africa. That's why I came here. Thank you so very much. Thank you.

MR. HUBER: Documentaries are a hot medium these days. Americans are privileged to have available to them numerous documentaries, many of them feature length and garnering oversized attention at movie theaters. Michael Moore gives the audience in-your-face journalism. Al Gore gives the audience a lecture, complete with multi-story high slides. The subjects range over all of human and even animal life. MLRC wanted to see what some experts had to say about
the role of the documentary in our country's public dialog. We have invited some of the best documentary filmmakers and journalists working in long-form journalism to be with us tonight. I'd like to introduce our moderator for the panel. Our moderator, Judy Woodruff. She's a senior correspondent with The NewsHour with Jim Lehrer on PBS. She recently completed part two of the PBS documentary series, Generation Next: Speak Up, Be Heard, a project to interview young people in America and report on their views. And our first panelist, in no particular order, is Lowell Bergman. He is a producer and correspondent for Frontline and an investigative reporter with the New York Times, as well as a professor at the journalism school at the University of California at Berkeley. Also joining us is Heidi Ewing. She is a documentary filmmaker whose film credits include Jesus Camp and Boys of Baraka. Also, we have filmmaker Alex Gibney. He has more than 25 films to his credit, including Enron: The Smartest Guys in the Room. And of course, David Fanning. You can read more about all of them in the program. Judy.
MS. JUDY WOODRUFF: I’m delighted to be here with you, with all of you and especially so because of David Fanning, whom I've known since the beginning of Frontline. The reason I was connected with Frontline is because when they were at the very beginning and weren't established yet, they felt they needed an anchor. It wasn't long at all before the tables were turned and television journalists were knocking on David Fanning's door to be associated with Frontline. And the rest is history as you just saw in that film. I just want to say as somebody who has known David for all these years and has admired him, that the real secret to David is not the brilliance, although that's there, his phenomenal commitment to journalism, it's that South African charm. David, we love you. We love you and it's still there. We're all, everybody up here is agreeing with that. All right, it's an audience of mainly lawyers, so my first question for all of you and David first, how many times have you been sued?

MR. FANNING: [laughter] We've lost count. No. We actually haven't been sued very often.
Relatively few times. There were a few--

MS. WOODRUFF: Or threatened. Maybe threatened with a law suit.

MR. FANNING: You know, generally Lou Wiley's done his job all these years. He's done a very good job. Lowell could talk about one of the suits we've had. A libel suit that fortunately we were in co-production with the New York Times and they had much deeper pockets than we did and we could deal with a suit. There are members of the legal team in this room who we thank very much for the extraordinary work they did. It was dismissed without--with prejudice. Is that the right phrase?

MR. LOWELL BERGMAN: With prejudice.

MR. FANNING: Otherwise, I think of privacy. There are a few others but generally not, actually.

MS. WOODRUFF: So maybe the question is how many times have lawyers saved you from being sued?

MR. BERGMAN: I love lawyers [laugher] on my side. And I think most journalists would say that. Actually Mike Raiff and Tom Leatherbury are over here at a table with Dan Kelly, you
guys should stand up, because, we just won a separate judgment with prejudice. And that means for journalism. Can you hear me? Okay, well, Mike Raiff and Tom Leatherbury from Vinson & Elkins, they’re over here. They represented us and the New York Times and--

MR. FANNING: You've got a loose connection.

MR. BERGMAN: Where's my producer?

[laughter].

MS. WOODRUFF: Lowell?

MR. BERGMAN: Okay.

MS. WOODRUFF: Okay.

MR. BERGMAN: I was saying that Mike Raiff and Tom Leatherbury, who are here from Vinson and Elkins, and Dan Kelly, we won a libel suit, which was really groundless with--in summary judgment--with prejudice and they're sitting over there somewhere and the wonderful thing about you guys, you lawyers, is when you're on our side. We love to investigate you. We love to make fun of you. But the bottom line is that this is the only country, the United States, we're allowed to do what we do and you will defend us doing it and there is a legal history, backing. I remember the--I don't know if Rick
Altabef and John Sternberg are here from CBS News but where you have lawyers who actually understand what we're trying to do and make, and help us do it. And that's an incredible situation because we're so often, and we feel that we are so often, the targets of the people who we deal with. And they're usually a lot bigger than we are with a lot bigger assets than we have.

MS. WOODRUFF: Let me ask all of you. We've heard—David, you've talked about this a little bit—but what is it that when each of you starts a project. What is it that attracts you to that idea, that story. You've all done such accomplished work. Alex, I mean, what is it that turns you on about a story that makes you think this is something I want to spend time with?

MR. GIBNEY: Well, I mean, when I started making the film Enron, I thought I'd lost my mind. I had broken rule number 1(A) of the filmmakers handbook, which is never make a film about accounting but the--I was confident in that film because it really wasn't about numbers. It was about people. And I had read
this book, *The Smartest Guys in the Room*, and there were extraordinary characters and there was a kind of human drama at the core of that. And while there was something very important about the issues that were being dealt with, it wasn't going to make a very interesting documentary in my view unless there was a kind of fundamental human drama. Something that we were understanding about the human condition. And so that's what attracted me to the story and that's usually what attracts me to the stories that I do.

MS. WOODRUFF: And Heidi, you haven't been at this as long as these distinguished gentlemen up here.

MS. HEIDI EWING: I should have had some more wine before I came up here. I'm sitting here with some major giants. But we, my co-director Rachel Grady and I, we have a company called Loki Films and we make mainly cinema verité-based films, character driven. Our first feature, *The Boys of Baraka*, we spent four years on. So what we try to do is we try to go at subject matter through individual characters, sort of, non-luminaries, regular run of the mill
people, that if we hadn’t walked, come along, would never have gotten their moment. But, for example, in Jesus Camp, we follow a small-time preacher, named Becky Fischer, and a community in Missouri of children who attend a sort of radical summer camp in North Dakota and, you know, we sort of let ourselves go by the gut and by curiosity and the film and the subject presents itself to us along the journey. And in this case, we started making a film about an interesting, quirky woman in a summer camp and we realized that we were filming that invisible, nameless Christian right that you hear about on the news and they were right in front of us. And this was everyday life of an aspect of the radical right. And so we try to tell our stories through regular run of the mill, you know, people but really, you know, if you step back, the audience walks out of our movies, I hope, ruminating the rise of the Christian right and on, sort of, much larger, broader subject matter. So we always approach it through the character. So we have to find the right person first and then we step out and we try to tell a larger story.
MS. WOODRUFF: Lowell, you were at, what, ABC, CBS, you--

MR. BERGMAN: I've been fired at most networks.

MS. WOODRUFF: What is it that turns you on about a story or a project and has that changed ever?

MR. BERGMAN: Well, today, there are very few venues to do really important stories that challenge what is going on. Those people--you know who you are who are in the audience. And there are the people who work, but for example, for Frontline. We've got Marty Smith sitting over there who is one of the only people I know whose gone into the Northwest territories and I think Marty's insane, by the way, doing those kinds of things. I refused to go with him at one point in those kinds of stories. What we do have is a large number of you people here in the room who have stayed, who have kept the faith. You think we're doing something not only that we enjoy doing, but also that's important. And what is it really all about. It's trying to tell the truth. I don't think that we had to do very much, for instance, to, in a sense, realize
that the Bush administration didn't know what
it was doing. They did that on their own. But
we were amongst the only people, because of
David Fanning, who could present that in a
cohort way to the public. And so really what
I think is important right now is for all of us
actually to celebrate the idea that we have
survived this particular cycle in the way the
news business is operated over the last 35 years
without having many of us having to go to jail
or to suffer.

MS. WOODRUFF: An why do think--why do you
think you have survived?

MR. BERGMAN: Because the expansion--
technological expansion of the media on the
internet and otherwise has made it impossible,
in this country and other countries, to keep
information from people. That's one of the most
important things that's happened
technologically, the expansion of the
documentary form, the reason that it's become so
important. You know, I can remember--now those-
--are those CBS people out there? I can remember
when I used to be told at 60 Minutes,
documentaries, that's about documents. That's
boring. No one wants to do documents. Well, in fact, it's become something that's popular, that has a mass audience appeal. Information is now extremely important and we are on that cutting edge and you guys, the media lawyers, are part of that. And I think we're on a--in a period of growth, of importance and where things are going to become more important, more--not necessarily lucrative--but rewarding.

MS. WOODRUFF: David, I want to come back to this question of what makes the story that you want to do and you're in a position where you're not out there doing the filming most of the time. You're in the room making the decision about whether to go with one idea or another idea. What comes into play?

MR. FANNING: Well, you've been around it when we were working together. You know, we talk a lot. We talk and talk and talk and talk and people who sit around in the editorial group at Frontline in Boston talk a lot to each other and talk to producers that visit and talk about ideas, and as areas of interest surface and we talk about them. There's, people throw little pieces of information or fairly well read, smart
people that they put together a kind of series of thoughts about well, that would make a pretty good film, and at certain points you get quite proud of yourself and you think well, that looks like a film that we should do. At which point you certainly shouldn't do because it's the received, kind of, common, you know, wisdom of people who read the New York Times and a few other publications and have kind of put that together. What you have to do is say, this is territory that's interesting for us. How do we turn this over in a way that we can find an angle of vision into it? Where can we put the chisel on the rock and hit it hard and open it up in some way, that will require somebody out and doing old fashioned leg work? You can have an instinct about a story about territory and then you, sort of, think about the various methods that you can use to tell it. Perhaps use what Heidi uses, which is the idea of immersing yourself in a story we're shooting over a long period of time observationally. On the other hand, you can go out and do the kind of work that Lowell does, which is--which is all done on the telephone until he works his
sources, until finally he says I got someone
who will go on camera. And that one person on
camera begins a trail that leads to other people
on the camera. You're never quite sure at that
point what the structure or style of the film is
going to be. Every producer, documentarian has
an autograph, has a method, has a kind of way of
telling and they each author just as much as
probably David Remnick sends certain kinds
writers off to follow kinds of stories, so you
send journalists and documentarians in search of
different sorts of stories. But it starts with
a kind of curiosity about territory. It always
says, is there something there that can be
surprising, that is not going to be what we've
been reading in the New York Times or any of the
other publications.

MS. WOODRUFF: Not a slam on the New York
Times.

MR. FANNING: Or perhaps even the Washington
Post or the Boston Globe or anybody else that
we've been reading. All of the, you know, it's
that hunt for the surprising. And I think the
great, you know, Orville Schell once told me
about working for William Shawn and he said it
was extraordinary to go in and sit in for
Shawn, who you know didn't like to leave
Manhattan Island. He didn't like to go over the
bridge at all. So he would—you'd come in and
tell him about wanting to go to Mongolia and he
would say, that would be very nice, would you
come back and tell us what it's like. And he
would essentially give you a ticket to Mongolia.
And that's what we have the great privilege at
Frontline of doing, which is to give Lowell, a
ticket, and Marty, a ticket to go to Somalia, to
go to East Africa in 1998 or wherever to go and
find out what happened in those bombings in the
East African--

MR. BERGMAN: [Interposing] Or into the
jails, like Ofra. Or into pipe plants that kill
workers.

MS. WOODRUFF: So Alex, you were nodding
when David was saying that each filmmaker has
his or her own sort of signature. What does
that mean to you? What do you think you bring
when you put your head into something?

MR. GIBNEY: Well, what I think is
important. I mean, one of the great things to
anything's new, I think we continually reinvent things all the time. But as David was talking, you know, I was just reminded of this notion of the author documentary, which is just like a good non-fiction book. When you read a good non-fiction book, you develop not only an understanding of the material, but you develop a relationship with the author because the author's tone and personality in mysterious ways comes through. And everybody has a different way of doing that, but I think what's really important for documentarians is to find a voice, not in a self-conscious way but in a way that finds the way of telling a story that makes the most sense for them. You know, I was very much inspired and I think, you know, my whole idea of how to do these things changed when, not as a director but as a producer, I was given the job of producing a series of films that were on PBS on the blues and Martin Scorsese was the executive producer and there were a rather extraordinary group of fiction filmmakers who had also done documentaries. People like Martin Scorsese and Clint Eastwood and Mike Figgis and Wim Wenders and others. And everybody had the
same subject matter but everyone took a radically different approach to the material and I found that very invigorating. And I saw the degree to which they obsessed and became very concerned about how to tell the story in a new way that was also a very honest way both to themselves and the material. And I think that's very important.

MS. WOODRUFF: Do you find that, Heidi, that it's getting, again, I don't mean to keep contrasting the age and the experience here because you've obviously been doing this--

MS. EWING: [Interposing] A bit obvious.

MS. WOODRUFF: --for some years. But do you find that there's a welcoming environment out there for your work? Do you find that you have to--

MS. EWING: [Interposing] Well--

MS. WOODRUFF: --you know, that you feel like you're climbing a mountain to persuade people that this is a good idea and they need to spend money supporting it?

MS. EWING: If it's very, very easy to sell something, I think it might be a bad sign. I think--I mean, I like tough pitches because it
means that we're onto something new, that
hasn't been tread over before. But I think it
is a very welcoming moment. You know, a lot of,
you know, college students have seen our films.
We get letters. We get e-mails from a much
younger demographic than you'd imagine that are,
you know, renting our films and, you know,
opening a few beers and having a discussion.
And that's exciting to me. And I think
basically what's happened, from my observation,
is that there has been a lot of distrust of the
news media over the last several years. There
was a moment, I think, where people were
disappointed with some of the coverage of the
war, especially in people in their twenties and
such and there was, sort of, a sourness. And I
think the documentary film stepped in at that
moment--or we were always there, but that we
were noticed suddenly. And they said, let's see
what they're doing. They've spent a lot more
time and they're going very in-depth and they're
spending many, many years and let's have a look
at their take on Iraq. So you see six or seven
or eight very interesting documentary films,
very different from one another, on Iraq coming
out and I think that's very, very exciting because you can't just read a three column article or listen to NPR for ten minutes and understand complex issues that are going on in the world. And I think documentary is stepping in to maybe fill that void. In that's what I--so, I do think there's a welcoming moment. You know, I definitely have to say that I still feel--you know, we deal with television networks, and we also deal with less traditional places like PBS and, you know, I definitely do feel the corporate hand at times. There--it's a--people do think twice or three times before they allow certain things in the film that are going on the broadcast networks and we're experiencing something like that right now. So--

MS. WOODRUFF: [Interposing] How do they let you know?

MS. EWING: Well, I've got to vent. I've got to get something off my chest. And why not, with 600 people that I don't know. But this has been going on for a couple of days and this is like gossip with all these people, but our film Jesus Camp was financed by the A&E Network and
they took a great leap of faith in financing a film that was about very provocative subject matter. And we were in the edit room last year and we're cutting a scene where there's a lot of--there's very small children holding plastic fetuses at an anti-abortion rally and they're screaming, "Righteous judges, oh lord, may George Bush and God bring righteous judges to the Supreme Court that will outlaw abortion."

It's a very incendiary scene. It's a very disturbing scene. And I turned to my co-director, Rachel, and our editor and I said, A&E will never air this. This will never broadcast in the United States. And the film went on. It got an Academy Award nomination. It has been--it was a pretty wide theatrical release for a documentary film. It's been seen in almost every single country on every single network all over the world, including Al Jazeera and in Paris and all over the world, and the only place that it has not broadcast is the United States of America. And it's been a year and a half. And I'm getting the distinct feeling and some news that's come to us recently that it will never be broadcast in the United States.
Advertisers don't want to sign on to a film that has the word abortion in it many times. And there was an article in the New York Times last year that the word “abortion” has been said in television shows—-it's dropped, like, 80% since the 70s. So it might be that. It might be something else. I don't know. It's a political film. I can't--I am pointing fingers but I don't have evidence. But I don't think the film will ever be seen and if it is, it will be at 12:00 p.m. on a Tuesday with no advance warning. And that bothers me. So we still have to fight those fights. And I assume that everyone on this panel has got a story like that. That's my little story. But that does--it is disturbing and it is happening. And we do feel that, even though there is a welcoming atmosphere in general to documentary.

MS. WOODRUFF: David, Lowell, Alex, you want to pick up on that because I have another question?

MR. BERGMAN: Well, I have a parallel example. Many of you think I'm Al Pacino, right? Did you ever see the movie, The Insider, broadcast by a network television organization?
Seven times Academy Award winning movie has never been on network television... 'til this day. It's been on FX and a couple of other digital channels. So what she's saying is true, from my point of view. Network television does not want to tell you or will not report on what it can't report and the problems that it can't do. But that's a reality of a business where the press is free, as we know, for those who own one. That's not a surprise.

MR. GIBNEY: I have a—I don't know if this is a counter example. It's not really a counter example. It's right in line with what everybody else is saying. But while I spend most of my time investigating how horrible things are and probing the dark side, to quote Dick Cheney, I—the—one thing I discovered, which I think is a ray of hope, is that when I made this film, The Trials of Henry Kissinger, it was primarily financed by the BBC. We went everywhere to try to get financing in this country for TV and it didn't happen. But what did happen, that once we completed the film there—we had a showing at the human rights film festival and they were actually hawking tickets outside of the theater.
And that taught us something. And then a theatrical distributor picked it up. It was distributed widely theatrically and was finally picked up by the Sundance Channel and showed. And the Sundance Channel, to my great delight, put a huge billboard in Times Square, with just white letters on a black background saying Henry Kissinger is a war criminal and then attributed the person who said that line. Which, you know, I thought that was a very good thing. But I take the point that Lowell was just talking about, and everybody else, it is a serious problem. But one of the peculiar aspects that documentarians--one of the peculiar abilities that documentarians sometimes have is by virtue, sometimes in a perverse way, of using the market against itself, or using these new media, like the internet, you can sometimes outfox the great corporate gate keepers and bring content, that they won't put on to people in a way that was never thought possible. I mean, now you can put stuff on YouTube in a way that's extraordinary and outflank the corporate masses. So I think, you know, while I'm dismayed, utterly dismayed by the tendency in the corporate media to censor
things because they're concerned that it's
going to have a deleterious economic effect on
them, nevertheless, I also see the market
working in peculiar ways to help the
documentarian.

   MS. WOODRUFF: David, given this explosive
change in technology and not only the advent of
the internet but all these--the YouTubes and
things that surely are coming down the pike that
we're only dimly aware of. Now how is that or
is that going to change the fundamental nature
of what you and other documentarians do?

   MR. FANNING: Well, I think the

   technological revolution that started over a
decade ago, particularly with the access to the
tools, the digital cameras that became readily
accessible and the editing programs that can go
into a laptop, have completely changed the
economics of this business. What used to be
extremely expensive film and expensive cameras
and crews to travel, can now become one skillful
person with a camera and perhaps a second person
to help carry the bag. A great deal can be made
from that. And now that we have a much more
sophisticated way to stream video, to show video
on the internet at high quality, it's going to create enormous amount of material. And it's going to be edited in all kinds of ways. And, you know, the current language is called a mash up, you know, you take material from other places and you mash it up you remake it. There's going to be all kinds of experiments in that. There are great opportunities in this, terrific ability for people to, you know, to literally pick, you know, go around the world or around the corner and to open a camera up on pieces of life or to engage people in conversations and to then create narratives out of it and to report or to tell or to show. The dangers in all of that is that this is the most manipulable of media. It is enormously manipulable. And you can do things with imagery and words and pictures and effect them in ways that are going to be harder and harder to unpack. And to understand what is truthful and what in juxtaposition is fair, is going to be very hard to do. We're talking about a very broad territory here when we talk about documentaries. It's a kind of genre but
forms. And one of them is the political
documentary, which carries its own political
agenda, which is, you know, perhaps to make the
point, and the best case would be Michael Moore.
There are journalistic works, which subscribe to
a different kind of set of tests. And there are
experiential films and all the rest of it. It's
going to be—we're going to—we're going to have
to look around to say, how do we judge this
material. And if you find you distrust it, then
you may not go back to that source again. So
it's going to be a sort of wild west for a long
time, I think. And some institutions and places
will perhaps surface or hold some guarantee that
this is probably a place to come back to and
that I can trust what I'm going to see there.
But it's dangerous territory. And very
exciting.

MS. WOODRUFF: And something that the daily
journalists are dealing with as well, is how do
we--how do you make sure that there are a few
places or maybe more many places people can go
to and know that they can trust the information,
when it's changing almost before our very eyes.
Lowell.
MR. BERGMAN: You know, I was—when I was invited to be on this panel, I was thinking that the one way to pay tribute to David Fanning and Alex Gibney is that if you watched Alex Gibney's documentary, I'm in it ... because it was because of David Fanning that we did a documentary about Enron in early 2001 and got into Enron and actually met those people. And so the process of doing that—and by the way, they were not that happy with what we did so there was—you guys, who we were thinking of, who were going to defend us. And maybe this is one way to talk about all of this. Without the specific, and I've learned this over the last 35 years, protections that many of you have volunteered to protect us to do, we couldn't produce the kinds of information, the kinds of stories, that we're here today celebrating and we couldn't actually celebrate David's career and everyone else. This is a very unique kind of situation. You just have to go overseas and see what goes on there, and what you can get on TV and can't get on TV. And David was talking earlier about his experience in South Africa. That is a real— that's a reality today in many
places. So I hope out of this dinner and our appearance here that you understand that there is a payback for what we do. The payback—what you do. The payback is we can do what we do. And thank you.

MR. GIBNEY: I wholeheartedly agree. So yeah, clap for yourselves.

MR. FANNING: Yeah. Applaud yourselves because--

MR. GIBNEY: [Interposing] Honestly, you—you know, Bob Dylan once said, to live outside the law you must be honest. I mean, I—right now, though I learned a great deal ... maybe people don't know, but one of the very first documentaries I made was for Frontline.

MR. BERGMAN: You did?

MR. GIBNEY: And David and Mike Sullivan taught me a tremendous amount in terms of how to craft a story and also how to be honest and truthful in terms of balancing all the perspectives. But to pick up on what Lowell said, you know, one of the most important things that I've run into over time, you know, going back to the Bob Dylan quote, is that when I work outside of a larger media superstructure, I'm on
my own basically, I rely a great deal on lawyers for all sorts of things and I've been little sued but sometimes sued and sometimes threatened with lawsuits. But in the area of fair use and, you know, my attorneys have been an enormous boon and allowed and indeed forged new territory. So much so, that insurance companies are now allowing all sorts of things in error and omissions insurance that they never allowed to be included in documentaries before. Because a legal argument was basically won. And the legal argument was that the Copyright Act is unconstitutional without the fair use doctrine, because it abridges free speech. So that's something that the insurance companies have taken on board now, thanks to many of you and so thank you again.

MS. WOODRUFF: Alright. We've only got--

MS. EWING: [Interposing] Well, I want to say also--


MS. EWING: I want to say that I also love all of you lawyers. Don't want to be left out here. And my attorney Victoria Cook is--
MR. FANNING: [Interposing] [off mic].

MS. EWING: --you started it. Victoria Cook is my attorney and she's here and we love her. Thank you. And I do want to say, actually, Rachel and I made a film, one of our, the first things that we did, many years ago. Also for A&E, as a matter of fact. It's, like, never going to speak to me again this tonight. But we did a two-hour investigative report on the Church of Scientology and no one would touch the subject matter like a hot potato because they had sued Time Magazine for what, 60 million dollars after the Cult of Greed cover story that had come out. And suddenly, there was nobody touching the subject matter. And the only reason that we were able to make the film was because, you know, the bond was more expensive, Alex. You know, we had to pay that because they were, of course, afraid we'd be sued. But if the attorneys at A&E hadn't stood up and said, no, we're standing by these filmmakers, they're going to make this film and we're going to roll the dice, is the only reason the Church of Scientology agreed to participate, to not sue us and they ended up, you know, cowing and
participating in the film. Because they couldn't believe that someone was willing to, actually even to take, the chance legally. So that was a very good story and it wouldn't have happened without wonderful entertainment attorneys as well.

MS. WOODRUFF: Alright. We've got only a couple of minutes left because everybody's here to eat dinner too, as well as to honor David. But just one last quick question I want to ask all of you. And that is, you're each burning to do, you know, a lot of work. Time goes forward. Share with us something that you think needs to be done without showing your hand on whatever--

MR. FANNING: [Interposing] No. We'd never give away our [unintelligible].

MS. WOODRUFF: --you haven't promoted. I know, you're not going to give it away but give us some kind of a hint of the kind of work that ought to be done to carry on in the great tradition of--

MR. FANNING: Well, I do think that we can't--we have a tremendously difficult time doing corporate stories, doing stories about the world of business. Very hard because we now
don't have Freedom of Information Act stuff. We can't get access to materials. We can't get inside. Confidentiality agreements, employment agreements--very, very hard to report in the business world. I mean, they're so powerful and so extraordinarily--more important than the government in many ways. And we can't do it. And we would like to do more of that and that's the big threshold for us to, kind of, push our way towards to do more reporting in the corporate business world.

MR. GIBNEY: I've been working for two years on a film about the Gonzo journalist Hunter S. Thompson. And one of the things that Hunter taught me, you know, going back in time to 1975 or 1972, when he covered the presidential campaign, was sometimes you need to bend and twist the rules of accepted journalism in order to thwart the mechanisms of people in power that are holding those rules against you and sometimes taking you hostage in the process. And so I think to some extent, we've reached a point now where politicians are so careful at stage managing and corporate leaders are so careful at stage managing their images and the
way they act and the way they're presented,
that what I'm exploring now are new ways that
are truthful but at the same time intended to
be, you know, work like a termite. To eat away
at some of that stage managing that is going on
that I think is so pernicious in terms of
preventing us to get at the truth.

MS. WOODRUFF: Heidi.

MS. EWING: Well, I think it would serve the
public and all of us to explore more the ever,
sort of, changing moral--our--the United States'
relationships with some of the countries that we
once perceived as rogue states. Our new
relationship with the so-called new Libya and
the new Qaddafi. Our friendship with Pakistan
and we're seeing how that's turning out right
now in terms of a country that, you know, was
pretending to move towards democracy and, in
fact, that's not the case. Our--more about our
relationship with Saudi Arabia and how, sort of,
maybe we've compromised some of our rules about
our relationships with countries just in self-
interest. I think it would be very, very
interesting to look more deeply into that and
Rachel and I would like to explore some of those
topics.

MS. WOODRUFF: Lowell, you get the last one.

MR. BERGMAN: [laughter] Well, I think we need to remember the origins of documentary. We need to represent that Eisenstein and Leni Riefenstahl all did documentaries in the interests of totalitarian countries and governments. It is extremely difficult. It is much easier to manipulate images than to report the truth, however artistic and however more remutative it is, to do whatever is popular or whatever the government or those with power will reward. And so we have a great, I think, responsibility. A responsibility that I believe of the programs that I've worked with, Frontline actually embodies in itself. And that--again, I would say we would rely on those of you out there to help us tell that truth, however unpopular, however difficult and however unartful we have to--to whatever means we have to do, to tell that truth. Thank you.

MS. WOODRUFF: Thank you all very much. Appreciate it. Congratulations, David Fanning.

[pause]

MS. BARON: I want to thank Judy Woodruff,
Lowell Bergman, Alex Gibney, and Heidi Ewing
for joining us tonight and giving us their views on documentaries. If you haven't seen their work, I strongly recommend you do so. I realize that each of them has a huge body of documentaries and reporting, but I can also tell you that many of them are on DVD. Develop a relationship with Netflix. And as for Frontline, the website for that series is remarkable. You can not only watch dozens of their documentaries, but read transcripts, original documents and countless other materials on the site. It's a miraculous resource and a 24-7 legacy to the extraordinary work of our honoree, David Fanning and his colleagues. Thank you all for coming. Enjoy your dinner.

[END TRANSCRIPT]
CERTIFICATE

The prior proceedings were transcribed from audio files and have been transcribed to the best of my ability.

Signature __Mark Hugo_________

Date___11/12/07______________