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THE CONTROL OF PROGRAMMING

In September, FCC Chairman E. WILLIAM HENRY went before the members of the International Radio and Television Society to explain the Commission's pending proposals to limit network ownership of nighttime TV programs—the so-called 50-50 Rule. That portion of Mr. Henry's address devoted to clarifying the nature of the proposals is printed below.

The matter had been moved, said the Chairman, from the "back of the regulatory stove" to the front burner, and he challenged the assembled broadcasters to make a response to these proposals. Their silence, he suggested, could not be misquoted, but might be misconstrued. Since improvement in the quality of programming is the ultimate goal of all parties concerned with the proposed regulation, there seemed little likelihood that silence would ensue.

In a vigorous dissent from the Commission's position, HUBBELL ROBINSON risks misquotation by arguing here that such regulation can only diminish the quality of present programming. If the networks are denied that werewithal which supports risk and experiment, Robinson maintains, program innovation will eventually die off—for other agencies will not, or cannot, provide the impetus for creative invention.

Others disagree, and their support of the FCC echoes in the halls of Congress. In October, Rep. Emmanuel Celler (D-N.Y.), Chairman of the House Judiciary and Antitrust Subcommittee, filed an angry brief with the FCC in which he insisted that networks be regulated out of programming altogether. Shortly before Celler filed his brief, Senator Gale McGee (D-Wyo.) read into the *Congressional Record* an essay by *Television Quarterly* Editorial Board Chairman LAWRENCE LAURENT which recorded the opinions and expressed the interests of important non-network program agencies. The essay also gives the background of complaints that led to the 50-50 proposal. Originally published in the *Journal of the Screen Producer's Guild*, Mr. Laurent's essay is also reprinted here for purposes of further clarification.

For those who may be unfamiliar with the subtleties of the continuing struggle for control of programming in American television, the interchange which follows may help to separate the umpires from the ballplayers.

THE "50-50" RULE

E. WILLIAM HENRY

Just what is this proposal which has been given the shorthand label of "50-50"?

In practical terms, it aims at opening up weekly prime-time television schedules to a maximum of two hours of programs each evening from independent, non-network sources. Or, to state it the other way around, except for news and sustaining programs the networks could not produce, co-produce or have unlimited exclusive exhibition rights in more than 50%—or 14 hours a week, whichever is greater—of their prime-time programming.

Before looking at the "why" of the proposal, let me summarize briefly where it stands today.

The Commission has been looking into the matter of network domination of program supply for almost ten years. It is a problem that has long bothered thoughtful men interested in this vital industry—including communications scholars and legislators, as well as producers and station owners. We have received many complaints about this situation, ranging from distracted murmurings to violent objections. We have had a special staff conduct an exhaustive study. Following all of this, in March of this year a majority of the Commissioners felt that certain aspects of the problem needed further exploration in the more formal context of a rule-making proceeding. We therefore issued the pending "50-50" proposal as a good starting point.

A graduate of Yale University and the Vanderbilt School of Law, E. WILLIAM HENRY was appointed to the Federal Communications Commission in 1962. Less than a year later, he became the youngest man ever named to chair the FCC. Mr. Henry's tenure in office has been marked by a number of major accomplishments designed to increase the efficiency and economies of our domestic and international telephone and telegraph carriers, and to improve the services to the public rendered by the broadcast industry.

Our Notice of Proposed Rule Making states:

...Network corporations, with the acquiescence of their affiliates, have adopted and pursued practices in television program procurement and production through which they have progressively achieved virtual domination of television program markets...

The proposed rule is directed toward a strengthening of independent program production.

Little can be said to define more clearly the heart of the problem. Shorthand antitrust characterizations such as "economic domination," "triopoly" and "restraint of trade" are little, if any, additional help. The central assumption of our approval is the domination by the three networks of virtually all programming which the American public sees during the prime evening hours. Let's just look briefly at a few basic statistics developed by our Office of Network Study, largely from material furnished by the networks themselves.

In 1957 the networks themselves produced programs occupying about 29% of their prime evening time. In addition, they held rights from other producers under various types of co-production arrangements accounting for another 38% of prime-time programming. Thus the networks owned or had some proprietary interest in 67% of their prime-time programming. In 1964 this figure had risen to approximately 93%. In other words, in 1964 only 7% of the networks' prime-time programming was independently provided.

These figures indicate that the networks today not only exercise the right to choose the programs they broadcast, but largely to determine what programs are produced and available for choice.

Another basis for our position is that the best industry data we have show that in 1956 there were 29 program series released by independent major suppliers to the first-run, mass-appeal syndication market. In 1965 we could find but a single such series.

The question for the Commission, then, is whether this vast influence over program supply runs counter to the basic national policy for the competitive development of a diversified television service.

The Congress, the Courts, and the Federal Communications Commission throughout its history have in many ways explicitly recognized the vital importance of the diversification principle. The Commission, for example,

...has allocated hundreds of channels to local communities instead of just a few channels here and there for regional or national broadcasts;

...has fought strenuously and continuously to provide more broadcast facilities through the development of UHF and educational-TV;

...has long prohibited ownership of more than one station of the same kind in the same community;

...and has fought all the way to the Supreme Court to defend its rule limiting multiple ownership.

Additionally, over the years it has adopted a body of principles covering network-station relationships which stands as basic precedent for our current proposal.

Diversification is thus truly a cornerstone of our regulatory structure. Historically, the people of this Republic created a Communications Commission and charged it with the responsibility of fostering diversity and competition. We cannot shirk a responsibility as old as the regulation of private enterprise broadcasting. It is to this fundamental national policy that the proposed rule responds.

The problem is therefore one of principle, not of programming. Opinions on programming and how to improve it are as numerous as the individuals expressing them. Every man is a critic, and this is one area where diversity runs rampant. In my judgment, little would be gained from a prolonged debate on the question of which source furnishes better programs and what, if anything, the government should do about it. We are, of course, discussing the networks' role in the program market. But programming per se is not the dominant theme of this proposal.

In short, the diversification principle would here call for the exploration of ways to enhance the competitive climate so that more elements might figure significantly in the programming to be offered to the American public. Our aim is not to select or direct programming, but to promote the development of conditions that will lead to the widest possible program production and distribution.

And we are concerned with still another principle, pertinent also to the syndication aspect of our proceeding. Are the networks in a position to demand and receive a proprietary interest in any program simply because they control the means of exhibition—to obtain “a piece of the action,” as it were, because they control the pipelines? If so, what is the effect on the public interest?

You might reasonably ask at this point: Where do we stand? What has been the reaction to our proposal?

Well, we have stated a problem, proposed a possible solution, and noted the first preliminary reactions of several interested groups.

These have told us—from informal comments, from speeches and from the trade and general press—that a majority of the spokesmen for all segments of the industry are likely to be against our proposal. However, formal comments, to be filed for the record, will come later. Decision will then follow.

Meanwhile, while the big guns are being rolled into position, here are some initial thoughts of my own made with the hope of provoking still further thought.

In several instances the initial reactions were both predictable and visceral. They resembled Groucho Marx in *Duck Soup* when he sang: "Whatever it is, I'm against it." Other spokesmen seem to be trying to resurrect the old and extravagant refrain of "Gloom, Doom and Disaster." But the Commission hears such peerless prognostications whenever it considers changing the status quo.

We will, of course, give full consideration to all economic presentations in the comments to be filed with us. However, in light of the Commission's experience over the years with contentions of this kind, the most careful documentation is required to support any reiteration of them now.

Experience has shown that unsupported and unrealistic predictions of "Gloom, Doom and Disaster" have a most unsatisfactory track record. We heard this same refrain back in 1941 when we adopted the Chain Broadcasting Rules. We then characterized it as "the exaggeration of advocacy" and rejected it as "incredible." We heard it again prior to 1963 when we did away with "option time" agreements. Notwithstanding these prophecies, the networks have continued to flourish—as it was anticipated they would—and have gone on to increasing prestige, power and profits.

In this connection, it should be noted that 1964 gross revenues of the three networks with their owned-and-operated television stations was 929 million—almost one billion—dollars. This amounted to 52% of the television broadcast total—more than all of the nation's 560 other television stations put together! The networks' combined 1964 net pre-tax income was \$157 million, or 38% of the total earnings of all TV broadcasters.

We have also heard that the FCC need not worry about competition in this area because nowhere is it more fierce than among the networks. For example, we are referred to the decimal-by-decimal reporting by the trade press of the titanic struggle for national ratings as substantiating this viewpoint. Additionally, we read the program obituaries, which so often list sagging Nielsens as the cause of untimely death.

However, if a need exists for more competition in programming source and supply, it is difficult to understand how it can be satisfied by the competition for audience and ratings among the networks, no matter how intense. The competition normally envisioned by the public interest in vital fields such as broadcasting is not that of a fierce struggle between three giants—and only three—to determine who shall be King of the Mountain. Moreover, such competition is of small comfort to other climbers hanging perilously to the slopes below.

Of all the reactions noticed thus far, perhaps the one most often reiterated is the view that sponsors' "control" of programming would be increased under our diversification proposals, to the detriment of over-all program quality. Accompanying this viewpoint seems to be the unspoken feeling that "sponsors" are not only more commercially oriented but that, as program producers, they are only "half-safe" and are apt to worship a "White Knight."

Let me suggest to you that this attitude needs very close study by broadcasters, by the FCC, and by the public. Analysis may reveal that the underlying premise of the argument against sponsor-provided programming and sponsor "control" is inaccurate.

In the first place, our "50-50" proposal does not change the essential fact that it is the individual station licensee, not the network or sponsor, who has full responsibility and control over all of his programming, network or otherwise. While as a practical matter networks may assume this burden, they do not have the ultimate responsibility for it, except insofar as they themselves are also station licensees. This control cannot lawfully be delegated to, derogated by, or shared with sponsors, even when sponsors put up every cent for program development.

Moreover, the networks and their supporters cannot have it both ways. They cannot hail the vast accomplishments of responsible American businessmen for the public good, and simultaneously condemn them as unfit to participate more closely in program production and supply. They cannot fight with other networks for the highest rating at almost every moment of the day and night and then claim that sponsors are interested only in mass audiences. They cannot have sponsors as best friends and joint venturers one day, and make them their ogres and whipping-boys the next.

My own impression is that the evils popularly ascribed to sponsor control are largely inherent in the nature of commercial television. It is an advertising medium too often aimed at ever-increasing mass audiences. It is a show-horse seeking a billion-dollar blue ribbon,

regardless of who is in the saddle. It is operated and sustained by a mixture of good guys and bad guys, but they are not all on one side of the street.

It seems reasonable to conclude that the potential for abuses exists in our system of commercial television regardless of the identity of a given program's owner and producer. This potential will change drastically from program to program, depending upon the circumstances, and the problem is admittedly far more complex than can be outlined here. But recognition of this essential fact makes it unnecessary to point the finger of blame at one group or another, or to assess relative degrees of guilt for failure to withstand such pressures.

In any event, it is my impression that the old skeleton of sponsor taboos is much less frightening today, however strenuously it may be rattled. Networks, advertisers and agencies have all shown steadily increasing signs of maturity in learning that their audiences, even *en masse*, will accept more realism and sensitive subject matter, and still watch the commercials. That, indeed, is progress.

Of this much we may be certain: Whatever the outcome of our "50-50" proposal, we shall all profit from our study of the important principles involved. Our task is to derive a sound interpretation of those principles, and to then determine their correct application to the television industry. Surely this is a challenge, not only to the members of the FCC, but to everyone in broadcasting.

To the networks and all others who see in our current proposal only an unfortunate retrogression toward poorer programming and a weakened industry structure, let me repeat: It is not a case of "50-50 or fight!" We are ready to receive all comments or alternative proposals at face value. We shall make no decision until they have had their day in court.

To those who favor some adjustment in the present structure, let me urge them to speak now, or hereafter hold their peace. This matter has been under consideration for almost a decade; if we are on the wrong track we should no longer waste the taxpayers' money. Silence cannot be misquoted, but it can be misconstrued.

To both sides, let me make one point clear. Industry reaction should and will be accorded full weight, and will be given the closest consideration. But industry reaction, however informed, cannot alone be decisive. It is only one of the several public interest aspects which the Commission must consider. It is the public interest which must prevail.

ANGELS, SAINTS AND SINNERS

HUBBELL ROBINSON

In 1964, according to figures toted up by the McCann-Erickson advertising agency, American advertisers ran up a television bill of \$2,236,000,000. Approximately \$1,109,000,000 of that total was spent on sponsorship of network programs.

The amounts spent by the angels who provide the "backing" for Broadway, the banks and studios that finance movies, individually and collectively, are small potatoes compared with this massive outlay. Procter and Gamble, reportedly today's biggest television spender, is said to be investing in excess of \$80,000,000 a year to peddle its products in living rooms. American Home Products, Bristol-Myers, Lever Brothers, General Foods, and Reynolds Tobacco are among the others whose giant-sized appropriations make the television wheels go round, spending from \$50,000,000 a year on up.

If these dollars are responsible for most of television's less than deathless programming they also make possible its finest hours. Without the profits from such dubious examples of current folklore as *Hullabaloo*, *Shindig*, *Gilligan's Island*, *The King Family*, *Mona McCluskey* and other similarly stupefying banalities, the networks could not bring us the intensive play-by-play coverage of the Gemini

HUBBELL ROBINSON is one of America's leading spokesmen in behalf of creative television programming. A former production executive, CBS-TV programming Vice-President, and now an independent producer, Mr. Robinson was responsible for the development of many significant programming innovations, among them the *Playhouse 90* series. A member of the Editorial Board of *Television Quarterly* since its inception, Mr. Robinson was recently named Co-Chairman.

space flights, the Churchill funeral, *CBS Reports*, a bundle of NBC special news and public affairs programming and most of the other cultural, informational and educational productions which they undertake.

Central to any precise understanding of the advertiser's posture vis-à-vis today's programming complex, his Janus-like role as saint and sinner, is the simple fact that the TV medium offers him the best available opportunity to reach the most people most often at the lowest cost.

In his pursuit of that carrot the advertiser is a remove from the Broadway backer who wants to make money but is also frequently motivated by a genuine interest in the theater as an art form or just hopes to somehow get to exchange martinis with names he reads about; nor is he kin to the movie banker who is making a dollar investment with profit as his only goal or the picture-maker who values excellence as well as his bank account. The advertiser's infatuation with television has nothing to do with its capacity as an art form and very little to do with its efficiency as an intellectual or informational forum. For him it is a medium that, given programming that attracts the attention and continuing interest of millions, affords him an unparalleled opportunity to hawk his wares persuasively. If you find today's television advertising jargon with its thundering claims for "Retsyn," "Platformate," "V-7," "Neo-seal," "Flexinal," tigers in your tank and basset hounds worrying about your batteries and crankcase something short of persuasive, forget it. The goods are moving and, as the man says, "They must be doing something right."

The quality of the entertainment which gathers these hordes of potential buyers is the favorite football of double domes everywhere. The fact is the content of the bulk of television's evening "series" is a symptom, not a cause, of mass taste in all the entertainment arts today. The Broadway concentration on musicals and comedies is understandable. Reporting in the *New York Times* on June 21, Sam Zolotow remarked that "serious drama is a losing venture on Broadway as shown by the record of the 1964-5 season. A dozen new dramas were produced. All failed." In searching for a significant work on which to bestow their favor, the Pulitzer Prize pundits had to turn to *The Subject Was Roses*, which might have been exciting to *Studio One* television audiences in the fifties but on Broadway manages just enough weekly audience to keep the roses from wilting.

And Hollywood, too, concentrates on comedies, action-suspense drama and, when they can be bought or borrowed, musicals. It seems that "everybody's doing it."

A covey of critics, ranging from Harriet Van Horne (who is pretty) to Dwight Macdonald (who is not), profess to see in this condition a noxious plot to debase the national taste and make Parkinson's Law the reality of our times in the entertainment world.

This, of course, is sheer Aristotelian dialectic. A more reasonable, less shrill intellectualization of the facts would seem to be that since the mass media deal with millions of people, concentration must be on materials that mass audiences will embrace. One may quarrel with the overwhelming escapism of what they prefer, but the stark fact of their preference is inescapable. In the world of the sixties, riddled with convoluted problems and complexities about which even the savants seem to be of many minds, it is perhaps understandable that audiences welcome television's daily and nightly interludes of respite and relief.

A recent comment by Crawford H. Greenwalt, Board Chairman of E. I. duPont de Nemours & Co., not exactly the archetype of the average middle-class, middle-income, uninvolved American, seems relevant. Speaking to the National Association of Broadcasters he confessed himself a "member in good standing of this intellectual wasteland over which you are said to preside." He listed *The Flintstones*, *Bewitched* and *The Rogues* as some of his favorites. He added: "The Greenwalt intellect is not of a very high caliber after quitting time." Considering the dimension of Mr. Greenwalt's responsibilities, it is scarcely surprising that he elects to rest his mental motors "after quitting time." Nor should it be a matter of amazement that millions of other Americans whose responsibilities and intellectual quotient are considerably less do the same.

Television is the major supplier of this kind of relaxation, and the nation's major advertisers are the principal supporters of it. If that were the sum total of the networks' and advertisers' contribution to television, the carpers and revisionists who rail at the former as the conceivers and producers of the most popular entertainment in the world and the latter as the villains whose dollars encourage and propagate it might have a tenable beachhead. As anyone knows who takes the trouble to examine the facts, it is not the whole story. There is a balance. The appetite of the minority audience is not without nurture.

Two recent events make this clear. They also make clear the

effective interplay between the network as creator—or the factor responsible for creation—and the advertiser as the “angel” whose money finances that creativity. One is NBC’s devoting three and one-half hours of prime network time last September to a program examining America’s foreign policy in depth. (It is true that the program was sponsored by Eastern Airlines, but NBC’s program costs exceeded sponsor payment by more than \$500,000.) The other is CBS’ contracting for from four to six cultural specials to be produced by Robert Saudek, a man of formidable accomplishment in this area. It is the funds accruing from the “meat and potatoes” programming which permit commitments of this kind to be executed regardless of whether they acquire sponsorship. Without those funds no network can undertake long-range investments of this size or maintain the creative staffs to make them possible.

Now this entire mechanism—which, in the main, posits the networks as creators, producers and/or suppliers of the program product and the advertisers as buyers—is liable to total disruption through a ukase the Federal Communications Commission is proposing to enact. Should these proposals take effect they could sharply alter the whole pattern of television broadcasting, changing materially the quality, quantity and range from which every viewer will have the opportunity to choose.

Stripped of almost impenetrable bureaucratic patois, the FCC proposals boil down to three fundamental rulings:

1. 50% of all evening prime time (7:30 P.M. to 11:00 P.M.) is to be turned over to advertisers and the agencies for programming.
2. Networks can not engage in domestic syndication under any conditions. In foreign syndication the networks are limited to programs wholly produced by them.
3. Networks are barred from any financial or proprietary interest in any program which they do not wholly produce.

Let us reason together about the wisdom and the practical consequences of these proposals.

The 50% Rule. The avowed intent here is to widen the variety of program types offered and to evaluate the over-all quality of evening programming by spreading the responsibility. Since all the major advertisers using prime evening time want the large circulation that the most successful network-owned shows now deliver, this seems a remarkably unrealistic form of wishful thinking. And they are going to continue to want big audiences which indicate

more efficient use of their television dollar, bigger sales and better reports to the stockholders. (There is no reason they shouldn't.) And they are going to continue to want new shows that appear to have a better than even chance to succeed because they are "like" shows that have already succeeded. (There's no reason why they shouldn't reach for that value, too.) Moreover, advertisers and their agencies through the years have not been conspicuous for their appetite for innovation in programming.

Given these facts, it seems naive to believe that turning 50% of the network evening schedule over to advertisers and agencies will materially alter the face of television. Much more debatable is whether they are willing to invest in the number of trial runs necessary before an evening schedule evolves. This is a basic consideration. All three networks overproduce, every year, in the volume of pilots they order as against the time periods to be filled. The overproduction can run anywhere from 50% to 100%. This is not some form of whimsical management. It is done simply because all networks know that in the entertainment business your raw material is human talent. Its capacity does not always equal its ambition. Some of the best laid program plans go sadly awry between concept and execution. If the advertisers are to successfully undertake such large blocks of programming, they must, individually, be prepared to face this kind of overexpenditure to be sure they come up with what they want. Only the giant advertiser such as General Foods, which last year financed eight pilots and found all wanting, can play this game. The middle-sized or relatively small advertiser will be reduced to what the big boys will share with him or to choosing from the halved opportunities the networks will offer.

The three networks annually aggregate a loss of about \$60,000,000 on their programming operations. This is exclusive of their losses on news and public affairs. Among the items accounting for this red ink are pilots that didn't sell, scripts and preliminary work on shows that were abandoned before they reached the pilot stage, shows that sold but became series that failed, and similar disappointments and disasters. Whatever we may think of television entertainment, it couldn't be as effective as it is without the continuing expenditure of these monies to experiment, to find out what will work and what won't. Can the advertiser be counted upon to spend these sums in the same amounts and with the same persistency?

It is well to remember that, as Frank Stanton, President of CBS,

Inc. and frequent pontifex maximus for the industry, has pointed out, what is under discussion here is 35 hours of prime-time programming, six times the amount of programming sponsors now supply to the three networks. Against these 35 hours the networks now spend around \$200,000,000 a year. Unless the proposed new system can guarantee a similar commitment—with the understanding on the part of those who do the committing that some dispiriting losses are inevitable—the public is likely to see evening television programming slide back rather than inch forward.

Nor can any exegetic excursion into the source of programming ignore the inescapable fact that only a network concerns itself with balancing its schedule week by week, month by month, year by year. The advertiser, of necessity, is concerned with his particular hour or half-hour, what precedes it and follows it, and what competes with it on the other networks. The rest of the network schedule is neither his concern nor his responsibility. There is no reason why it should be. Advertisers are not primarily in the network business; they are in the advertising and selling business.

While any sweeping generalization is vulnerable as being simplistic, the facts and figures set forth here would seem to lend considerable substance to the argument that the public interest would best be served, in the main, by keeping advertisers in the advertising business and leaving the network business to the networks.

Networks can not engage in domestic syndication; in foreign syndication they are limited to programs wholly produced by them. This is the least onerous of the three proposed rules since syndication is the smallest slice of the total pie. None the less, whatever it drains off in network profit proportionately shrinks the amounts available for gamble and experimentation which are so necessary to the evolution of a better, more viable network program effort.

Networks can have no financial or proprietary interest in any programs they do not wholly produce. This is a real crippler. What it says is that even though a network may have provided the basic program idea, financed the pilot and made a financial commitment for the whole series, the only "right" a network can get to any program produced in whole or in part by an independent producer is the right to network exhibition. Networks may take the total program risk, but they can have no part of the profit in return. None of these pilot undertakings can be pursued at the current tempo, much less expanded, if the total funds now available are

bobtailed as sharply as they would be if this ruling becomes final. And certainly it would not be surprising if the networks, in an attempt to preserve as much of their financial war chest as possible, elected to wholly produce all the shows allotted to them under the 50% rule. This would, of course, cut the independent producers market for their product by 50%. While this might not affect the large independents, it could be fatal to many of the medium-sized and smaller ones. The result would be a contraction of program sources available to the advertisers and their agencies as they attempt to shoulder the enormous burden of programming half the existing evening prime time.

To sum up, it is difficult to see how the effect of such complete fragmentation of current programming procedure as the FCC suggests can be anything but nugatory at best and chaotic at worst. Certainly some advertisers and their agencies have the resources to create or cause to be created programming of the sort calculated to meet their needs. But not all of those who would be called upon to play a part in the total evening program picture are so equipped. Insofar as they are not, the implementation of these rulings would constitute a recession rather than a thrust forward for "the box." And the networks, with both their immediate and long-range income and profits sharply cut back, will have to abandon their efforts to upgrade their entertainment series and, more importantly, trim their large-scale planning and production in the already unprofitable area of news, public affairs and educational programming.

The advertiser-network relationship may be highly symbiotic, but on the record it seems calculated to serve not only those two groups but also the public far better than the proposed FCC hodgepodge. The Commission's plan will seriously mutilate the network function both creatively and financially and thrust upon the Angels, Saints and Sinners a program responsibility with which they are not all equally prepared to cope.

Before these rules settle into concrete, it would seem appropriate for all the interests concerned to reach for a consensus.

"50-50" OR FIGHT?

Right on schedule — and just as expected — wails, groans and predictions of disaster followed the news that the Federal Communications Commission is considering a rule that would cut a network back to 50 per cent ownership of its entertainment programming. The wails, groans and forecasts of doom don't make much of an impression here, probably because this act has been worn thin and it no longer has impact. After all, only one decade ago Dr. Frank Stanton, President of CBS, claimed that television would lose its magic if the industry converted to film. A few years later, Washington heard that a network's schedule would be shattered (beyond repair!) if the FCC outlawed network option time. And you may have heard that the marginal (fractional!) profits of a network hung in the balance when rigged quiz shows had to be abandoned.

This is not a case to be compared with the boy who cried "Wolf!" one time too often. It is more like the wolf who yelled "boy" once too often for the township to heed and come running.

For about five years, attorneys general have been receiving complaints from those persons who produce programs for television. Persistently, producers have said that a man cannot get his show on television unless he cuts a network in for:

- (1) A piece of the ownership, meaning a share of present and future profits;
- (2) Full domestic syndication rights (where — producers claim — most of the profit is made from a short-run television series); or
- (3) Foreign syndication rights (and — again producers claim — this is the film series-maker's hedge against the "dry period" and old age).

The complaints haven't gone unheeded. Nor are these gripes without discernible, documented proof. Producers came to Washington and told stories about screenings that were followed by conferences that began with a network chieftain saying, "Yes, I like your show — but first, I will have to look at the house packages."

This, by nearly anyone's definition, is restraint of trade. Free enterprise, by any economist's definition, means unlimited access to the marketplace. It means that any individual can enter into competition and that the man with the best goods will thrive and prosper.

But, by some curious quirk of the television marketplace, the three television networks in 1964-65 had room for only about 15 programs in which a network didn't have a share of future profits. Such programs usually had a backing of muscle. It might be one of the T/L Productions of Danny Thomas and Sheldon Leonard, with the backing of an organizational sponsor called General Foods. Or it might be a *Hazel*, produced by Screen Gems and sold in advance to a tiny, struggling organization such as the Ford Motor Company.

With this kind of documentation, the Justice Department — nor the FCC — could not long ignore such complaints. The long legal opinions and documented citations made the bureaucratic rounds and eventually some found their way to the desk of the Attorney General. He called a secret, off-the-record conference with the Chairman of the FCC.

The starting point of the discussion between these two lawyers was the celebrated case of *U.S. vs. Paramount*. In this case the Supreme Court held that a producer cannot be an exhibitor. The case is known to laymen as the "Anti-Block Booking Decision" that divorced movie-makers from ownership of movie theaters.

Under the philosophy of this decision the Attorney General was certain that he could go to court and win — hands down — a decree that would separate television program production from television program exhibition. He had one additional worry: If networks were separated from production the public might lose one of TV's greatest benefits — the documentary, public affairs, non-fiction schedule of programs. What could be the solution?

In response to that question, one who is not schooled in the complexities of the Federal Government might reply that "illegal monopoly can simply be declared to be illegal." But life, legally, hasn't been that simple for at least 70 years (or, if you insist on being technical, since passage of the vaguely worded Sherman Anti-Trust Act). No, students, "monopoly" means control of 51 per cent of the market. Now, scholars, do you see why the proposed rule is 50-50?

First, of course, the FCC won't even consider "sustaining" — meaning "un-sponsored" — programs. Nor will it count "News and Public Affairs" programs. Also excluded are the lucrative, profitable daytime hours. All that would count are the prime-time, entertainment programs.

To re-state, then, the FCC is considering a rule that would limit a network (and there are only three TV networks) to 50 per cent ownership of the entertainment programs scheduled between 7:30 P.M. and 11:00 P.M.

There are other considerations. Each spring the *New York Times* publishes a report on how much money the networks lose in the creation of television programs. The most recent article put this figure at about \$70 millions. One might logically expect that this story, so carefully documented, would be a plea by networks to be relieved of an awesome, burdensome responsibility. But, no, it seems that in spite of the terrible losses, networks actually enjoy a function that is so dreadfully expensive. This curious attitude might lead one to a conclusion that figures have been carefully isolated and that in the long run there is some profit in the selection, creation and care and feeding of new programs. This is certainly indicated in the FCC's second interim study of network operation. The networks took over programming control in 1960, following the quiz show scandals. Between 1960 and 1964 network profits rose from about \$21 million to more than \$60 million (before Federal taxes). These figures indicate only one thing — one can easily lose money searching for just the right program and — in the triopoly of network television — reap a bonanza through absolute control of everything that goes into the prime-time schedule.

We come now to that amorphous thing called public policy, governing what is happily called the publicly owned airwaves. Here, one might understand a policy that says the independent entrepreneur is entitled to every dollar that results from his risk of an investment in a new program. Further, unless we reverse all sound thinking of the past 70 years, this entrepreneur ought to be able to reach the marketplace without having to cut others in on his potential profit. In terms of public policy, the 50-50 ruling would mean that the creator has a 50-50 chance of getting every dollar that his risk earns in the marketplace.

It would not mean, in terms of the smokescreen so carefully laid in recent months, that advertising agencies would have to control programming. It would mean, in simplest terms, that a network couldn't control more than half of the prime-time entertainment schedule.

Of course the networks are going to fight such a ruling — for a time. In the background, however, is the spectre of a Justice Department complaint reaching the courts and — under the U.S. vs. Paramount decision — the exhibitor of television programs (a network) could be ruled out — completely — from the production of programs.

This, then, is the government's case. The other side will be covered, I am certain, by Senator Hartke and others. Here one should keep in mind several economic facts:

(1) Such a ruling would not mean the end of the networks as a central, contemporaneous source of programming and sales. Anytime, in our society, that a need exists for goods and services, some organization is going to supply those goods and services — and for a reasonable profit.

(2) Obviously, networks did exist, and make a profit, in the years between 1948 and 1960 — without complete domination of program production. By their own testimony, a network makes most of its money as the broker for time to a group of affiliated stations. This will not change.

(3) A strong argument can be made in favor of the greatest possible number of sources for programs, each competing equally, without having to bargain away future profits in order to reach the public. This, essentially, is what the FCC is seeking.

On a more personal note, it is my business to know what is being considered at the FCC before proposed rules are announced. I knew, for example, in February of 1965 that a 50-50 ownership rule might be proposed publicly during the summer. This is why I went to Los Angeles in March to ask TV film producers what the effects of such a ruling might be. The most forthright answer came from one of the most successful producers in all television.

We sat in his office and I carefully explained the rule that was being considered (and which now has networks in an uproar). I asked: "What do you think of this rule?"

The answer came quickly: "It's a timid step in the right direction."

LAWRENCE LAURENT

Television's creators might consider having the following appropriately framed and hung on the wall. It was included in Theodore Sorensen's new book on John F. Kennedy, and described as one of the late President's favorites.

**Bullfight critics ranked in rows
Crowd the enormous Plaza full;
But only one there is who *knows*—
And he's the man who fights the bull.**

**DOMINGO ORTEGA
—TRANSLATED BY ROBERT GRAVES**

THE *BOY* CONTROVERSY

Because it is established by law that licensees must accept full responsibility for what is broadcast over American television and radio stations, each decision regarding the suitability of program content carries its own dangers and dilemmas. Trapped between the necessity to observe community tastes and norms (violations of which may lead to regulatory action) and the growing demand for broadcast of more provocative and "adult" material, both commercial and noncommercial station managers find their responsibility beginning to weigh more heavily.

Rarely, however, does a single act of deletion of questionable material by a licensee cause much general furor and concern. The most recent exception occurred last summer when THE REVEREND MALCOLM BOYD, an Episcopalian minister and civil rights activist, charged that the Michigan State University educational station (WMSB-TV) had banned *Boy*, one of his three plays dealing with the treatment of the Negro in America. Boyd's charges attracted considerable attention in the Michigan press as well as in some national magazines.

The incident, together with its implications for freedom of expression and the obligations of licensees, is reviewed in the following interchange between Reverend Boyd and WMSB-TV spokesman ARMAND L. HUNTER, who made the final decision not to broadcast the play.

A PLAY CALLED *BOY*

MALCOLM BOYD

Following my return in 1961 from a Freedom Ride, I wanted to make a statement about race and humanness in the idiom of the theater. I wrote a one-act play entitled *Boy*. It is a two-person play, featuring a Negro shoeshine man and a white man who brutalizes him. The first performance of *Boy* took place in a Detroit coffee-house theater in the spring of 1962.

When, in the fall of 1963, WMSB, the educational television station at Michigan State University, asked if it might produce the play, I gave my consent. I had no idea then that the matter would end in a violent and confused controversy, or that it would be described as an incident raising "the issues of obscenity and profanity for both society and the Church" (according to William Stringfellow, writing in *Motive* for May, 1965).

Boy has been performed in every section of the country by university, civil rights and religious groups. In southern California it was presented widely by the Kairos Theatre Group. It was presented in 1964 on a tour of eastern university campuses and, at the Massachusetts Institute of Technology, was staged in the chapel directly in front of the altar. In April, 1965 *Boy* was done inside the National Cathedral in Washington, D. C. before some 5,000 persons. NBC-TV televised an excerpt from it, at the same time, on the *Sunday* show.

THE REVEREND MALCOLM BOYD is national field representative of the Episcopal Society for Cultural and Racial Unity. A member of an interracial team ministry at Washington's (Episcopal) Church of the Atonement, he has written several books and plays and is a frequent contributor to journals in the fields of religion, communications and the arts. Before entering a theological seminary in 1951, Reverend Boyd worked as a producer-writer for Foote, Cone & Belding, and was general manager of a TV-radio packaging-production firm.

In July of the same year the play was presented in Negro churches throughout rural Mississippi, Alabama and Arkansas. In August, 1964 *Boy* was seen by 12,000 youths attending the Luther League Convention of the American Lutheran Church in Detroit and, in August, 1965, by nearly 10,000 youths attending the Lutheran Church in America Youth Conference in Miami Beach, Florida. Most university campuses have seen the play.

This is the same play banned by WMSB because "it contains too many curse words" and later attacked by a bishop (who had not read or seen it, but was reacting to newspaper accounts of the ETV station's censorship of it) for allegedly employing "vulgarity and profanity."

Let me relate the events leading to censorship of *Boy* by WMSB. During the summer of 1963, Robert Sherwood, then a producer-director at WMSB, expressed an interest in presenting three of my plays, including *Boy*, on the station. The other two were *Study in Color* and *The Job*. (I have written, in addition to these, *They Aren't Real To Me*, which has been produced for television by the Canadian Broadcasting Corporation and also by WNJU-TV, Channel 47, the new ethnic station in Newark, New Jersey; and *The Community*, excerpts from which have been televised by NBC-TV.)

Several months passed before I next heard from Robert Sherwood, following his initial expression of interest in my writing. "I have read the plays of *Study in Color* and I am anxious to try putting them on television," he wrote me November 5, 1963. "I had hoped to be in Detroit long before this to see you about it but time has not been working for me this fall. I do not want to let this keep sliding, however; things like this are too easy to let go of." I was then in Detroit as Episcopal Chaplain at Wayne State University. I replied to Mr. Sherwood that I looked forward to a meeting.

Soon afterward he came to Detroit to outline his plans, and we agreed on them. Mr. Sherwood proceeded with production arrangements. In January, 1964 Woodie King, Jr. and Cliff Frazier (actors who had appeared in the initial performances of my plays) went to East Lansing from Detroit to tape *Boy* and *The Job* for WMSB. A week later Mr. King and I were in East Lansing to tape *Study in Color* in the WMSB studios.

As Mr. Sherwood had expressed considerable satisfaction with the tapes, I was jolted when, on March 9, I received a letter from him which stated: "I am very sorry and embarrassed to have to inform you that we cannot broadcast *Study in Color*, *Boy* and *The*

Job. The Director of Broadcasting Services made the final decision on the point that the plays do not reflect the proper function of the University in either approach or method of dealing with the social questions involved."

He added: "Please accept my apology for the problems and inconvenience I have caused and for any embarrassment I may have inadvertently caused you. In spite of the negative outcome, I still do not regret making the tapes. In fact, given opportunity, I would probably try the whole thing again and for the same reason—I still believe they ought to be broadcast."

Upon receipt of this letter, I asked Mr. Sherwood to come to Detroit for another meeting with me. I informed him that the cancellation was unacceptable to me and asked for clarification. His reply was that there was great controversy within the station management concerning the plays, with one executive claiming they were "anti-white." (I found this in sharp contrast to *Variety's* comment about the play, on March 14, 1962, that said: "(It) becomes a lesson in race relations. . . It brings the whole issue down to person-to-person relations and how a few kind words, so easy to say and mean, could help bring peace and friendship rather than war and hatred.")

Incidentally, Mr. Sherwood did not mention that WMSB took exception to any objectionable words or language in the plays. This was soon to become a major issue.

Mr. Sherwood then entered into further discussions with the station. I was informed that *The Job* and *Study in Color* would be scheduled for viewing on WMSB, but *Boy* would be censored. Mr. Sherwood negotiated with the Anti-Defamation League of B'nai B'rith to make films of all three plays available for national distribution, both for television and private showings. B'nai B'rith paid the costs of making film negatives from the three videotapes and some 20 prints of each of the plays.

The telecast of *The Job* and *Study in Color* was scheduled for July 12, 1964 on WMSB. I telephoned Mr. Sherwood four days before that date to ask again if *Boy* would definitely not be shown. He said it would not because it was considered "too strong" by some executives at the station. On July 11, one day before the telecast, I announced to the press that *Boy* was being censored by WMSB.

On July 12 the Sunday edition of the *Detroit News* front-paged the headline: "MSU BANS CHAPLAIN'S PLAY ON TV." "He certainly has been censored," Armand Hunter, director of the division of broad-

casting at MSU, was quoted as saying. The reason given was "because officials at the East Lansing school say it 'contains too many curse words.'" (The so-called curse words were two: "damn" and "nigger," the latter being used, of course, as an exhibit in the anatomy of racial prejudice.)

Robert Sherwood was quoted by the *News*: "The play *Boy* is the best thing we have had on the station yet. It's the kind of thing that needs to be seen because of its strong message and dramatic presentation." Armand Hunter was further quoted: "I don't see the need for all the cursing. Mr. Boyd has been censored largely because television is not the place for the dialogue contained in his play."

I told the *News*: "I think the play was just too strong for the university people to take because I feel it cuts deeply and gets to the heart of what race discrimination is all about." I explained the play is about a Negro "searching for his identity through a maze of racial intolerance."

The next day the *Detroit Free Press* asked this question: "Are the words 'damn' and 'nigger' too strong for Michigan television viewers? The director of the Michigan State University educational television outlet thinks so, and refused to broadcast a social-protest play written by a Detroit minister."

Mr. Hunter clarified his position in his remarks to the *Free Press*: "We would have screened the play if the words had been left out," he said. According to the paper, he explained how "the two words have never been used over the station in his eight years as director" and that "they were not vital to Boyd's play." (Commenting on the incident a few days later, the *Ann Arbor Michigan Daily* quoted Mr. Hunter's remark that the words "damn" and "nigger" had never been used over the station in his eight years, and went on to say how this "speaks volumes about the extent of freedom of expression allotted to those who submit material to the MSU station.")

Actually, the words "damn" and "nigger" had indeed been used on WMSB.

Both words were contained in my play *Study in Color* which was telecast on July 12. This would seem to point up the fact that the words themselves were not the reasons for banning *Boy*, despite what was said publicly to that effect. Also, a taped program featuring James Baldwin had been shown on the station several weeks before, and Baldwin had used both words liberally in the course of his remarks.

Mr. Sherwood told the *Free Press* that *Boy* was the best of my three plays and that the station "probably objected to the dramatic intensity of the play. It's a very strong piece. A frightening piece." And I explained to the paper that *Boy* was written "to make the whites experience human pain. It cuts very deeply. I want to embarrass the whites. A lot of them must learn how the Negro suffers."

I pointed out that the words "damn" and "nigger" have been used on commercial television and criticized educational TV stations for not being more outspoken. *The Defenders*, *East Side/West Side*, *The Nurses* and other commercial programs have given extremely forthright treatment to racial situations. Educational television is not meant to be an ivory tower. A university educational television station has particular responsibilities in artistic and academic freedom, especially as related to areas of controversy.

In an interview in the East Lansing *Towne-Courier*, I appealed to John A. Hannah, president of MSU and also national chairman of the Civil Rights Commission, to schedule *Boy* on WMSB because the reasons given for its banning were self-contradictory.

I also criticized educational television for not moving well ahead of commercial TV and performing the function of breaking new ground, pioneering in programming and new ideas, and affording intellectual and artistic freedom. I coupled this with a specific criticism of the university's station for not affirming academic freedom, and I pointed out that I had worked in Hollywood television during the years when it was emerging as a national force and still cared deeply about its integrity and purpose.

I consider *Boy* to be a highly moral statement, possessing considerable sensitivity and poignancy. The attempt to smear it as "immoral" because of innuendos about its language seems quite immoral itself. My use of "nigger" is a dissection in public of a fantasy "nigger" world of whispers, ignorance and stereotypes. Educational television, as little theater, must offer an opportunity for experimenting with new forms of communication and a breakthrough of new ideas. Too, whites must begin to experience racial pain at profounder levels if they are going to be enabled to comprehend how a Negro suffers in "white America."

Instead of being "anti-white," the play cuts below the color line and raises the uncomfortable question of what it means to be human. If whites feel that a play by another white is anti-white, they might better examine their own attitudes than engage in censorship. Mr. Sherwood has summed up the whole matter quite succinctly: "This

is a new kind of drama. It is experimental. It relates directly to life today, by taking a position."

Reaction to the banning of *Boy* mounted swiftly. The *Michigan Chronicle*, a leading Negro newspaper, stated in a headline: "PLAY WOULD ONLY OFFEND 'THE WHITE BIGOT.'" The *Ann Arbor Michigan Daily* (July 24, 1964) criticized Mr. Hunter's "puritanical action" and went on to comment: "Certainly the station director cannot really suppose that he knows better than the writer which words are vital to a play and which are not. It is obvious that whatever rights of censorship the director of a television station may have, Hunter has overstepped the thin line between constructive censorship and abridgement of freedom of expression."

Michigan State News, the MSU student newspaper, headlined its lead editorial on July 13: "'BOY' SUPPRESSION HIDES TRUTH." Its opinion was that "suppression of an educational play on race relations by an educational television station hardly seems conducive to educational enlightenment on this campus or in the State of Michigan. . . [Armand Hunter] said that an educational television station has a responsibility to show programs which are in good taste. We agree. But we do not think that the truth is in bad taste. . . You just can't sweep naughty names under the rug. They are symptoms of a sickness in our society. Educational broadcasting media should take the lead in exposing that sickness." The ETV station executives continued to avoid speaking to the issues raised by the censorship and the banning of *Boy*.

"Just what is the function of educational TV?" was the question raised in the Wayne State University *Daily Collegian* (July 20, 1964). "At first thought someone will answer: to supplement and increase the student's educational possibilities. It would seem that MSU officials would answer that question a bit differently. They would probably say: to supplement and increase what we think are the student's educational possibilities. . . I do not think that people our age must be protected and sheltered from the cruelties of life—from curse words or racial discrimination. University education is supposedly designed to prepare the student for life. It is supposed to enable him to meet these cruelties and obstructions head-on. It is supposed to train him to use his mind without restraint of freedom—to think independently." This commentary was headlined: "SPOON-FEEDING RESULTS FROM CENSURE."

The American Civil Liberties Union of Michigan (the Greater Lansing Branch) issued this protest to MSU: "The reasons for

refusing to show a play dealing with race relations given by the head of Michigan State University's TV station reflect a shocking lack of sensitivity in dealing with controversial issues . . . The Lansing community is indebted to Boyd for publicizing this action of censorship rather than remaining silent because two of his three plays were produced. The American Civil Liberties Union feels that Michigan State University should judge the merits of this play by the same standards used generally for the fine arts. The works of Shakespeare as well as the Bible use language at least as objectionable but the over-all context in which they are used makes them an important part of these works. An author or playwright has the right to see his works presented in the form that he feels best expresses his ideas. A great university should be particularly sensitive to this problem and respect this right even though it may upset the sensitivities of some individuals. Therefore, we urge Michigan State University to reconsider its hasty action and offer the play as soon as practical."

But the station never presented the play. A member of the MSU Board of Trustees telephoned me and requested a copy of all data in my possession concerning the controversy, promising to bring up the matter at a meeting of the Board of Trustees. In fact, he said the full board would look at the tapes of *Boy* and the other two plays. However, the day of the meeting of the board passed, and the next, and the next. I never heard from the gentleman again. It is painful when truth is suppressed and justice is denied.

Writing in *Saturday Review* (August 15, 1964), Robert L. Shayon called *Study in Color* "a provocative exploration of racial attitudes" and commended it and *The Job* as "fresh, vital explorations with social bite and contemporary relevance." Then he commented on *Boy*, calling it "honest, uncompromising, and poignant." Mr. Shayon went on to say that the reasons offered for the censorship by WMSB spokesmen "on and off the record, simply don't wash, and one is justified in suspecting that the buck is being passed. . . . Such an affair disappoints educational television's friends, and it sets back the creative people in the field who want desperately to have their branch of the medium step out with courage and style and become meaningful in American life."

Shayon made this interesting observation, too: "Somebody was apparently afraid of someone, and the shock of having the timidity and dissimulation come from the academic community—where freedom of expression is presumably prized—undercuts the station's presentation of the two plays that were aired."

It seemed the incident was closed. I certainly assumed it was. But shortly thereafter, when I was in Switzerland giving lectures at an international conference there under the sponsorship of the World Council of Churches, the Associated Press telephoned me. Did I know I had been attacked by my bishop? No, I said, I did not.

In a newspaper column, the Rt. Rev. Richard S. Emrich, Bishop of Michigan, had written: "A newspaper article informed us that a play on racial justice, written by a clergyman, was banned because of its profanity by the radio [*sic*] station of a great university. Since the clergyman preaches and practices high and sensitive standards in race relations, it astounds me that his standards in language are so low. Rejecting the sin that divides man from man, it is astonishing that he is willing to offend men by accepting the vulgarity and profanity of the modern avant-garde stage."

So the *Boy* controversy had not ended. The *New York Times* headlined a story: "PRIEST IS REBUKED ON WORDS IN PLAY . . . EPISCOPAL BISHOP DEPLORES HIS PROFANITY IN DRAMA."

But the bishop had neither seen nor read the play. When he saw a somewhat sensational newspaper report of the incident involving the TV station, he wrote a criticism of my use of profanity in the play. Yet there was no profanity in the play. The bishop's mistake was certainly human and understandable, but his public (and sensationally-treated) accusation that I had used "profanity" in the play created images whose durability God alone knows how long it may take to erase. And the incident provided considerable comfort to racial bigots who have long opposed me and tried to hamper my work, in the arts as well as in the civil rights movement.

The issues in the *Boy* controversy became so complex that the fundamental question—the role of educational television as related to controversy, the expression of new ideas and creative experimental work—undoubtedly became obscured along the way. This role needs to be examined carefully, painfully and honestly.

THE CASE OF THE MISSING *BOY*

ARMAND L. HUNTER

In answer to the Reverend Mr. Boyd, and in order to help clarify the record, I would like to describe the events and conditions which precipitated the *Boy* controversy.

On March 6, 1964, I was asked by the Program Director and the Manager of the University television station to preview a series of programs, produced by a member of the staff, which was being considered for possible telecast. Apparently there was some question as to the acceptability of the programs, complicated by the fact that the producer had apparently made a broadcast commitment. The background to this situation needs some explanation.

For some time the University station had provided its producers with workshop opportunities for experimentation in individual program ideas and new production techniques. A producer's workshop usually operated on Saturdays or during periods when the station was not on the air; workshop productions were staffed largely with volunteer crews, and the programs produced were not regular programs. No guarantee of broadcast was extended, and they were not included in the station schedule. Productions were previewed by the Program Director and Manager. If suitable and up to standard, they could then be approved for regular telecast. The responsibility for such evaluation and judgment rested with the Program Director and Manager, not with the producers.

Director of Continuing Education Services at Michigan State University, ARMAND L. HUNTER graduated from the University of Nebraska and earned his Ph.D. at Northwestern. He served in various administrative posts at Nebraska, Northwestern and Temple universities before moving to Michigan State. At MSU Dr. Hunter had served as Director of Television Development, Head of the Department of Speech, and Director of the Broadcasting Division before assuming his present responsibilities.

In the case of Mr. Boyd's plays, the producer seemingly had given the author the understanding that the plays would be broadcast. The scripts, however, had not been submitted to the Program Office for clearance in advance, and no prior approval for airing had been given by that Office. But now the plays had been produced and recorded on videotape, and the author had been led to believe that they would be broadcast. The question of their acceptance had arisen, so I was called in. I met with the producer, the Program Director, and the Station Manager to preview the shows, discuss the problem, and make a judgment regarding their acceptability.

Several key points were brought out in this preview and discussion. First, the production carried an implication (in its titling) that the plays were of University origin. This was not the case. These were the plays of the Reverend Mr. Boyd. They were not drawn from the resources of any of the academic departments, nor did they involve any member of the faculty or staff. Therefore, they were not properly identified as to origin and source, and the FCC requires such identification. Second, Section 326 of the Communications Act, as amended, states that "No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication." There were a number of instances of what is usually called profanity in the three plays.

Since a necessary adaptation to broadcast regulations, and our own standard policies, had not been made in the original production, we reviewed the possibility of re-staging the plays. It was held that this could not be done; the cast was not available, and the author would not take kindly to any editing or changes.

On the basis of this review, I made the following administrative and editorial judgment. *If the plays could be properly identified and packaged—and the language violations held to a minimum—they could be broadcast.* We wished to honor the oral understanding which had been extended by the producer; but if these conditions could not be met, the plays would not be scheduled.

Some days later I was informed that two of the plays, *The Job* and *Study in Color*, had been packaged into an hour-program which also included a filmed interview with Mr. Boyd. A member of the MSU faculty acted as a commentator to open the program, link the plays together, and provide a close. The titling was corrected. *Boy*, however, was not included in the package because it

held the largest number of language incidents and they could not be edited out. I approved the arrangements and the program was scheduled for broadcast on Sunday, July 12.

During that extended period when arrangements were being made, the interview filmed, and the hour-long program package was being put together, no further problems or objections were brought to my attention. During the period before broadcast I did not receive any questions, letters or telephone calls with reference to the decisions which had been made.

The first notice of a developing controversy came to me in the form of a telephone call from the *Detroit News* on Saturday, July 11. I was informed that they were carrying a story on "the banning of *Boy*" the next day, and was asked if I had any comment to make. On Sunday, the 12th, I received a call from the *Detroit Free Press* on the same matter, and the *Free Press* carried a story on Monday, July 13. The controversy was in full swing.

Let me examine some of the incidents, events, and issues which developed from this situation. To begin, we might look at the timing of events, as well as some of the procedures which Mr. Boyd adopted. He certainly knew of the station's decision and of the program plan some time in advance of the broadcast. He had been interviewed on film for the program's introduction, and had been in touch with the producer. I find it difficult, therefore, to understand why—if he had serious objection to the decision or to the program as finally packaged—he did not notify the Program Director, the Station Manager, or me. Why did he not make some earlier effort to register a protest, make an appeal, or ask for a hearing? These courses were certainly open to him. Yet he chose to talk only with the producer, after which he simply took his case to the newspapers with a story which would (conveniently) break on the morning of the day the program was scheduled for broadcast.

I hope I may be forgiven if, at the time, I regarded this merely as a clever promotional stunt which would probably succeed in getting a larger-than-usual audience for the Sunday afternoon program. I was, therefore, somewhat skeptical of his motives, since his tactics seemed open to question. Of course, once the press got hold of the story it quickly became a controversy of major proportions. Since I seem to be the target of most of the stories and editorials, I would like to respond to the comments and charges which have been made.

In connection with the newspaper campaign (which continued for several weeks), it is interesting to note that, apart from the aforementioned calls from the Detroit papers, I received only two telephone calls—one from the *Lansing State Journal* and one from Robert Shayon of *Saturday Review*. None of the other papers which carried stories, articles or editorials troubled to call me or the station for information and explanation. Instead, an intensive campaign demanding that the station broadcast the play was generated. It was implied that the reasons offered for my decision were not the “true” ones, that there was some deeper motive or plot involved, and that the University TV service was “afraid of controversial issues.” It was openly charged that by not showing the play we had denied citizens their civil, academic, and artistic rights.

Strangely enough, throughout their campaign I received only six letters and one telegram. Five were in favor of the station’s decision and two were opposed. The argument in one of the dissenting letters was based upon an earlier incident in which a radio station in a western city won permission from the FCC to broadcast poetry containing obscene words late at night—a permission which constituted an exception to Section 326 of the Communications Act. If that station could do it, the writer argued, our reasons for the action taken were baseless and absurd.

I don’t believe that there is a very sound analogy here. In the case of the radio station, the broadcast was late in the evening when family listening was not involved. Our TV broadcast was on Sunday afternoon, which posed a much different viewing and audience situation. I doubt, in our case, if the Commission position would be the same. If the implication is that a University station (and educational television) should provide leadership in this type of “free speech movement,” I disagree. Leadership in the presentation of ideas, of increasing understanding, of exploring issues, yes—but *within* the framework of good taste and those forms of expression suitable to the nature of the medium, and to the conditions under which it is received.

Let us consider the major argument advanced by Mr. Boyd and the newspapers. The use of some profane terms, they argue, could not be justified as the reason for not broadcasting *Boy*, because the terms had been used in the other two plays which were broadcast. It is also argued that these and similar terms had been used on commercial programs a number of times.

That the terms in question and similar ones have been used on the air is true. That they occurred in the two plays we broadcast is true. And that *Boy* was not included in the hour-long program containing the two longer plays because it represented, individually and—with the others—cumulatively, a situation which I believe went beyond the limits permissible under the regulations of the medium is also true.

There were, however, no hidden motives and no “secret” issues involved other than editorial judgment. This judgment was made with no reference to the purpose of the play, to its content, idea, intent or meaning. It was made solely with regard for the suitability of form under the conditions of the particular medium and of the regulations under which it operates.

Changes in form, and editing, are rather standard practices when materials are adapted from one medium to another. The reason for this is simply that different degrees of freedom of expression exist among the novel, the play, the film, and the broadcast. Certain language and form permissible in the novel may not be suitable in the broadcast adaptation. This is generally understood and accepted without angry cries of “censorship.” Normally, such adaptations and editing are accepted by the author. In those rare instances where they are not, then the adaptation and performance usually do not occur.

The responsibility for making these editorial judgments rests with the publisher, the producer, the network, and the station. They are judgments of taste, and as such are subject to differences of opinion. But there can be no question of the responsibility or right of the editor to make such judgments. The problem in *Boy* was purely one of form. Since editing was not possible after the fact of recording, my decision was not to include the play for broadcast.

The implications that there was pressure from the University, that there was some cover-up for a hidden reason, or that the station and University were afraid of controversial issues are without any foundation whatsoever. I will defend the record of this University, its Board, its President, its administration, and its faculty and staff. Michigan State University can be compared with any other university in the country in its degree of concern with, and involvement in, civil rights, human relationships, better understanding, and public issues. We do not avoid controversy or its responsibilities; but we do reserve the right to deal with such matters within the context of their own nature and function—and insist upon our

right *not* to be used as a means for the ends of those who do not represent us.

President John A. Hannah has never been “unavailable” to those who have disagreements with the University. His willingness to hear men out is built into his character. And yet no one sought him out. The method employed to reach him, as in my own case, was an appeal made through a newspaper. Why the headline approach when the direct method was available? Again, I cannot avoid reflections upon the purpose, indeed honesty, of this form of appeal.

The MSU Board of Trustees is also receptive, and available, to those who have concerns and differences with the University. In this case, a member of the Board did call Mr. Boyd and request documentation on the controversy. A member of the “Friends of Reverend M. Boyd Committee” had asked him to investigate the controversy. The Board member agreed to do so and kept his promise. Contrary to Mr. Boyd’s allegation, the Board did review the hour-program prepared and broadcast by the station as well as the play, *Boy*, which was not broadcast. The issues were discussed, and it was decided that the station had not treated Mr. Boyd unfairly, that the hour showcase was adequate and acceptable for the purpose, and that *Boy* should not be broadcast. For the University and the station, this closed the matter.

The videotapes of all three plays were made available to B’nai B’rith at no cost, and permission was given for them to engage in whatever distribution pattern they might elect. The tapes were, and are, available for showing by any or all commercial and/or educational television stations which choose to schedule them. The plays and the kinescopes are also available for whatever public performances, before whatever audiences, are arranged. It seems to me that there is a maximum of opportunity for Mr. Boyd’s message to receive a hearing.

I have no quarrel whatever with Reverend Boyd’s purpose. I affirm the importance of the problems with which he deals. I have no question regarding the seriousness of his intent. And it is indeed unfortunate that the controversy that has developed has had such an adverse effect. But the real heart of this matter remains the issue of “proper means” and the proper form. And this, of course, goes beyond the role of ETV and the expression of new ideas, even as it involves them.

I do not believe that the end—no matter how good it is—justifies any or all means. Means may be good or bad, suitable, or unsuit-

able, right or wrong. A good end does not render a bad means good; and good content does not render an unsuitable form acceptable. The suitability of form and means rests in their own rightness, their own nature, and not in the nature of their end or purpose. This I believe.

In this controversy, I made an editorial judgment of taste on the acceptability of a form or means of expression in relation to the nature of the medium involved and the conditions which obtained. Such judgments are subject to differences of opinion, for such is the nature of all value judgments, even though to each individual, his judgment carries that demand for universality of agreement which, of course, can never be obtained.

I made the judgment. The easy way out would have been to "pass the buck" to the Board, or to have changed my decision under the pressures which were applied. To me this would have been an abdication of the responsibility and the office which I hold.

I believe that my decision was right under the circumstances, although there are others who obviously do not agree. But I will defend my right—and that of all others who hold editorial and decisional responsibility—to make such judgment. Under no circumstances would I change that decision under pressure of any kind. I can be persuaded, but I will not be forced.

After all the shouting and tumult, the clash of opinions and the emotional reactions, it is quite clear that Mr. Boyd and I are poles apart on the issues involved. He sees the act of banning *Boy* as a refutation of his purpose and the denial of a hearing. I say that his objective and intent were never in question, and that he received an excellent hearing—a full-hour program, free use of the video-tapes of all three plays for unlimited distribution, and plenty of publicity, mostly *sui generis*. He sees the act as an evasion of controversy by educational television and a failure to encourage creative expression. I say that educational television has not been afraid to deal with controversy and there is ample evidence to prove it. But it has the right (and the station a legal responsibility) to determine whether the form in which the subject is expressed is suitable to the nature and conditions of the medium.

I am not willing to concede that *any* form of expression, creative or uncreative, is permissible simply because the content or purpose is commendable. There is some responsibility to see that the form or means are acceptable and good in themselves as well as in their relationship to a good end and purpose. On this, I stand.

TELEVISION AND LAW

Among the legal nettles that prick television's managers and creators are problems related to CATV and the rights of creative ownership. To assist those who may be awed by the mysteries of legal procedure in these areas, Federal Communications Commissioner LEE LOEVINGER and attorney RICHARD WINCOR file explanatory briefs.

Mr. Loevinger considers the possible outcomes of CATV's expansion while tracing the history of pertinent regulation, and Mr. Wincor reviews the complexities of establishing ownership of creative properties.

LEE LOEVINGER was appointed to the Federal Communications Commission in June, 1963. A *summa cum laude* graduate of the University of Minnesota (1933) and its Law School (1936), Mr. Loevinger has had a varied and distinguished career in teaching, law and public service. He has written or edited legal volumes and has contributed to numerous anthologies in the fields of jurisprudence, legal logic and semantics, and antitrust law.

THE FUTURE OF TELEVISION

LEE LOEVINGER

Television is probably the most spectacular success in the history of the communications field, and perhaps in all the history of modern commerce. Within a decade and a half it has advanced from the status of an experiment to a position of predominance in audience, in advertising carried, in profit, in prestige, and in social importance. The statistics as to the growth in audience, advertising and profit are too well known to require review. The number of stations has increased more than ten times, and recent surveys show that television has now become the dominant medium for the mass dissemination of news.

One would expect that in the face of such a record the industry would be afflicted with complacent self-assurance. There are, indeed, some within the industry who are smugly self-satisfied and others who are valiantly striving to show the need for continuing self-criticism and improvement. However, at the moment the most widespread mood seems to be one of anxiety and uncertainty about the future. There is concern that the economic expansion which has so quickly brought so much prosperity to so many may be threatened by a similar growth of CATVs with pay-TV lurking in the background.

This concern seems to be widespread among broadcasters and is shared by many government officials. It ranges from mild apprehension to what can be described only as panic. However, to appraise the situation rationally we must put aside our hopes and fears and prejudices, and analyze the facts as unemotionally as possible; then we may try to project the future on the basis of such facts and analyses.

We must start with a recognition of television as a service industry. The role of television has been to bring entertainment, news and advertising into the home. Television may, and on occasion does, perform other functions such as education; but its principal

role has been to provide the public with entertainment, news and advertising.

The success of television in satisfying the desire and need of the public for this service may fairly be judged by the degree of public acceptance it has achieved. This is indeed impressive. Television has penetrated—to use the fashionable term—92 per cent, or more than 52 million, of the total 57 million United States households.¹ Perhaps even more significant is the amount of time the family spends in the average home watching television. According to the Television Bureau of Advertising, the family in the average home spends slightly more than 44 hours a week watching television, while the top quintile (or 20 per cent group) spends more than 80 hours of family viewing per week and the bottom quintile spends approximately 11 hours of family viewing per week.² Perhaps most significant is the Roper Report that television has replaced newspapers as the public's primary news source, is the source regarded as most believable by the largest group of people, and is the source most desired by the largest group.³ An impressive 58 per cent of the population regards television as its primary news source.

When we come to examine the distribution of television households and watchers it quickly becomes apparent that television is an urban phenomenon. Referring to the 48 conterminous states, there are approximately 256 television markets or communities with one or more television stations.⁴ The list of television markets largely coincides with the list of standard metropolitan statistical areas established by the Bureau of the Budget and adopted by the Census Bureau.⁵ There are 215 such areas within the United States. The definition established for the standard metropolitan area is that it contain one city of 50,000 or more inhabitants or twin cities with a combined population of at least 50,000. The smallest of the metropolitan areas has just over 50,000 inhabitants and, of course, the range is upward to New York, which has over 10,000,000.

The statistics as to the television markets are given in number of households. Statistically each household represents between three and four people. Consequently, a metropolitan area with a population of 50,000 or more represents at least 15,000 households.

From these and other data the conclusion emerges that television has been and is largely confined to the metropolitan areas, and that there is a continuing trend toward the concentration of population in these areas which will tend to keep television stations confined to metropolitan areas in the future.

The data relating to CATVs are much less clear and easy to come by, but seem to indicate quite a different picture. The estimates of operating CATV systems at the present time range from about 1,300 to about 1,600.⁶ These systems are estimated to serve between 1.2 million and 1.5 million homes, or between four and five million viewers.⁷ Since there is generally only one CATV system in any given community it is apparent that the CATV systems to a very large extent cover the smallest communities outside, or on the fringes of, the metropolitan areas. There has been a relatively rapid increase in the number of CATVs in the last year or two, but historically CATVs seem to have increased in spurts rather than steadily and there is no clear indication that the present trend indicates any long-term change in relative numbers or relationship.⁸

CATVs are almost as old as commercial television itself. The first systems were started as early as 1950. They were established to satisfy the needs of those who because of distance or terrain were unable to get satisfactory television off the air.⁹

From the beginning broadcasters have been divided in their attitudes toward CATV. Some of them have welcomed CATVs which extended the service area of stations or improved the reception. Others have regarded CATVs as competitors or commercial enemies and have opposed them. The opposition of many broadcasters to CATVs is born of two fears. First has been the fear that CATVs would bring multiple signals in to fragment the audience, and thus have an adverse economic impact on the local station, with the possibility of making it unprofitable. The second fear has been that CATVs might develop into pay-television systems, which would compete directly with television stations and eventually might destroy a number of conventional or free television stations.

Broadcasters who have opposed the development of CATVs have urged that the FCC should act to limit or restrict CATVs and to protect conventional broadcasting stations on four grounds:

First, CATVs give service only to those who will pay, whereas conventional television will serve the entire public within its area free.

Second, CATVs will serve only those who live in areas which can support cable systems and will not reach into the rural areas.

Third, CATVs unfairly compete with television broadcasting stations because they distribute television programs to subscribers for a fee without the consent of the originating station and without bearing any of the program cost.

Fourth, CATVs do not originate any local live programs as television stations do, and conventional television stations thereby serve local needs and interest more than do CATVs.

The Commission has been urged to take action to limit CATVs on the basis of these considerations for many years. The first reported decision of the Commission was in January, 1958.¹⁰ This case involved an objection by a television broadcaster to the grant of a microwave authority for a CATV relay company on the ground that the microwave relay would create additional competition for the television station. The Commission said that it would be "arbitrary, capricious, discriminatory and unwarranted" to deny authority to a CATV relay company on such grounds.

A few months later the Commission held, in a similar case, that it did not have authority over CATV cable systems regardless of whether or not they were regarded as common carriers.¹¹ The Commission then conducted an extensive inquiry into the whole subject of CATVs and auxiliary services and, after hearing numerous parties, it entered a lengthy Report and Order reviewing the entire subject.¹² In this Report and Order the Commission held that it did not have jurisdiction over CATVs and that there was no legal basis for trying to regulate CATVs by imposing regulation on microwave common carriers which transmitted television signals. The Commission held that it would be an unwarranted invasion of the public's right to get programming if it attempted to restrict the presentation of programs to prevent duplication, and said that any such system would be cumbersome and probably completely unworkable. The Commission did say that CATV systems should be required to carry the signal of local stations without degradation and should be required to obtain the consent of originating stations. However, it said that both of these steps required changes in the Communications Act and, therefore, it requested Congress to pass appropriate legislation to give the Commission authority to impose these requirements.

Some three years later the Commission issued its famous Carter Mountain decision.¹³ This case involved an application for a permit to install microwave relay equipment to bring television signals to a CATV in Riverton, Wyoming, one of the three smallest television markets in the country. The television station in Riverton protested the grant on the grounds that this would result in economic destruction of the television station. There was a full hearing before an Examiner, who considered that any economic impact of the grant upon the station was of no legal significance since the microwave carrier was a common carrier, and, therefore, it was presumed

that it would serve the public interest. The Commission said that the issue was whether this presumption was justified and whether the economic impact upon a television station should be taken into account. It concluded that the economic impact of the grant should be considered, and that on the basis of the evidentiary showing that the economic impact would be destructive it should deny the grant. The Commission specifically said that it was not attempting to examine, limit or interfere with the material that might be transmitted if a grant were made. Incidentally, this is the only case in which the Commission has attempted to examine the actual impact of a CATV system on a television station.

A month after the Carter Mountain decision the Commission considered another complaint by a broadcaster against a CATV system and unanimously concluded that it had no jurisdiction over CATV systems.¹⁴

About nine months after this decision, the Commission started a new rulemaking concerning CATV relay systems, and a year later instituted a second rulemaking on another aspect of the same matter. On April 23, 1965 the Commission issued a Report and Order which constitutes an initial decision in these two rulemaking proceedings, and, at the same time, issued a Notice of Inquiry to initiate another investigation of the "CATV problem."¹⁵ These latter documents comprise a mass of material aggregating over 120 pages, but, in essence, the Commission does four things.

First, the Commission rules that CATVs must carry the signals of all local television stations without material degradation.

Second, the Commission establishes a rule of non-duplication which forbids CATVs to present a program that duplicates a program presented over a local station for fifteen days before or fifteen days after broadcast by the local station.

Third, the Commission asserts jurisdiction over all CATV relay companies and systems, including those that operate wholly in one state and those that transmit signals entirely by wire.

Fourth, the Commission institutes an inquiry seeking comment on the possibility of imposing more than a dozen and a half types of additional restrictions upon CATVs. In addition, the Commission adopts a policy which amounts to a freeze on microwave relays to serve CATVs in large cities during the pendency of the proceedings.

I filed a separate opinion in which I agreed that the Commission should, within the scope of its jurisdiction, require CATV carriage of local television stations without degradation and agreed that the Commission should undertake an inquiry into the role and the

scope of CATV operation. I disagreed with the non-duplication rule and with the Commission's attempt to extend its jurisdiction without Congressional authorization.

While I am in complete sympathy with the desire of the Commission majority to protect and foster the television system of this country in order to insure its maximum future development, I believe that the action which the majority has taken is improper and inadequate because of four basic considerations.

First, I believe that the Commission's assertion of jurisdiction is without an adequate legal foundation and is improper without Congressional sanction.

Second, the Commission action deals with symptoms rather than causes and is likely to have little or no effect.

Third, the limitation of competition through selective program control, which the non-duplication rule attempts, is wrong because it limits the choice of the public, interferes with the free operation of economic forces, and intrudes into the area of free speech.

Fourth, the basic approach is wrong because it is negative and restrictive rather than positive and expansive.

I think it is important that the public generally and broadcasters in particular should understand the basis of the jurisdiction which the Commission is now asserting. The Commission is now claiming that it has jurisdiction to regulate CATVs on the basis of three different legal theories.

First, the Commission has jurisdiction to grant or refuse a license to any company which proposes to transmit television signals by microwave relay from point to point. There is no dispute as to this claim of jurisdiction and everyone concedes that the Commission does have jurisdiction over such microwave companies.

Second, the Commission claims jurisdiction to control CATVs which are served by common carriers. The Commission undertakes to exercise this power by requiring the common carrier to act as its policeman in order to impose its regulations upon any CATV system which is a customer of the common carrier. The authority that the Commission asserts in this manner is not limited to common carriers that serve only CATV systems but extends to all common carriers, including AT&T and other telephone companies. It seems to me that the Commission does not have, and should not have, the power to control the activities of customers of common carriers by virtue of its control of common carriers. If this theory is sustained by the courts, then the Commission's authority to regulate the economic activity of business in the United States is almost unlimited. Every

American business enterprise is the customer of some common carrier. If this subjects them to regulation by the Commission then the Commission has a truly unprecedented scope of power over the economic life of the country.

The third Commission theory of jurisdiction is nearly as vague and broad. It is that CATV systems are subject to FCC control because they handle interstate transmissions, even though they operate wholly intrastate and by wire. Arguments for and against this theory involve statutory terms and legal technicalities that are too detailed for exposition here. If this theory is correct, then the Commission has authority to regulate not only the networks but even television and radio receiving sets. In previous years the Commission has disavowed such broad authority and Congress has refused to grant it. It seems unwise and presumptuous for the Commission now to assume such authority without Congressional sanction.

Turning to the substantive aspect of Commission action, the reliance upon the elaborate, detailed and complex system of program control of CATVs deals with symptoms, not causes, and is wrong in principle.

To begin with, it seems to me that the proper role of CATVs is to act as a supplementary mode of transmitting television programs. In the performance of this function, CATVs should transmit and deliver the programs without degradation or alteration. Any requirement which imposes the duty to select programs in order to delete some of them requires the CATVs to alter the programs which they are transmitting and, therefore, imposes on them a function which is not appropriate to their role. Furthermore, this requirement will cause CATVs to have substantial periods when some of their channels will be lacking for television programs. Certainly an enterprising CATV operator will prefer to keep his customers happy by presenting some material on all channels during ordinary viewing hours. Consequently, a requirement for deleting certain programs will stimulate CATVs to engage in program origination in order to avoid blank screens. In this manner such a rule may actually engender more competition for local television stations rather than less.

The non-duplication rule is likely to create a host of problems involving fairness, balanced political presentations and other problems relating to substances of programming that really should not have anything to do with CATVs at all. The Commission rule on non-duplication is based upon the premise that the FCC will con-

tinue to require local stations to present local live programming and will exercise some degree of supervision over such programming. The effort to extend protection to local stations in this fashion provides another ground for the Commission's assertion of the right to supervise the programming of local stations, but I believe that FCC control or supervision of programming is basically wrong in principle.¹⁶ I am confident that if broadcasters encourage or support Commission control of programming through the imposition of programming rules on CATVs they will give additional grounds for Commission control of their own programming and will not be long in regretting this approach.

It is a curious fact—one broadcasters would do well to ponder—that some of those who are most eager for government regulations to protect the viewer from the annoyance of commercial interruptions of programs are among those who are most willing to adopt regulations which annoy the viewer by deleting entire programs from CATVs. Surely the deletion of programs for no reason apparent to the viewer is bound to be frustrating and irritating to the public and is bound to create ill-will for those whom the public regards as responsible.

My most basic disagreement with the approach of the Commission majority is that I believe it to be negative and restrictive rather than positive and expansive.

It seems to me that the viewpoint represented by the majority approach has never come to grips with the basic problem of deciding the proper role of CATVs and other auxiliary services. This is manifest in the inconsistent approaches and theories adopted in various measures. The requirement that CATVs carry the programs of local stations implies that they are a supplementary service but are not competitive. One cannot properly require one competitor to aid another within the field of competition. On the other hand, the Commission's prior refusal to sanction common ownership of CATVs and broadcasting stations has been based on the assumption that these services are competitive rather than supplementary.¹⁷ The non-duplication rule which attempts to restrict competition for audience attention implies that CATVs are an inferior or subordinate service rather than supplementary or competitive.

This last conclusion is stated explicitly in a number of statements that point out the failure of CATVs to serve those who cannot afford to pay, to serve outlying rural areas, and to carry programs without the consent of the originating stations. On the other hand, translators and boosters are all free of these shortcomings. They

provide service to those who do not pay, they reach the outlying rural areas, and they do not and cannot operate without permission of the originating station. Nevertheless, the Commission has been just as restrictive in authorizing translators and boosters as it has been in authorizing CATVs and it has imposed the same limitations on these auxiliary services that it does on CATVs.¹⁸

I think that this illustrates the basic error in the approach, which is based upon the assumption that limitations and restraints on one mode of transmitting programs will necessarily benefit other modes. The whole history of economics has shown that this is not true. As we limit and restrict the public access to any service or product, we tend to discourage the public from seeking this product and to constrict the market for the product. In order to insure continued growth it is necessary to encourage the public to accept more of a service or product and to stimulate the expansion of the market.

Thus it seems to me to be fundamentally erroneous to regard the growth and proliferation of CATVs as an ominous or threatening phenomenon. CATVs have only two things that they can offer to their customers. They can offer better television reception of stations being received and/or the opportunity to receive more television stations. In any event, CATVs are simply helping fill a public demand for television service. The growth of CATVs is unmistakable evidence of the public desire for more and better television service. This is a demand that deserves fulfillment, not frustration by regulation.

I suggest that, in place of the essentially negative and restrictive approach implicit in some of the present proposals, the industry should support and the Commission should adopt a positive and progressive program for regulation of CATVs and promotion of an expanding future for television. While I believe that the main thrust of this proposal is right and that it moves in the proper direction, I emphasize that the details are tentative and uncertain. It might well be desirable to delay proposing a positive program until a later day. However, the situation has developed to the point where action is being taken, and a proposal must be made if we are to achieve any workable consensus on an affirmative plan.

There are eight basic points in the program which I propose.¹⁹

First, there must be a legislative enactment by Congress to establish FCC jurisdiction over CATVs. As a purely practical reason, it is necessary in order to avoid an almost indefinite period of uncertainty and confusion that will follow if the FCC attempts to act without an explicit statutory foundation.

Second, there should be a positive and coherent policy promulgated to guide the FCC in the exercise of its power in this area. The phrase "public interest" is too vague and indefinite to give much direction to Commission action. I suggest that the policy which should be promulgated, preferably by Congress, is that the Commission should act to secure to the public the greatest possible diversity and freedom of choice in programs and program sources.

Third, CATV should be defined so as to differentiate it from pay-television. The two are different and separate, and considerations relating to one should not influence our judgment as to the proper method of dealing with the other. The differentiation may be clearly established by defining CATV as a service that transmits television programs but does not originate programming or charge customers on a per-program basis.

Fourth, we should declare CATVs to be a supplementary and auxiliary mode of transmitting television programs to the public, and should deal with them on this basis.

Fifth, CATVs should be required to carry the programs of all local television stations without either degradation or alteration. This proposal is substantially the same as the present Commission rule except that I would prohibit the alteration of programs as well as the degradation of the quality of signal.

Sixth, we should permit and encourage the establishment of translators to extend television station service areas and to supplement CATV service. There should be a substantial liberalization of the Commission attitude toward translators and they should be permitted wherever they are desired and can be established without causing harmful interference.²⁰

Seventh, we should permit and encourage broadcaster ownership of both CATVs and translators, particularly within the service areas of television stations and on the fringes of service areas where the area can be extended without technical interference with other stations. We should not prohibit the extension of broadcast service areas merely to provide economic protection against competition between broadcasters.²¹

Eighth, we should require the permission of the originating station for either a CATV or a translator to transmit programs of that station. To insure a stable structure in the broadcasting field and guard against abuses, it would probably be appropriate to provide that consent should be for a specified period of time, such as one or three years rather than on an *ad hoc* or per-program basis.

What then can we foresee as the future of television in the light of these various proposals?

In the long run, it seems probable that the public will be served as it demands to be served, regardless of what the Commission may do or try to do about it. This is not to say that Commission action cannot have substantial short-run influence and even some influence beyond the short run. However, I am convinced that the future of television does not, and should not, depend upon what the Commission does or does not do. If television broadcasters give the people the service they want, television will have little to fear, either from other forms of services or from the government. However, if television broadcasters try to deny the people the services they want, then not all the power of government will be able to save television from the depredations and inroads of alternative services, whatever they may be.

It seems doubtful that there will be an unlimited number of additional television stations in small towns throughout the country. Even were such stations economically possible, they would be little more than local outlets for programs originating in larger centers. The major metropolitan areas are and will continue to be the sources of television programming. However, a supplementary system of distributing television signals by translators and CATVs may make every metropolitan area the center of a small regional distribution system.

If we permit the technical means of distribution now available to us to be utilized freely and in response to economic demand I foresee a day in the near future when all sections of the country, with the possible exception of a few remote and sparsely settled areas, will have the choice of a multiplicity of television programs which is substantially as great as the choice available in the major metropolitan areas. For the first time in history many of the cultural advantages of metropolitan life will be available to people in small communities and rural areas.

To conclude, let me venture a final prediction. No matter what happens, no matter how prosperous, efficient and cultured television becomes, there will always be those who are dissatisfied and who bemoan the current scene and view the future as threatening. Within the next decade we will be able to see a spot on the horizon of television that will rapidly develop into a satellite in the sky capable of transmitting television programs directly to home receivers. The alarmists and the worriers will then be alarmed and worried

that television stations, translators and CATVs will all be replaced by satellites. But if we have stimulated and encouraged the expansion of television service through all of the technological and economic innovations available, the optimistic and the stouthearted will know then that there is no more to fear than there is now. Each new development of man's inventive genius is a threat to the timid and the indolent and an opportunity to the bold and the enterprising.

For the pessimist the golden age is always in the past; for the optimist it is in the future. In 1975 those who now counsel fear and opposition to change will have the same counsel, but they will speak nostalgically of the golden age of television in the remote past of 1965. Those who see a challenge and an opportunity in the developments that face us today will be able to look ahead in 1975 and see the opportunity for even greater service, prosperity and glory in 1985.

NOTES

1. *Television Magazine*, May 1965, p. 67.
2. Report by the Television Bureau of Advertising to the FCC Feb. 3, 1965, based on reports from A. C. Nielsen Company as of January 1964.
3. *Broadcasting*, March 15, 1956, p. 140.
4. *Television Magazine*, 1965, pp. 67-71.
5. Statistical Abstract of the United States, 1963, Table 10, and *Broadcasting*, Oct. 28, 1963, pp. 85-6.
6. Dr. Martin H. Seiden, *An Economic Analysis of Community Antenna Television Systems and the Television Broadcasting Industry* (1965) p. 49.
7. *Ibid.*, p. 1, and Statement of Frederick W. Ford, President, NCTA, before Communications Subcommittee of House Interstate and Foreign Commerce Committee, June 2, 1965. See Seiden report, p. 49.
9. See articles in *Television Magazine*, June 1962, September 1964 and April 1965.
10. Inter-Mountain Microwave, 24 FCC 54, Jan. 30, 1958.
11. Frontier Broadcasting Co., 24 FCC 251, 16 RR 1005 (1958).
12. Inquiry into the Impact of Community Antenna Systems, TV Translators, TV Satellite Stations, and TV Repeaters on the Orderly Development of Television Broadcasting, 26 FCC 403, 18 RR 1573, Apr. 13, 1959.
13. Carter Mountain Transmission Corp., 32 FCC 459 (1962), affirmed Carter Mountain Transmission Corp. v. FCC, 321 F2d 359 (C.A.D.C., 1963), cert. den. 375 US 951 (1963).
14. WSTV Inc. v. Fortnightly Corp. 23 RR 184 (1962).
15. FCC 65-334, Docket No. 15971, Notice of Inquiry and Notice of Proposed Rulemaking, April 23, 1965, and FCC 65-335, Docket No. 14895 and 15233, First Report and Order, April 23, 1965.
16. See separate opinion in Lee Roy McCourry, 2 RR 2d 895 (1964); Loevinger, "The Role of Law in Broadcasting," *Journal of Broadcasting*, vol. 7, p. 113 (Spring 1964); George E. Borst, et al., FCC 65-207 (1965).
17. See Notice of Inquiry, April 15, 1964 in Docket No. 15415. This docket does not reflect the fact that subsequent to this Notice of Inquiry the Commission deferred the renewal of the licenses of numerous stations because the licensees also owned CATV systems or carriers.
18. Lee Co. TV, Inc., File Nos. BPTT-1066-1069, FCC 65-483.
19. This program was first outlined and proposed by Commissioner Loevinger in testimony before the Communications Subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives on May 28, 1965.
20. This article is a condensation of a paper delivered to the Colorado Broadcasters Association on June 11, 1965. On July 7, 1965, the Commission did take action to liberalize significantly the restrictions imposed on translators. Amendment of Part 74, Subpart G Television Broadcast Translator Stations, Docket No. 15858, Report and Order, FCC 65-615.
21. On July 27, 1965, after this paper was prepared and presented, as noted in the preceding note, the Commission voted to permit broadcaster-CATV cross-ownership. Acquisition of community antenna television systems by television broadcast licensees, Docket No. 15415, First Report, FCC 65-688.

WHO OWNS LEVERETT LOWELL?

RICHARD WINCOR

Literary property is like alcohol: it provokes impassioned discussion by famous men. Debated nearly two centuries ago by the House of Lords, it is now making a stir in Congress as various learned groups seek revision of our outmoded copyright laws.

There is something about the subject that starts fires. Obviously the size of the copyright industries has something to do with it, since high stakes are involved. Then too, authors and their customers are more articulate than most and can use words with relish and with venom. International amity and the promotion of culture come into it, although often as not as a mask for the promotion of special interests. Yet there is something more here than what appears so obvious. Literature is unlike other property; being incorporeal, a product of imagination engendered by compulsion as well as greed, it has its own ground rules.

Actually what it does is to give tired businessmen a touch of metaphysics. There, I suggest, is the missing element, one of the reasons besides hard cash that traditionally brings into the fray giants like Swift and Dickens and their successors.

Television as a sort of literature can make unique contributions in this field. As a medium it is absolutely without parallel in its reflection of the creative process. Its business is conducted with a speed and sophistication that makes child's play of the older arts.

A graduate of the Harvard Law School, RICHARD WINCOR is a partner in the New York law firm of Stern and Wincor. He has written extensively in the field of literary property rights for *Variety*, *The Copyright Bulletin* and *World Unfair Competition Encyclopedia*. Mr. Wincor's most recent book is titled *From Ritual to Royalties*.

Consider for a moment how rights are divided in other media. Book publishing contracts generally are Victorian, or Edwardian at best; the grand climax in each is an unenforceable option on the author's next work. In the theater most of the rights deals are by rote and on Dramatists Guild forms. Adaptations from other media and translations from other languages may provoke thought, but you will still find most of the stress on the number of points, the prominence of names and the availability of house seats.

Motion picture arrangements are more elaborate, admittedly. Here you are playing for world markets and the long pull. Nevertheless, Hollywood's approach is on the pedantic side. There is an understandable obsession with buying up rights from prospective widows, but not much perception of script possibilities growing out of the main trunk, the screenplay itself.

This is where television is in a class by itself. With so many hours of programming to fill, its appetite for material is insatiable. The diversity of its message, ranging from entertainment to public affairs, is endless. Its production tempo, collaboration depth and public impact are not in the main equaled by other forms of communication. Here, then, is the ideal proving ground for working out property rights. Unfortunately television's voice is still listened to as that of junior partner.

I think one of the reasons besides youth is that television is too concerned with technology. Over a decade ago network package agreements demanded 3-D rights. Two seasons ago independent producers received circulars asking for UHF rights. Last season it was CATV. All very interesting, this anticipation of what Ingenious New Machines can do (hereinafter I refer to this complex of broadcasting uses as INM rights), but the script material itself is important too. We need the English professor along with the scientist.

More specifically, I am suggesting that television is creating new forms of literary property. They have not yet found their way into the law's lexicon, but they ought to. There can be no harm in recognizing new assets. Daily traffic in television rights has given them business recognition. The Writers Guild Minimum Basic Agreement makes a stab at defining some of them.

Strange things are happening that defy all of the old copyright rules. Here is an example composed especially for this occasion. Suppose that a spy novel about other things contained the following passage:

"Florienbad was burning. The world's espionage capitol, on the

outskirts of Bucharest, was half destroyed. Among the ruins strolled tall, indifferent Secret Agent Leverett Lowell (Harvard '42) wearing as always his Black Belt, Fifth Degree for Kiaijutsu (Zen combat by Screaming), puffing casually on a consciousness-expanding cigarette and followed by Alec, his lame ocelot who had figured so gallantly in the Tower of London Demolition Case. Lowell was flanked, as always, by two of his luscious Eurasian girl bodyguards.

"A small man disguised as a passerby stood by a burning building, watching the flames with satisfaction. Lowell recognized him as Q 50, a medium-ranking agent of the dreaded ACL, Arson Consultants, Ltd. Q 50's eyes glistened as he turned from the conflagration and addressed Lowell.

"'That's one for the insurance company, mate,' observed Q 50.

"'Touché,' Lowell replied, indifferently."

Now any producer with vision surely must recognize in this passage a potential diamond mine. Leverett Lowell is enough for a new series. Change his name and he will still, identified by his other traits and bizarre retinue, be next season's hero. Q 50 can appear in every third episode and eventually go spin-off into his own series. Alec has possibilities for a children's animal show. The Eurasian girl bodyguards may inspire new fashions. Even Florienbad, which does not exist on my map, may find its way into a model city in California. Kiaijutsu as a combat form may be used on a rival network and become the subject of learned treatises. There is enough here for everyone.

Traditionally these elements would be considered mere ideas not susceptible of protection. In this case I suppose they should be deemed in the public domain, but it is not easy to be certain. On the one hand we have no wish to encourage crank suits by the uncreative; yet on the other, people are doing deals involving this sort of "property" every day of the week. The reason is television; in that medium it can actually happen.

The point is that the dismembered fragments of a literary passage may take on separate lives of their own and make money. A fictitious character or city, an imaginary animal or a combat system or spy organization, all make-believe, all grow overnight in this manic garden. In other media (some may say fortunately) it is less likely to occur.

So amply endowed with INM rights and spin-off possibilities, television is the ideal laboratory for experimenting with literary property techniques. Perhaps a better image is the microscope: you

look into it and see all sorts of unsuspected living forms moving about underneath. Something can be learned by inspecting the forms, not just the microscope.

Even in less avant-garde areas television raises classic problems more dramatically than do its sister media. For example, the old disparity with respect to the duration of copyright between the United States and Berne Union countries has meant that a public domain property here might have to be cleared for Canada. This problem is one thing if you are getting the rights to put on a play, but something more frenetic if you are going on the air next Monday with Canadian stations in the line-up.

The Canadian problem is straight copyright. INM rights also come within the copyright category but new statutes rarely can keep pace with the inventions of science. The spin-off type of thing may not be a copyright question at all. Unfair competition is the legal doctrine most lawyers would name as the most appropriate for protection, but the whole sea is uncharted.

Uncertainty about rights cuts more ways than one. The problem is not only who owns what, but who might sue. Insurance companies are affording less and less comfort each year and broadcasters are increasingly vulnerable.

With all these interesting dilemmas unresolved, a tremendous traffic in television rights is conducted by contract. A typical arrangement might be something of this sort:

1. An independent producer conceives the notion of doing a series about an elderly woman detective.
2. He makes a contract with a network for script development money on a step-deal basis. The contract is never signed.
3. The independent producer engages a writer on a step-deal contract to do a pilot script on the basis of the producer's format, which is supposed to be typed up as proof of the producer's ownership and annexed to the writer's contract. The format is never typed up and the contract is never signed.
4. The writer is "cut off" and replaced by another, whose contract is never signed. The original writer claims "Created by" credit and there are some brisk telephone discussions with the Writers Guild.
5. A settlement is reached pursuant to unsigned contracts, and the network orders a series.
6. As soon as the series is announced, a novelist points to his own elderly woman detective character and writes threatening let-

ters. He is cut in on profits after the insurance company refuses coverage on its policy with the producer.

7. There are no profits.
8. The series is cancelled after 26 weeks but a spin-off is optioned.
9. The network legal department submits a long-form contract on the original series, which is taken under study.
10. The series' theme song becomes a hit record. Phonograph record rights never were granted by the composer.
11. The director of the original series contends that he created the spin-off concept. He is cut in on profits.
12. A Broadway producer with film company pre-production backing options the series' characters for a musical. The various elements mentioned earlier each get half a point. Since a film company is involved, long-form contracts actually are signed but fail to cover series rights to a new character in the play. Controversy ensues.

Behind all this is an intriguing question: What constitutes *the Property*?

When you are dealing with books the answer is fairly straightforward. *The Once and Future King* is a property founded on public domain folk legends; *Camelot* is a derivative although matchless property based rather peripherally on *The Once and Future King*; a Japanese *Camelot*, ditto, but one step further. Conceptually nobody has much trouble with these different versions. They are "copy-rights." You are unlikely to see very much else through the microscope.

In television things are a little different. Each element is the germ of another; things tend to fragment and go off separately, each entity comprising a potential ancestor. I am not suggesting any qualitative judgments about the results. Few programs are great, but the same is true of plays. The point is that regular broadcasting schedules with time pressure tend to create new property forms. They might be anything from a fictitious era to an imaginary naval unit; characters are only one example. Somehow a dream fragment materializes and becomes real, if only for a season, with summer repeats. When this happens, and the fragment is original in the legal sense, it may constitute property.

It is scarcely in point here to consider who ought to own what in these circumstances. What matters really is recognition that there is something to own. Leverett Lowell may be money in the bank.

Television is the short-cut to myth-making. It creates new worlds

in a week or two. Even the James Bond cultus, which came from books, took longer. Each broadcasting myth may be the link in a chain. Nobody knows where it may end, whether at the FCC or Fort Knox. Again without reference to program quality, and solely to conduce the creation and maintenance of orderly ground rules, some quick action is called for before it all goes out of hand. Television property rights deserve objective, swift and sophisticated attention.

The subject should not be solely a matter for labor-management negotiation. I should like to see an industry study group try and sort out the new forms of property. A committee of producers and writers working with copyright lawyers and program executives might be the nucleus of a balanced study team. A top Guild official could contribute enormous knowledge of things as they are under the Minimum Basic Agreement. Together these people would be uniquely qualified to make recommendations for legal implementation.

Then we might have something better than old copyright cases to use as guides in this growing medium. Nobody will ever be able to predict whether a specific program element will in fact become myth and be somebody's property, but it will be helpful to know in advance whether such a thing is possible at all. Unfair competition law is too fluid for many business purposes. What we need are a few maps and some up-to-date rules.

I might suggest, too, that the television industry had better do something about "errors and omissions" insurance. It is harder and harder to get coverage, and the risks are growing. Some of this may be our fault, but the need is clear. Another study group may conclude that the industry has to set up its own insurance system.

A final thought is that somebody ought to make a study of collaboration itself. When there is a group of writers exchanging ideas with a creative star and an inventive director it becomes impossible to know who did what. Still this precise question often relates to the entire division of format royalties and profit shares. Possibly there is no way to improve things, but we might all find it useful to make a try. Credit determinations by the Guild are not necessarily the ideal answer.

These few reflections may be wide of the mark but I feel sure of the main point and want to repeat it in closing. Television is the most dynamic medium in the creation of new properties. Its business affairs people (whether labor or management) are more

sophisticated about script rights than all of the old-line theater agents together. The industry would do well to unite and make its voice heard more loudly in Washington. There is nothing to be ashamed of in being the new boy in school.

And then somehow—if we learn how to protect characters and reward the true author who puts on the magic touch, and all that—somehow with better rules we may help programming itself. Personally I am hazy about how the two are connected, but the copyright people say that better copyright laws promote culture and international goodwill.

They may be right at that. Better television depends largely on better writing, and the medium has long since lost most of its best talents. Sounder industry practices might make a difference. Laws that are realistic promote sounder practices. All of it may help get back some of the best writers, and attract new ones.

Television is a form of literature. It creates new property rights that perplex all of us. Commercial in value but elusive by nature, these rights comprise something unique, a system of William Morris metaphysics, a step between this pilot world and the real series.

Who owns Leverett Lowell? I do, but nobody can be quite sure.

DAVID LOWE—

IN MEMORIAM

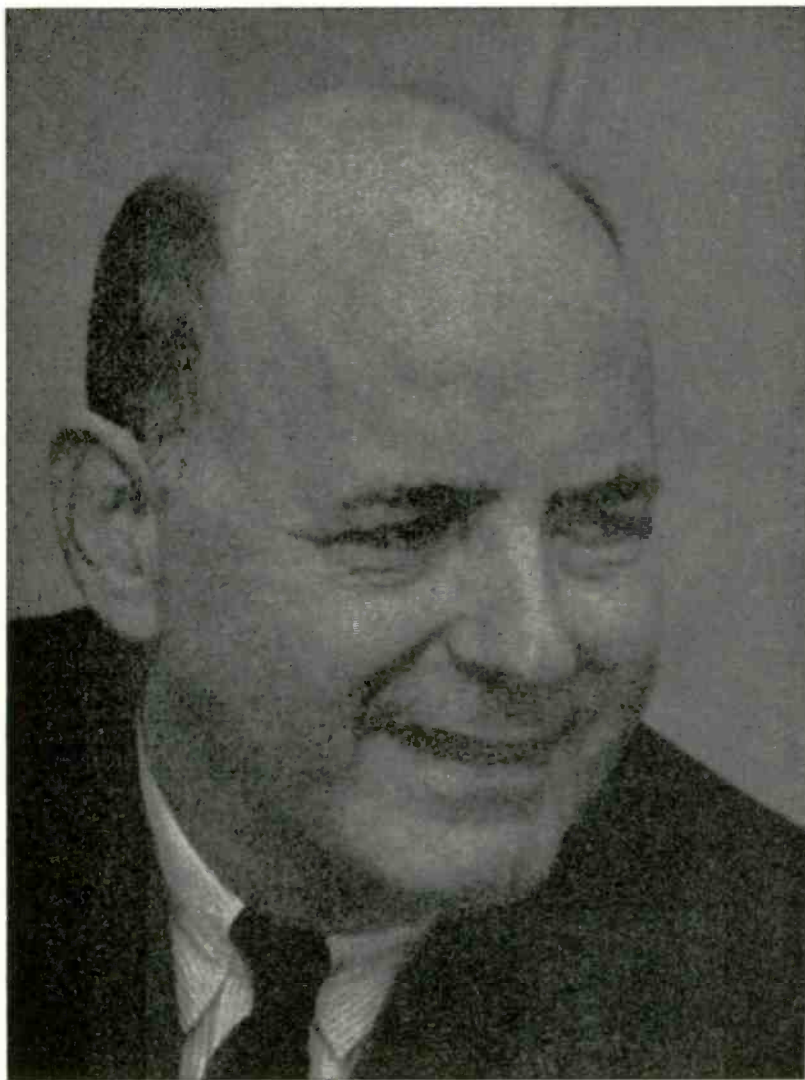
David Lowe was born in New York City fifty-two years ago and he died there last September. His life and work is a testimony to the power of the simple faith that things will get better only if men struggle to make them better.

His career led him from the Broadway theater into television and thence into public affairs programming, where his rare talent for giving dramatic urgency to the issues men must resolve contributed to a series of memorable television journalistic documentaries.

From *Harvest of Shame* to *Ku Klux Klan: The Invisible Empire* (witnessed by millions only three days before his death) the work of David Lowe represents the finest expression of man's concern for his fellow-beings. In his documentaries one finds not a simplistic political liberalism, but a reflection of that indefinable American spirit which makes each of us pause, turn back to the deprived, the weary, the crippled, or the merely unlucky, and say, "Come along. You're a human being too. We'll help you make it."

In a civilization where all of us find the going hard, David Lowe always did his best.

AWB



David Lowe was a broadcast journalist in the best of the Murrow tradition.

Perhaps the list of his broadcasts are his finest eulogy—*Harvest of Shame, Who Speaks for Birmingham?, Sabotage in South Africa, Abortion and the Law, Ku Klux Klan: The Invisible Empire.*

His profession and the nation will remember him for these. We will remember him for so much more.

FRED W. FRIENDLY

...perhaps we cannot draw analogies between the motion picture and television documentary at all. I think the television documentary is something that is unique. It's new. It has just been in the forming stage. I don't think there is any specific kind. Each man here makes a kind of documentary that nobody else could make. The documentary is born out of individual creative art. It seems to me that any effective kind of documentary must come out of the inside of a man.

...I think that any re-enactment which tries to let the audience know what happened does a great disservice to the entire field of documentary. A single re-enactment, a single record which is not actually so, will mar all documentary efforts. Yet an interview in which you ask a person to tell you what happened seems valid. But when you introduce an element, for whatever purpose, which is not true and honest, the effort has been demeaned.

FROM MR. LOWE'S REMARKS
AT THE Documentary Forum,
NEW YORK CHAPTER, NATAS.
DECEMBER, 1963

FORUM

Each year individual chapters of the Academy conduct a number of Forums devoted to discussion of basic professional concerns. Subjects treated include specific skills and techniques in production as well as broader questions of television's social and cultural role and influence in the community. This department is established to provide for wider dissemination of the ideas and knowledge advanced by television's professionals serving local and regional audiences.

THE MAKING OF THE STATION AWARD

To begin this venture, *Television Quarterly* set out on its own to learn something about the details of planning and creative execution in the production of outstanding local station programs. Although they indicate the positive public affairs activities of licensees, the various surveys and overviews undertaken by trade magazines tend to emphasize spread rather than depth. As a result, too little understanding of the logistics of production, personal creative decision-making and the extent of community liaison which must underlie a successful public affairs program is conveyed. More important, the lack of critical assessment of individual programs listed in such surveys gives us no means of evaluating their worth.

The Academy's initiation of *The Station Award* two years ago has helped to fill this void. The criteria for achievement include not only communicative excellence, but positive evidence of genuine service to the community. The programs which have earned this award during the past two years set an example not only for stations which lag, but for those students of programming who wrongly believe that the ultimate outlet for a creative career in public service must be only a network or major production agency.

The winner of the 1964-65 "Emmy" Station Award was WDSU-TV in New Orleans, which has long taken courageous stands in civil rights. While the WDSU-TV study of the Ku Klux Klan most certainly deserved the honor it was accorded, this department wished to call attention to the work of the other stations also cited for their contributions. Those most directly responsible for these programs were invited to respond to a series of general questions dealing with production problems, financing of public affairs programs, and their personal aspirations for local television.

Their replies varied from brief statements of how the award-winning programs were prepared to some lengthy soul-searching about their craft. The responses might almost serve, at one level, as a primer on public affairs programming and production; and, on another, as a revelation of the dedicated and creative spirit at work under the varying conditions and limitations imposed by the system. The reader may also discover some new understanding of that most difficult and elusive term—"documentary."

Finally, those who doubt whether the industry is sufficiently attentive to creative talent may observe that *three* of the seven producers have already moved on—hired away from the stations where they earned recognition.

NATURE OF THE AWARD

The award will be presented to a licensed commercial station in the United States for a single program or series of programs dealing with a significant issue in the station's community:

- a. The results of which can be judged on the achievement of the program itself and documented evidence of a resulting constructive action in the community; or
- b. If not designed for such specific, immediate action, an outstanding achievement which can be judged on the merits of what the program undertook to say, how well it was said, together with its courage, ingenuity, and execution.

Such a program or series could deal with community problems, such as delinquency or gambling; a community development project, such as a civic or cultural center; community politics; a local disaster for which community aid is required; or a community development which needs further expansion or support. The criterion for award eligibility is based on the treatment of an actual issue or an inherent, potential or possible social problem.

The program or series should be documentary in style and can include entertainment, as long as its objectives are dominant and clear and meet the requirements outlined. In the event that an entry is based on a presentation which stimulated direct action in the community, substantiating evidence directly tying the program or programs to the action must be submitted and the results so achieved will play an important role in the judging. In this manner a program achievement with but basic production qualities, when directly effective in its impact upon the community, will have equal consideration with more elaborate undertakings which may or may not have been designed for such immediate action.

This Award is designed to recognize the achievement of a single station, as specifically differentiated from the efforts of a group of affiliated stations or two or more stations of common ownership. Although it is possible that some segments of an entry may well have used the facilities of a station other than the originating licensee, the criterion of eligibility is that the final physical production and the efforts of the personnel responsible for producing, performing and executing the program was the achievement of the individual station entering the program.

*The National Academy of
Television Arts and Sciences*

THE REGIONAL AWARDS

- WOOD-TV Grand Rapids, Michigan
Program: ROSES HAVE THORNS
Respondent: Peter A. Kizer
Program Director
- KSD-TV St. Louis, Missouri
Program: NO ROOM AT THE BOTTOM
Respondent: Mary Spencer
Public Affairs Staff
- WOW-TV Omaha, Nebraska
Program: THE OUTSIDERS
Respondent: Steve Bell*
Producer
- WBNS-TV Columbus, Ohio
Program: STRANGERS IN THE SHADOWS
Respondent: Thomas Dorsey
News Director
- WBAL-TV Baltimore, Maryland
Program: CONVERSATION WITH JAMES EMORY BOND
Respondent: J. Sydney King
Manager of Community Service
- KTLA Los Angeles, California
Program: KOREAN LEGACY
Respondent: Baldwin Baker, Jr.*
Producer
- WNEW-TV New York City
Program: MY CHILDHOOD
Respondent: Arthur Barron*
Producer

*Since resigned

How did the program come about? Describe the basic unit which did the work. How does the unit operate within the station? What kind of community liaison do you employ?

MR. KIZER: Our production unit is simple. It consists of the Public Affairs Director (director-editor), our Production Manager (production supervisor), general station photographer (cinematography), and an over-all supervisor. One of the main characters in this particular program—who entered a state mental institution as a “subject”—was the assistant to the Public Affairs Director. It could have been the mail boy, a clerk in accounting, a sales secretary, or nearly anyone willing to take the risk! Frankly, the people in this group usually *don't* operate as a unit. In a station of our size, we call on certain staff people to form a unit when the need arises.

MRS. SPENCER: KSD-TV has four persons who involve themselves in public affairs programming, but they do not operate as a unit. Rather, we combine efforts on individual programs in various ways. Keith Gunther, our Program Director, is at the helm and assigns us to write, produce or direct according to the requirements of each upcoming study.

In *No Room at the Bottom* I did the research, wrote, produced and did the interviews and part of the narration. Another part of the narration was handled by John Roedel, Paul Campbell directed and Dick Hardcastle, Jr. (not on the KSD-TV staff) was our cinematographer. Three of the four of us are St. Louis born and reared. We depend on our own community contacts, plus the many years of experience of our extensive and able news staff, to provide effective liaison.

MR. BELL: Special public affairs programs at WOW-TV originate with our documentary projects board, made up of management from both radio and television. Suggestions may come from anyone on the staff, although most come from top management or our public affairs director, who has prime responsibility for community liaison. Once a topic is selected, a writer-producer is named; he does basic research and brings back a firm proposal regarding production schedule, manpower, cost and format.

The basic production unit for the series consisted of a writer-producer-reporter, a photographer-film editor, a director, a sound engineer and a videotape engineer. Once an outline had been prepared, photographer Bob Mockley and I did the bulk of filming and reporting. With a topic as subjective as ours, I wanted the interviews completed and transcribed by an office secretary before work began on the actual script. The entire production unit began a coordinated effort once a rough script had been prepared.

The writer-producer at WOW-TV has full control over editorial content once his basic outline is approved, subject to review by management. (As a practical matter, I have never been overruled, and suggestions have been offered only when requested.) Added cost factors, such as the trips to other cities which were made as part of producing *The Outsiders*, must be approved by our program director.

MR. DORSEY: All of our documentaries are done by WBNS-TV staff members. I write and produce, and news photographers shoot and edit. For *Strangers in the Shadows*, one of the directors scored the finished print for us.

The “unit” operates in whatever time it can steal away from the news department operation. During the normal week we shoot, write and edit 140 film stories for news programs. I research and write the documentaries at night and on weekends, and the photographers steal whatever time they can from their regular news duties to shoot and edit the film. So the documentaries are an extra-curricular activity of the news department, even though we average 12 half-hour efforts a year.

I think our liaison with the community is the best possible because, as newsmen, we are out everyday in every section of the city, in touch with every sector of its life. Therefore, we have an inside track on what's going on. We see the problems and often have a chance to do short pilots in the form of news stories. As news director, I think I have a better than average opportunity to see the best subjects for documentaries.

MR. KING: On the evening of February 3, 1964 we presented a live, 90-minute program featuring top law enforcement officers, lawyers, and judges in the Baltimore area in a discussion of the local crime situation. At the conclusion of this special program, the moderator, Station Manager Brent Gunts, invited viewer reaction. We received our quota of wires, telephone calls and letters. One man, however, Mr. James Emory Bond, Sr., presented himself at our reception desk the next day. Because Mr. Gunts was unavailable, Mr. Bond was directed to me, and, in two or three minutes, he told of his feelings about the cause and cure for the crime situation in our city and country. His sincerity so impressed me that I asked him to wait until he could meet Mr. Gunts. The latter's reaction was the same as mine, and he asked Mr. Bond if he would tape a few of his comments to be used as a follow-up to the previous night's discussion. Mr. Bond agreed and went to the studio where I was to interview him for four or five minutes.

We secured one cameraman (with the understanding that he had to leave in a few minutes to work a live show), I collared a passing director and two other engineers, and we started taping.

I suppose that in the next hour I said 50 words. The rest of the time Mr. Bond unfolded his philosophy of life, talked of his God and country and of his life in Baltimore as a boy and young man. During this hour, we could use only one camera, taking engineers off maintenance work to keep things going in the studio and the control room, and the only change of shot was a slight dolly in or out. The end product won us the Emmy nomination and has since been aired locally by stations from New York to San Diego.

After screening the program later that afternoon, we felt we should air it just as it was, with no deletions, and it went on at 9 P.M. that evening in place of *The Richard Boone Show*. Only enough content was cut to allow for a brief introduction and close by Mr. Gunts.

Despite the manner in which this program was created, we do have another method for producing specials. A committee consisting of the Station Manager, Program Director, News Director, Community Service Manager and a producer-writer meets regularly to discuss possible topics. Frequently we will tentatively settle on one or more subjects and then make a final decision only after considerable research (and even filming) has been done. When a topic is settled upon, the producer-writer and our chief director work together under the News Director, serving in the capacity of Executive Producer. Drafts of scripts are reviewed by the entire committee, as is the final edited film. Paramount importance is placed upon the final product being more than just one man's view. It must always be something the station can stand behind and which will reflect credit upon the station as a responsible citizen in the community.

MR. BAKER: The basic unit you speak of in your inquiry just doesn't exist. An assignment comes along and we try to pick the best people for it and send them out. No local station is really prepared to handle an overseas story like *Korean Legacy*, but when I went to management with a plan for covering this unique story it was approved. People from all over the United States were going to come to Los Angeles, charter an airliner and fly to Korea to pick up the orphan children they had adopted. This, in itself, was an unusual story; it had great documentary possibilities and I wanted to go with them and record their experience. The entire story would be filmed in Korea in five consecutive days.

When I told KTLA Program Manager Bob Quinlan what I wanted to do, he said, "Figure out a budget." I figured out the budget and he said, "I don't think

you can do it for that." And I said, "I hope to try." In my budget there was just enough money for one person to go to Korea and film, record sound, and come back, which meant I had to serve as producer, director, cameraman and sound man. I knew it was quite an undertaking but I was willing to try. A few nights before I was to leave, I was talking to a neighbor of mine, Dallas McKennon, who happened to be a former sound recordist. He fell in love with my idea and said he wanted to come along. I said, "I don't have any money in my budget—I only have enough money to get me there and back again." He said, "Let me worry about that." He figured and pushed and pulled and he came up with enough money for his own passage. Then he figured and pushed and pulled a little harder and came up with a brand new tape recorder. This touched me deeply, and I'll never forget the contribution he made in Korea.

When we got back I rough-recut the whole film. Then I hired two writers, Ed Spiegel and Jules Maitland. Kip Walton volunteered to handle the music. We hired a negative cutter. The writers, the negative cutter and the editor were brought in from the outside and put under contract. They were paid very little, so it became a labor of love that occupied most of our hours between 11:00 P.M. and 3:00 A.M., after our regular work of the day was finished.

Happily, KTLA gave me complete control of the picture. Dana Andrews narrated our film and did a wonderful job. But the production unit really didn't exist at all within the structure of KTLA, and it doesn't today. It all came out of a desire to do a job with a lot of willing help from people who cared.

MR. BARRON: I worked at WNEW with my own unit. I had no formal title, but I was responsible for turning out as many or as few documentaries a year as I thought could be made with quality.

My Childhood took some six months to make. I reported directly to Bennett Korn, president of Metropolitan Broadcasting Television, and once the project was approved I had absolute and complete freedom with it.

The people who worked on the program included a director, an editor and a musician who composed an original score. There was no associate producer and there was no writer per se since it was based on the narrations. There were two cameramen, one of whom did all of the work in Harlem and some of the work in South Dakota. The other one did the bulk of the work in South Dakota. So the basic unit was fairly small.

There was no "community liaison" in the conventional sense. Since Dolan, South Dakota is an extremely small town, we had to be very sensitive to the feelings of the community and to our own special mores and world view. We had to move carefully and slowly, like anthropologists, in our approach to the town. There was some hesitation about the "city slickers" from New York with their wild ways and gadgets and the like, but since they knew we were telling a story about Hubert Humphrey—who is dearly loved by all the people of the town—our work was made much easier. In Harlem, where we filmed the story of James Baldwin, we found it difficult to work in the streets. There was suspicion and distrust, as well there might be. The people there do not relish having others poke their cameras into the squalor and misery of the ghetto. So here again we had to proceed with great tact and caution.

What kind of program would you call your work? Do you think it represents a unique kind of communication?

MR. KIZER: While a program like *Roses Have Thorns* has been done before, putting an incognito staff member in a mental hospital as a patient seemed like a good approach to us. The "patient" spent two weeks there without anyone knowing it. This technique generated the most excitement and interest. We had tried it before with a program on skid row, and we're making a stab at it again with a program about the Amish. Later on this year we'll try one on shoplifting. I know the method is not unique, but in this case it served our purpose quite well.

MRS. SPENCER: Basically, *No Room at the Bottom* is a documentary, combining on-the-scene filming of St. Louis County's one technical high school with on-the-scene filmed interviews with county educators and with the County Juvenile Court Judge.

Because we wanted our program to indicate to the voters and to the Missouri Legislature that St. Louis County's problems of inadequate vocational-technical education are part of a national problem (one of serious proportions), we went to Washington, D. C. for filmed interviews with U.S. Commissioner of Education Francis Keppel and with Secretary of Labor W. Willard Wirtz. The authority of these interviews helped persuade the State Legislature to act promptly to aid St. Louis County.

MR. BELL: *The Outsiders* is very definitely within the traditional documentary format. When time, money, equipment and manpower are available, I'm convinced this style of presentation has maximum impact because it utilizes all the means of communication available to television. The options are unlimited.

On the other hand, unless the station is willing to go all out in promotion, seeking a sponsor and providing prime time for exposure, it is hardly worth the cost. The management of WOW-TV gave a complete "green light" for our production, and I think we were able to achieve a degree of community impact necessary to justify the rather elaborate production for a local station.

MR. DORSEY: Our programs are strictly documentary in form. They do not employ interviews or question-answer sessions. I interview the people involved for hours on audio tape. Then the tapes are cut so that the subject appears to be thinking to himself with my questions edited out. Before we start, I research the subject thoroughly so that I can conduct an intelligent interview and challenge the interviewee on critical points. After the tapes are edited, the photographer and I get together and talk over what scenes will best illustrate what is being said. The points the interviewees don't make well, and the points I want to make, are then written into the script. The photographer has a tremendous degree of freedom in illustrating the script and choosing what he thinks best. He therefore becomes, in effect, the film's director.

The video is crucial. We never have a subject with a head and shoulders shot talking into the screen if we can find any other way. That is good radio and bad television. We try to show people what we are talking about. The end product is the voices of the people involved talking over film showing what they are involved in. The narrator reads the rest of the script, but he's never seen on camera.

MR. BAKER: My film is a unique documentary in that it records the final hours of Mr. Harry Holt, a man who was totally dedicated to something beyond just making money. He gave of himself so that others could live. He sacrificed all of his funds and, ultimately, his life for the sake of 3,000 Korean orphans who are now in the United States.

MR. BARRON: I would call *My Childhood* a documentary of human revelation—to distinguish it from the other types of documentaries. It is distinct, for example, from the documentary of reportage in which CBS and NBC provide the classic examples. Their purpose is essentially journalistic—to report on events and to place them in perspective. The appeal of such reports is mainly to cognition and to an understanding of the reality of the world as it moves forward on a day-to-day basis.

It is also distinct from what might be called the educational or "straight" informational documentary, such as the *Conquest* series, the *Stonehenge* Special, some *Twentieth Century* programs. The classification would include programs where the purpose is essentially to convey educational facts, points of view and information. In those the appeal is largely to cognition, to intellect, and to an ordering of the world in an intellectual way. The same may be said of the

“cultural” documentary which seeks to convey an aesthetic experience in the rich tradition of culture.

Essentially, the purposes of these various kinds of documentaries is informational. They help an audience to decide the relative merits of both sides of an issue—or simply how to understand issues. In a sense their mood is objective and their style reportorial. They are journalistic.

Now the document of human revelation, of which *My Childhood* is an example, carves out a different kind of communication. It gives a different kind of order to the world. Its purpose is to reveal in human terms the emotional meaning of the human condition. The mood is not objective, but subjective. It appeals not to cognition, but to the heart. Its purpose is to form links between people by enabling them to share the human experience of the person being portrayed. The approach hews more closely to the approach of the novelist, the poet or the artist rather than of the teacher, the partisan pleader of a cause or the reporter. It is much more interior.

The style of *My Childhood*, however, was not *cinéma vérité*. It was very much at the opposite end of the scale. It was highly directed, highly stylized, highly polished. Yet it was in the tradition of *cinéma vérité* in so far as that tradition seeks the revelation of the human moment *in the person* rather than the revelation of the event, or of the facts behind the event. This is the kind of film we made. It was obviously not a discussion or an interview. It was filmed, but I think it is important to point out that the film itself depended on very long interviews with both Humphrey and Baldwin—interviews in each case running from eight to ten hours in length. They were probing. Both men cried, both men laughed, and both men, I think, achieved a kind of reliving of their childhood in very individual and personal terms. I don't think this represents a unique kind of communication, but I think that to some extent it represents a fresh communication for television.

Television suffers much from being confined in the mold of the objective, the factual, the informational, the cognitive, the reportorial, the journalistic. It seems to me that the television documentary has fled from human feeling and, although quite lucid and exciting in its own way, has abandoned its capacity to stir the hearts and the emotions of men.

Please discuss some of your major creative problems. Are you hampered by budget or other restrictions?

MR. KIZER: The only creative problem we encountered in our program was not knowing what to leave in and what to take out. Since the program was not “written” as such, but “recorded” as it happened, we ended up with over eight and a half hours of material to condense into a thirty-minute presentation. Budget is not an important factor in projects like this one. Once we determine that we want to do a program, we establish tentative budget. It never becomes a restrictive device, however. It is only an estimate for the sake of information. I might add that we have been quite successful in getting sponsor support for most of our projects. This, of course, has helped minimize doubts regarding expenditures for this type of program.

MRS. SPENCER: The only creative problem is time! There simply is not enough time in anyone's working years—or his life—to attack even a small part of the problems that cry out for attention. To document a problem in public affairs takes time for adequate study of the facts, conversations in depth with authorities in a given field, comparisons with other states or localities, and thought as to possible solutions. Inadequate preparation can waste the station's efforts!

Time again is involved in the substantial follow-up that is a part of public affairs programming. An effective television program brings community awareness of the problem shown. Community awareness means speeches, letters, work with legislative committees and with many individuals. Now—18 months after the telecast of *Operation Challenge, A Study in Hope*, KSD-TV's study of the all-Negro community of Kinloch, Missouri (the Emmy winner last year)—we are still involved in many facets of community interest in that program.

KSD-TV has never even mentioned the word budget in connection with the producing of any of the public affairs programs on which I have worked. There has been absolutely no budget restriction in the producing of a public affairs program. Management's only questions are: Is it topical? Can a solution be found? Will it help our community?

MR. BELL: Once the topic is narrowed sufficiently for full treatment, the major creative problem in television seems to me to be obtaining proper balance between demands of the story line and production demands of the medium. A fact-filled but dull program pulls zero ratings and has limited impact. On the other hand, overemphasis on video and dramatic appeal can dilute the message to the point of uselessness. The writer-producer is constantly looking for ways to keep the program moving without prostituting the end product. Once satisfied with the depth of the story line, I find myself constantly relying on actual sound, tight editing of interviews, and double-chaining as tools for meeting audience-attention demands.

As far as budget is concerned, the local station usually has special problems related to production techniques. Fortunately, we were not restricted in the use of raw film footage because the shooting-to-use ratio for *The Outsiders* was much higher than in previous documentaries I have produced. This was because of the topic. We still were limited, however, by not having such expensive production equipment as double-system sound to provide maximum editing flexibility. And the limited availability of a third man (a sound engineer) for on-location filming prevented us from always getting maximum quality control of sound. I'm sure there also are other budget limitations of a similar nature that every local station experiences to a greater or lesser degree.

MR. DORSEY: Our biggest creative problem is people. We never use actors. No matter how good an actor, he is still acting and he has little understanding of what it's like to be in prison, to be a blind or abandoned child, or to be an unemployed school drop-out or a mental patient. I want these people to tell their own stories in their own words, and if they stumble or say "ain't" then they are real, and that makes a documentary believable. It is more difficult to deal with these kinds of people, but the end result is much more rewarding. One of our biggest problems is that you cannot show faces, so you must work with hands, eyes, parts of faces and shadows.

We try to start out without any preconceived idea of what we'll say. No script is written ahead of shooting. The filming and script are done simultaneously. If you write the script ahead, then you shoot to that script.

The budget is not restrictive, but we rarely spend more than \$800 for everything on the finished print, not including salaries. Time is the largest restriction. We have done some films in ten days, and when you do them that fast you make mistakes.

MR. BAKER: The major creative problems in our program resulted from overseas shooting. I came all the way back from the Orient with specific scenes, but obviously, some key stuff was missing. I lost some close-ups—one of my cameras had failed. I lost some shots because I lacked familiarity with my second camera; we lost some audio because we were operating on an emergency generator. We had to do all of our filming between Monday and Friday, under pressure. And there was, of course, no chance of going back to Korea.

MR. BARRON: I would say the major creative problem is the ultimate limitations of my talent. I think that is the major problem any producer encounters. I would say also that the small screen prevents you from doing particular kinds of things.

Certainly the potentiality of the medium is there. Television can be a remarkably expressive medium for the documentary, but all too often it is not. I think this is because of the sterile attachment to reportage rather than revelation. I

would add that documentary, too, often gets trapped in its own form. Creatively, the traditional documentary has been played out. The interview, the stentorian voice of the narrator and the exposition which tells you exactly where you are at every moment have begun to disappear.

Perhaps, if you reflect upon it, the major creative problem lies in forcing yourself to realize that a revolution in films is sweeping the world today. Extraordinary things are being done, particularly in feature films. In the work of Bergman and Fellini time has been broken in entirely new ways. Every traditional convention of film is being broken, and the creative problem is to translate the merest fraction of this renaissance in film into television film. Film itself is flying in a supersonic jet and the documentary is still traveling in the oxcart. There is still too much of the illustrated radio script, rather than a use of all of the brilliant and dazzling potentialities which are open now in film. To be able to translate those into television terms is a dominant creative problem.

There is also a need to persuade the people who are in control of the content of the documentary that experimentation is important, that images are important in themselves and that film is its own language. It is, in part, a creative problem to convince them that film has its own imperatives, its own kind of beauty and its own vitality.

Budget is not a real limitation. If you do a sound piece of work and it is well received, you do not have to worry a good deal about being overbudgeted. It is my personal philosophy that you do what is necessary to make the most stunning, valid and compelling film you can. If you do this and are successful, the admonishment for spending too much is not that severe. If you make a film which is boring or dull, no matter how much you are under budget, it isn't going to do you any good.

What are your opinions regarding the future of public affairs at local level? Is there any ideal form in which these programs should be cast? What can the industry do to advance the art and craft of such programming? What are your personal ambitions and aspirations in the field?

MR. KIZER: There are many things the industry can do to increase the flow of this kind of local programming. Let me mention one example. A few years ago, a group of television program directors formed the National Association of Television Program Executives. One of the main functions of this organization is the exchange of program ideas and information. At our second annual meeting more than 100 of the nation's leading program people were in attendance. There should be more exchange of ideas and information among program people, and I am hopeful that such organizations will provide it.

Exchanging information and doing something with it, however, are two different things. When you get right down to it, each individual station must decide for itself how serious it is going to get about local programming of this nature.

MRS. SPENCER: I like the combination of documentary filming and on-the-scene interviews with as wide as possible a cross-section of local persons involved in the problem. To me it's the finest type of communications when one segment of a community can come into the living rooms of another segment, and talk about their problems, their hopes, their dreams.

There is no question that the industry stands ready to expand public affairs programming; the problem lies with the proportion of the viewing public who will accept this programming. Perhaps the industry's burden is to present public affairs programs in other than a talk-talk format—to try to make such programming attractive and stimulating and make the viewer feel some personal involvement.

MR. BELL: The major stumbling block I see in television public affairs is the "image" of such programming within the industry and the station itself. Too often we are thought of as more of an "FCC must" than a meaningful part of the whole. And often this is our own fault. Unless there is mutual respect

between sales and programming on the one hand, and news and public affairs on the other, we are in trouble. We need their cooperation, promotion and money. They need from us an appreciation of the type of programming that has audience and sales potential. No, I do not think good information programming and audience and sales potential are necessarily incompatible. Too often, however, there is little or no attempt to find the common ground that must, of necessity, spell maximum impact.

If I had my druthers, we would look next for a community need that warrants a full-blown campaign on the part of the station. I'm thinking of anything from a drive for better treatment of the mentally ill to a proposal for changes in local government. The campaign would include regular news reports (properly labeled), editorials, documentary-format programs and, finally, a station-led community campaign for action. The latter could take the form of anything from organization of an action group to court or legislative action. We made an initial effort in this direction with *The Outsiders* by obtaining film transfers of the series that have been made available to various community groups.

My ideal for public affairs programming is the regularly scheduled program series. At WOW-TV we now have a regular weekly news conference, very similar to *Face the Nation* and *Meet the Press*. I would like to see a similar schedule—once a month instead of once a week—for a half-hour documentary format. In this way a regular audience could be built up while the potential would still be there for attracting an additional selective audience for specific topics. Production of these programs could overlap to a degree, and utilize the talents and ambitions of a number of our reporters, writers and photographers who want to work on documentaries. It would, however, probably require a permanent producer or skeleton production unit.

I feel there is a major need for some means of regular communication between the many local news and public affairs departments across the country. Frankly, I would like to know what other stations are doing and how they do it. Most of us have schedules that prevent even the observation of the work of others in our own market or at the network level. Why not a publication devoted to, or giving considerable space to, an exchange of news and public affairs activities, ideas and problems? Or how about short-term seminars at leading journalism schools designed for local station news and public affairs writers, producers and filmers?

MR. DORSEY: I'd like to do more of the "think" subjects that seem to lend themselves more to print or audio than to video. Television has to learn how to use the picture and stop doing radio programs. It must *show* people instead of telling them. And it must find a way to marry the picture and the word. The viewer usually has the choice of either watching or listening because one seems to distract from the other.

Finally, the industry must quit relegating documentaries to second-class citizenship—something to be done after everything else is done. The industry might also take a look at its form. I think the audience is becoming bored with documentary techniques. We must find new and more exciting ways to do documentaries, and stop doing something that way because "that's the way it's *always* been done." The industry can also begin to accept the fact that documentary audiences are going to be small. But this small group of people are the opinion makers, the people who do write their Congressmen and who support reforms.

MR. BAKER: The ideal production form for the local station may be the documentary. I believe a station should be able to afford a full-time documentarian on its staff, and he should devote himself to turning out programs that will earn sponsor and community support. He should, perhaps, sell his ideas to the sponsor personally. He should be able to produce the program as well, and must therefore be uniquely qualified and compensated.

I think the industry must encourage new ideas. Within the structure of KTLA alone there are many people with excellent potential. These people need to be able to express themselves, organize, formalize, and set their thoughts down in writing. Some of these ideas should be given fulfillment.

MR. BARRON: There is no "ideal" production form for any station. Form results when a producer demonstrates a personal caring about the kind of statement he wants to make. It is a very personal thing.

As to ways in which the industry can increase the flow of such programming, I really don't know. I don't think Newton Minow or Frank Stanton can answer that. I suppose you begin by taking off the air some of the inane and insane situation comedies, rock and roll shows, and serials and provide more time for serious work. As to how that can be done I have absolutely no idea.

I wish it were not so hard for young people to get into the field—as writers, as researchers, as associate producers and production assistants. The whole area of training is very unstructured. It would be good if there were some kind of institutionalized means whereby creative young people could find their way into this business. Fellowship and internship programs would be useful. I think that schools and more schools of film should be created in colleges, universities, and even in high schools. How do you make people better people? How do you make people more interested in film? How do you make people more receptive to innovation and experimentation? The best answer, I suppose, is for those who are established to make good films—films which are good not only in the sense that they are honest and artistically valid, but in the sense that they move and inform the hearts and minds of the audience. One of the things we can do is to be more serious and successful ourselves.

BOOKS IN REVIEW

Harry J. Skornia. *TELEVISION AND SOCIETY*. New York: McGraw-Hill Book Company, 1965.

On the dust jacket of Harry Skornia's *Television and Society*, James Fellows of the National Association of Educational Broadcasters expresses a hope that "The book's natural enemies will study it from beginning to end."

I have done precisely that. I certainly didn't approach Mr. Skornia's text as a natural enemy but he has done a first rate job of converting me. The primary target of Mr. Skornia's invective is network television. At the outset he says, "The approach taken here may well be a prejudiced one." As one proceeds through his rationale that comment emerges as one of the triumphs of understatement of our times. He finds it an electronic cloaca, dominated by men whose motives are unrelievedly venal, totally lacking in creative impulse or accomplishment. The network complex emerges from Mr. Skornia's pages as a Manichean plot to bilk the public of what they want and should have. Unfortunately the argument is pressed so relentlessly, with so little regard to fact and with such resort to faction, that it blunts its own impact. It becomes and remains shrill.

On page 34, for example, Mr. Skornia says, "It is understandable why network top executives have so little time for broadcast or program matters. Whether a given program is in the public interest is a question far down on their agenda. Making the decisions would be a waste of their unique management talents."

How does Mr. Skornia think CBS decided to keep *CBS Reports*, Neilsen's lowest-rated show, on year after year? How does he think NBC decided to devote three hours of prime time to Civil Rights and later a whole evening to American foreign policy; and on the Pope's visit to devote a whole broadcast day to it while at the same time cancelling all commercials? Those decisions were made by top management because they knew they were in the public interest. As a matter of fact only top management could make decisions of that size. There are, of course, countless examples of similar procedures familiar to all of us who are knowledgeable or willing to do our homework about network programming and the public interest.

Mr. Skornia returns to them on page 67, saying "films are bought according to availability, cost, discounts and other quantitative factors rather than qualitative factors; virtually by the gross, the ton, or the warehouseful. Concern for content, sentiment, or effects on people have no place in decision-making of this type." The fact is that the networks screen all the products they buy for prime time and then frequently cut and edit what they have bought because they are "concerned with the content, sentiment, or effects on people" of the films as television fare.

The networks' concern has resulted in their being sued by producer George Stevens for abridgements he felt were not in keeping with his original concept. Top management was sufficiently concerned with content, sentiment, and the effects on a television audience to risk going to court about it.

On page 163 Mr. Skornia concerns himself with the plight of the artist in television. Woefully he reports "Perhaps the greatest danger of today's practices with reference to art, however, lies in the low status granted the artist. The business structure of broadcasting is unquestionably such that the sales executive can and does dictate to the artist...if the artist wants to earn a living he must do not what he wants but what the salesman wants." There are no examples given and no definition of what is meant by artist in this context. I must presume it applies to anyone who has perfected his skills so that the public, the critics and the people who pay for his services recognize his excellence in his chosen field.

If, within that definition, Mr. Skornia believes any "salesmen" are dictating to Lucille Ball, Jackie Gleason, George Schaefer, Sheldon Leonard, Irving Gitlin, Fred Friendly or others of their varied accomplishments, then the view from the Halls of Academe is even cloudier than I thought.

In the course of this book's 248 pages its author also suggests that singing commercials may stunt the growth of serious American musical composition, that network television may be the seed ground for the re-birth of Hitler and Mussolini brand fascism, that it is destroying physical fitness when it could be doing shows about hiking and gardening, that the social graces which television shows as desirable seem related to the various liquor and tobacco interests which are important sponsors, and that the nation has for years accepted the allegation of television leaders that scenes of violence on television do not incite to imitation, but if anything provide catharsis.

Which television leaders alleged that? When?

Mr. Skornia doesn't say. In fact his major sources of documentation in the chapter "The Effects of Television and Radio; Some Burning Questions" (in which he lets loose his most sweeping indictments) are the Payne Fund Studies on films published in 1935. He attempts to rescue his arguments by suggesting that "These studies are relevant here since these films, or others like them, make up a large part of the fare offered over most United States television stations." The observation is so wide of the mark that it is, in itself, a patent irrelevancy.

These mental saddle sores—this clutter of imprecision—is a pity. Mr. Skornia has obviously thought hard and long, if fumblingly, about television and society. The net of this pondering is, I gather, that he wants television to supply, as a preponderant element of its total programming, material of the sort one most frequently finds in *Partisan Review*, *Commentary*, *Encounter*, *Foreign Affairs*, *Harper's*, and *The Atlantic*, with a liberal salting of ballet, opera, symphony and similar delights. And, toward the end of his argument, he suggests that probably the best way to achieve that might be a new network, underwritten largely by government funds and largely free from the merciless competition of the marketplace—a sort of BBC First Program, American style.

This is an important and worthy concept which deserves careful and searching examination. Certainly if the government is to mount a full-blown, well-muscled effort to bring the Arts and the mass public into wider and more fruitful relationship, television is the fastest, most efficient way to do it. In such an undertaking there should be room even for Mr. Skornia's series on camping and hiking.

HUBBELL ROBINSON

Lajos Egri. *THE ART OF CREATIVE WRITING*. New York: Citadel Press, 1965.

For many years the Catholic Church has maintained that the celibate clergy were competent to understand and counsel marital and sexual problems, offering the analogy that it is not necessary to suffer from cancer to treat it. Perhaps, therefore, my feeling that a volume entitled *The Art of Creative Writing* should display some elementary skill in expository prose is niggling and irrelevant. I am possibly biased in favor of graceful and skillful word handling, and having declared this prejudice I can only report that this text seems to me to have all the *belles-lettres* quality of a McGraw-Hill first reader: "See Jane... Jump Jane... See Tom... Jump Tom."

To quote from the work is to be unkind, but a small sample may demonstrate the point.

Don't you recognize this man? I am sure you must know at least one. He grows everywhere like a weed. You don't? Too bad, because he is you and me, all of us—with a few exceptions.

The similes and other figures of speech employed to teach the novice creative writing generally are equal to the picturesque and original image quoted above.

But perhaps to cavil at style is unfair. This is, after all, a "how to" book—a technical journal in the league with "How To Fix a Leaky Faucet" or "How To Make Friends Despite Acne." The standard ought to be the excellence of technical analysis, the simplicity with which the mystery of the craft is made crystal clear; and by that criterion the style has found a worthy partner in the matter.

Mr. Egri seems to belong to what might be called the Orthopaedic School of character development. In offering examples of creative character delineation time after time he seems to find a fascination with the congenital anomaly as a sure-fire source of human behavior. He starts with a young lady who evidently committed suicide because she had very small breasts, and goes on to rub the lesson in thus:

I'm sure you know a few similar cases yourself. Of course you do. A big nose, or big feet or hands, or lack of hair, or too much hair, or a bad kidney, or varicose veins can make anyone the victim of the most insidious of diseases: fear... I know a young girl who committed suicide because one of her ankles was thicker than the other....

Later while developing the story of Otto, a uxoricide, we find that his mother was sensitive about her slimness and had a right leg an "infinitesimal degree shorter than her left leg." She resents her husband Oscar because "his eyes are so close together that sometimes he has an almost grotesque expression." Little Otto, the wife killer, inherits the eye condition and with his fate thus sealed the tragedy goes limping and squinting on with Greek inevitability.

The demonstration stories which Mr. Egri develops to make his various points seem generally to resemble an amorphous cross between *An American Tragedy* and Gregory Peck's role in *Spellbound*. One story in particular haunts me. Therein, a rather Reverend Davidson-like fellow named John is stalking a virginal Little Eva named, with creative genius, Harmony-Olivia:

She was asleep, naked above the waist. Her virginal breasts smiled up at him like white flowers. Suddenly he began to cry and ran out of the room.

I can't say that I blame him. At that point I, too, cried and ran out of the room.

I think it is only necessary to list a few other of Mr. Egri's rather startling insights into the human condition:

The August, 1958 issue of *Archives of Neurology and Psychiatry*... came out with really startling evidence that the most baffling form of mental disease, schizophrenia, is caused by a brain deficiency. Habitual Criminals are retarded people. Their activity outside the law proves that.

Retarded people are born, not made.

A moronic person is not necessarily abnormal in any sense of the word.

It would seem obvious that Mr. Egri's grasp of psychology and sociology is equaled only by his firm grip on language and style.

I am told by the blurb writer on the jacket flap that this book outlines the Egri Method of Creative Writing used by Mr. Egri in his private consultations with writers and producers in Hollywood. Perhaps that may explain a great deal about Hollywood, if not creative writing.

ERNEST KINOY

Writers Guild of America

Edwin Emery, Philip Ault and Warren Agee. INTRODUCTION TO MASS COMMUNICATIONS (2nd ed.). New York: Dodd, Mead & Co., 1965.

There was a time when academic departments were realistically labeled as "Journalism," "Radio-Television," "Motion Pictures," "Audio-Visual," and so forth. Each specialized in an area of mass communications and hired professors with academic and/or professional qualifications for the limited field.

About 1950 many of those departments began to feel restive in their callings and decided that "Communications" would constitute a rubric much more attractive to both prospective students and to colleagues across the campus. The new title smacked a little less of professionalism, enabled each to broaden his field of concern and encouraged introduction of theory courses which would impress the professors of Philosophy and the Social Sciences on the Curriculum Committees. At that time the shift to "Communications" was "in."

A *bona fide* move away from specialization would have made sense both practically and pedagogically if under the new umbrella there had been included a substantial representation of the several disciplines. Unfortunately, after a few gestures in the new direction, too many of them lapsed back into approximately what they had always been, but with titles much less indicative and realistic.

The titling of *Introduction to Mass Communications* (2nd ed.) by Emery, Ault and Agee provides an excellent example of misusing the "Communications" rubric - and this is apparent on the dust jacket, in the Foreword, and the chapters devoted to broadcasting.

Each of the authors is a distinguished professor and/or practitioner of print journalism and his impeccable credentials. Yet in the thumbnail

sketches on the jacket "radio-television" is mentioned only once when it is indicated that one of the authors was administratively responsible for the field during his tenure as Dean of a School of Journalism.

In the Foreword we are told that the book "is designed to give the reader a full description of the mass communications industries, to introduce him to all areas of professional work...." And the authors do an excellent job of meeting their commitment with reference to print journalism while giving passing and partially inaccurate attention to broadcasting.

The once-over-lightly treatment of broadcasting can be indicated by the following gross oversimplification: "Mutual's complaints to the FCC... brought about the sale by NBC in 1943 of its weaker Blue network to Edward J. Noble who renamed it the American Broadcasting Company in 1945." In reality, Mutual's complaints were but a few of many reaching the FCC in the mid-1930's when the concern about network denomination of radio was almost identical with the climate which has existed for television networks over the past ten years. The sale of NBC Blue was forced by one of eight Chain Regulations. The other seven were even more significant. The networks fought the Chain Regulations all the way to the Supreme Court and the decision represents a milestone in the history of regulation.

The authors also state that "The FCC did not require set-makers to include both UHF and VHF tuning until 1964...." Perhaps it does no real harm if students attribute the action to the Commission rather than to Congress, but it discourages use of the book as a text if students learn through research and class discussion that a thing happened in one way and then get a different story in a recommended book.

The inaccuracies might be excusable if the authors had truly concentrated on meeting their commitment to cover broadcast journalism. But the omissions are worse than the minor errors. For example, while broadcasters are proud of the coverage afforded the Kennedy Assassination, they feel strongly that they have made an even more significant contribution in their development of the documentary to the point where many presentations are fully as scholarly as articles in learned journals. But the television documentary is not even discussed.

And the broadcasters feel, with justification, that their struggle for the right to editorialize and their handling of editorial material are among the high points of their history. But this aspect is barely touched upon.

Nevertheless, this reviewer would strongly recommend this book to students of radio-television who have completed their introductory courses and need to be grounded in the basics of print journalism to round out their education. For what it purports to be, the book isn't very good; for what it is, it is truly excellent.

EUGENE S. FOSTER

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Irving and Harriett Deer. **LANGUAGES OF THE MASS MEDIA.** Boston: D. C. Heath and Company, 1965.

Irving and Harriett Deer offer a small but interesting collection of essays by such well-established commentators as Archibald MacLeish, David Reisman, and Cleanth Brooks. They group the essays under three headings which help explain the focus and the scope of the book. The first group is called "Our New Languages, the Mass Media," the second

is called "Uses and Abuses," and the third is called "Possibilities for the New Languages." There is an introduction by the editors, a selective bibliography, and, since the book is intended for use in college composition courses, there is a section called "Study Aids," which consists of a few questions on each of the essays.

One of the pleasures of book reviewing is that through hallowed tradition the reviewer is permitted modestly to demonstrate his own superior knowledge and critical ability by pointing out flaws in the work under consideration, but that pleasure is denied here. It would be easy, of course, to name other articles that one wishes had been included, but this book is one of the D. C. Heath "Series for College Composition," and the policy is to keep all the books in that series brief so that the teacher will also be able to employ other items in his class. Furthermore, most of the other essays one might want to suggest are included in the books listed in the bibliography, and one of the purposes of this kind of book is to inveigle the students into doing a bit of reading on their own.

The primary purpose of this kind of book, of course, is to encourage the student to write well by, first, providing him with good models, and, second, by arousing in him enough interest so that he wants to write well. Certainly each of the pieces in this book is a well-conceived and well-composed example of what the essay should be. It is difficult to predict what will arouse student interest, but it seems likely that this collection will do so.

In short, this is a good book of its kind. It should have success.

WILLIAM F. HEALD

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Carl J. Stratman, C.S.V. BIBLIOGRAPHY OF THE AMERICAN THEATRE. Chicago: Loyola University Press, 1965.

Stephen Joseph (ed.). ACTOR AND ARCHITECT. Toronto: University of Toronto Press, 1964.

Bibliography of the American Theatre, despite its reasonable and numerous exclusions, is precisely what it says it is: three thousand, eight hundred and fifty-six bibliographic citations relating to the history, affairs, and aspirations of the theatre in communities (New York City excepted) throughout the country. From a 1925 description of "The Lobero Theatre" in Santa Barbara, California, to an entry relative to the staging of *Men Are Like Streetcars* at Schaaf High School in Parma, Ohio, Author Stratman has scrupulously culled a bounty of references from a dozen major sources and two dozen libraries.

The upshot is twofold: the book is clearly a modest triumph of patient search and painstaking organization and, more significantly, the book infers—rightly and crucially—the national character of the American Theatre. A total and viable portrait of this character is still to be pieced together; but as a start, it is good to find someone with the diligence to assemble the necessary parts.

Occasionally, conferences of theatre specialists accomplish something. When such conferences deal with the parlous state of theatre architecture in relation to evolving forms of theatrical performance, and when, in addition, the conferees are notable British producers, designers, directors,

and architects, there is likely to be heat and a surprising amount of light. In 1962, at the University of Manchester, a "Theatre Week" was held, distinguished by the contributions of Sir Tyrone Guthrie, Richard Southern, Hugh Hunt, Sean Kenny, Christopher Stevens, John English and Stephen Joseph. Their observations, and the unique, vigorous bias they all seem to share, have been published under the catchall and slightly misleading title of *Actor and Architect*.

The six essays and two appendices generally conjure up and try to exorcise a malevolent genie: the proscenium arch stage. Mr. Joseph accuses this stage of "suffocating live entertainment"; Mr. Kenny declares for freedom from the "misery of this Italian stage" and urges that "free space; nothing" be substituted for the Baroque, "accidental" origins of the picture-frame stage. Sir Tyrone is a trifle less dogmatic—having, after all, got the theatre he wanted—and supports any fresh theatre form that will alleviate "the single most serious ailment of the live theatre... You just don't see enough of the actors."

Then there is Professor Southern, enjoying a polite detachment, who outlines, cogently, the human necessity for the two basic kinds of stage (open and closed) and who very sensibly stresses the need for knowledge of the origins and applications of the forms rather than noisy advocacy of one of them.

These are lively and worthy pieces, written by informed and dedicated men. And in view of the vigorous outcropping of new theatre facilities in England in the past ten years (Festival, Provincial and Civic) the transcendent message this little book offers should be heeded: let theatres be conceived and built with the same fluent adaptability and freshness of vision that we commonly demand of our writers and actors. If we don't, the three-walled stage boxes that now prevail will become the burying rather than the borning place of the theatre.

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