

THE MEDIA BARONS AND THE PUBLIC INTEREST

An FCC Commissioner's Warning

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BEFORE I came to the Federal Communications Commission my concerns about the ownership of broadcasting and publishing in America were about like those of any other generally educated person.

Most television programming from the three networks struck me as bland at best. I had taken courses dealing with propaganda and "thought control," bemoaned (while being entertained by) *Time* magazine's "slanted" reporting, understood that Hearst had something to do with the Spanish-American War, and was impressed with President Eisenhower's concern about "the military-industrial complex." The changing ownership of the old-line book publishers and the disappearance of some of our major newspapers made me vaguely uneasy. I was philosophically wedded to the fundamental importance of "the marketplace of ideas" in a free society, and a year as law clerk to my idol, Supreme Court Justice Hugo L. Black, had done nothing to weaken that commitment.

But I didn't take much time to be reflective about the current significance of such matters. It all seemed beyond my ability to influence in any meaningful way. Then, in July 1966, I became a member of the FCC. Here my interest in the marketplace of ideas could no longer remain a casual article of personal faith. The commitment was an implicit

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part of the oath I took on assuming the office of commissioner and, I quickly learned, an everyday responsibility.

Threats to the free exchange of information and opinion in this country can come from various sources, many of them outside the power of the FCC to affect. Publishers and reporters are not alike in their ability, education, tolerance of diversity, and sense of responsibility. The hidden or overt pressures of advertisers have long been with us.

But one aspect of the problem is clearly within the purview of the FCC—the impact of *ownership* upon the content of the mass media. It is also a part of the responsibility of the Antitrust Division of the Justice Department. It has been the subject of recent congressional hearings. There are a number of significant trends in the ownership of the media worth examining—local and regional monopolies, growing concentration of control of the most profitable and powerful television stations in the major markets, broadcasting-publishing combines, and so forth. But let's begin with a look at the significance of media ownership by "conglomerate corporations"—holding companies that own, in addition to publishing and broadcasting enterprises, other major industrial corporations.

During my first month at the FCC I studied the cases and attended the meetings, but purposefully did not participate in voting on any items. One of the agenda items at the July 20 commissioners' meeting proposed two draft letters addressed to the presidents of International Telephone and Telegraph and the American Broadcasting Company, ITT and ABC, Messers Harold Geneen and Leonard Golden-son. We were asking them to supply "a statement specifying in further detail the manner in which the financial resources of ITT will enable ABC to improve its program services and thereby better to serve the public interest." This friendly inquiry was my first introduction to the proposed ITT-ABC merger, and the Commission majority's attitudes about it. It was to be a case that would occupy much of my attention over the next few months.

There wasn't much discussion of the letters that morning,

but I read carefully the separate statements filed with the letters by my two responsible and experienced colleagues, Commissioners Robert T. Bartley and Kenneth A. Cox, men for whom I was already feeling a respect that was to grow over the following months.

Commissioner Bartley, a former broadcaster with the deep and earthy wisdom one would expect in a Texas-born relative of the late Speaker Sam Rayburn, wrote a long and thoughtful statement. He warned of "the probable far-reaching political, social and economic consequences for the public interest of the increasing control of broadcast facilities and broadcast service by large conglomerate corporations such as the applicants." Commissioner Cox, former lawyer, law professor, counsel to the Senate Commerce Committee, and chief of the FCC's Broadcast Bureau, characterized the proposed merger as "perhaps the most important in the agency's history." He said the issues were "so significant and far-reaching that we should proceed immediately to designate the matter for hearing."

Their concerns were well grounded in broadcasting's history and in the national debate preceding the 1934 Communications Act we were appointed to enforce. Precisely what Congress intended the FCC to do was not specified at the time or since. But no one has ever doubted Congress's great concern lest the ownership of broadcasting properties be permitted to fall into a few hands or to assume monopoly proportions.

The 1934 Act was preceded by the 1927 Radio Act and a series of industry Radio Conferences in the early 1920s. The conferences were called by then Secretary of Commerce Herbert C. Hoover. Hoover expressed concern lest control over broadcasting "come under the arbitrary power of any person or group of persons." During the congressional debates on the 1927 Act a leading congressman, noting that "publicity is the most powerful weapon that can be wielded in a republic," warned of the domination of broadcasting by "a single selfish group." Should that happen, he said, "then woe be to those who dare to differ with them." The require-

ment that licenses not be transferred without Commission approval was intended, according to a sponsoring senator, "to prevent the concentration of broadcast facilities by a few." Thirty years later, in 1956, Senate Commerce Committee Chairman Warren G. Magnuson was still warning the Commission that it "should be on guard against the intrusion of big business and absentee ownership."

These concerns of Congress and my colleagues were to take on fuller meaning as the ITT-ABC case unfolded, a case which eventually turned into an FCC *cause célèbre*. It also demonstrated the immensity of the responsibility vested in this relatively small and little-known Commission, by virtue of its power to grant or withhold membership in the broadcast industry. The case shook into me the realization, for the first time in my life, of the dreadful significance of the ownership structure of the mass media in America.

The ITT-ABC Merger Case

ITT is a sprawling international conglomerate of 433 separate boards of directors that derives about 60 percent of its income from its significant holdings in at least forty foreign countries. It is the ninth largest industrial corporation in the world in size of work force. In addition to its sale of electronic equipment to foreign governments, and operation of foreign countries' telephone systems, roughly half of its domestic income comes from U.S. Government defense and space contracts. But it is also in the business of consumer finance, life insurance, investment funds, small loan companies, car rentals (ITT Avis, Inc.), and book publishing.

This description of ITT's anatomy is taken (as is much of this ITT-ABC discussion) from opinions written by myself and Commissioners Bartley and Cox. We objected, vigorously, to the four-man majority's decision to approve the merger. So did some senators and congressmen, the Department of Justice, the Commission's own staff, the American Civil Liberties Union, a number of independent individuals and witnesses, and a belated but eventually insistent chorus of newspaper and magazine editorialists.

What did we find so ominous about the take-over of this radio and television network by a highly successful conglomerate organization?

In 1966, ABC owned 399 theaters in 34 states, 5 VHF television stations, 6 AM and 6 FM stations (all in the top 10 broadcasting markets), and, of course, one of the 3 major television networks and one of the 4 major radio networks in the world. Its 137 primary television network affiliates could reach 93 percent of the then 50 million television homes in the United States, and its radio network affiliates could reach 97 percent of the then 55 million homes with radio receivers. ABC had interests in, and affiliations with, stations in 25 other nations, known as the "Worldvision Group." These, together with ABC Films, made the parent corporation perhaps the world's largest distributor of filmed shows for theaters and television stations throughout this country and abroad. ABC was heavily involved in the record production and distribution business, and other subsidiaries published three farm papers.

The merger would have placed this accumulation of mass media, and one of the largest purveyors of news and opinion in America, under the control of one of the largest conglomerate corporations in the world. What's wrong with that? Potentially a number of things. For now, consider simply that the integrity of the news judgment of ABC might be affected by the economic interests of ITT—that ITT might simply view ABC's programming as a part of ITT's public relations, advertising, or political activities. This seemed to us a real threat in 1966, notwithstanding the character of the management of both companies, and their protestations that no possibility of abuse existed. By 1967 the potential threat had become reality.

ITT's Empire

ITT's continuing concern with political and economic developments in foreign countries as a result of its far-flung economic interests was fully documented in the hearing. It

showed, as one might expect, ITT's recurrent concern with internal affairs in most major countries of the world, including rate problems, tax problems, and problems with nationalization and reimbursement, to say nothing of ordinary commercial dealing. Its involvement with the United States government, in addition to defense contracts, included the Agency for International Development's insurance of 5.8 percent of all ITT assets.

Testimony was offered on the fascinating story of intrigue surrounding "Operation Deep Freeze" (an underwater cable). It turned out that ITT officials, using high-level government contracts in England and Canada, had brought off a bit of profitable international diplomacy unknown to the United States State Department or the FCC, possibly in violation of law. Further inquiry revealed that officers and directors of ITT's subsidiaries included two members of the British House of Lords, one in the French National Assembly, a former premier of Belgium, and several ministers of foreign governments and officials of government-owned companies.

As it seemed to Commissioners Bartley and Cox and to me when we dissented from the Commission's approval of the merger in June 1967, a company whose daily activities require it to manipulate governments at the highest levels would face unending temptation to manipulate ABC news. Any public official, or officer of a large corporation, is necessarily clearly concerned with the appearance of some news stories, the absence of others, and the tone and character of all affecting his personal interests. That's what public relations firms and press secretaries are all about. We concluded, "We simply cannot find that the public interests of the American citizenry is served by turning over a major network to an international enterprise whose fortunes are tied to its political relations with the foreign officials whose actions it will be called upon to interpret to the world."

Even the highest degree of subjective integrity on the part of chief ITT officials could not ensure integrity in ABC's operations. To do an honest and impartial job of

reporting the news is difficult enough for the most independent and conscientious of newsmen. Eric Sevareid has said of putting on a news program at a network relatively free of conglomerate control: "The ultimate sensation is that of being bitten to death by ducks." And ABC newsmen could not help knowing that ITT had sensitive business relations in foreign countries and at the highest levels of our government, and that reporting on any number of industries and economic developments would touch the interests of ITT.

The mere awareness of these interests would make it impossible for those news officials, no matter how conscientious, to report news and develop documentaries objectively, in the way they would do if ABC remained unaffiliated with ITT. They would advance within the news organization, or be fired, or become officers of ABC—perhaps even of ITT—or not, and no newsman would be able to erase from his mind the idea that his chances of doing so might be affected by his treatment of issues on which ITT is sensitive.

Only last year CBS was reportedly involved, almost Hearst-like, in a nightmarish planned armed invasion of Haiti. It was an exclusive, and would have made a very dramatic start-to-finish documentary but for the inglorious end; U.S. Customs wouldn't let them leave the United States. Imagine ITT, with its extensive interests in the Caribbean, engaged in such undertakings.

The likelihood of at least some compromising of ABC's integrity seemed inherent in the structure of the proposed new organization. What were the *probabilities* that these potentials for abuse would be exercised? We were soon to see the answer in the bizarre proceedings right before our eyes.

During the April 1967 hearings, while this very issue was being debated, the *Wall Street Journal* broke the story that ITT was going to extraordinary lengths to obtain favorable press coverage of this hearing. Eventually three reporters were summoned before the examiner to relate for the official

record the incidents that were described in the *Journal's* exposé.

An AP and a UPI reporter testified to several phone calls to their homes by ITT public relations men, variously asking them to change their stories and make inquiries for ITT with regard to stories by other reporters, and to use their influence as members of the press to obtain for ITT confidential information from the Department of Justice regarding its intentions. Even more serious were several encounters between ITT officials and a *New York Times* reporter.

On one of these occasions, ITT's senior vice president in charge of public relations went to the reporter's office. After criticizing her dispatches to the *Times* about the case in a tone which she described as "accusatory and certainly nasty," he asked whether she had been following the price of ABC and ITT stock. When she indicated that she had not, he asked if she didn't feel she had a "responsibility to the shareholders who might lose money as a result of what" she wrote. She replied, "My responsibility is to find out the truth and print it."

He then asked if she was aware that I (as an FCC Commissioner) was working with a prominent senator on legislation that would forbid any newspaper from owning any broadcast property. (The *New York Times* owns radio station WQXR in New York.) In point of fact, the senator and I had never met, let alone collaborated, as was subsequently made clear in public statements. But the ITT senior vice president, according to the *Times* reporter, felt that this false information was something she "ought to pass on to [her] . . . publisher before [she wrote] . . . anything further" about the case. The obvious implication of this remark, she felt, was that since the *Times* owns a radio station, it would want to consider its economic interests in deciding what to publish about broadcasting in its newspaper.

To me, this conduct, in which at least three ITT officials, including a senior vice president, were involved, was a deeply unsettling experience. It demonstrated an abrasive

self-righteousness in dealing with the press, insensitivity to its independence and integrity, a willingness to spread false stories in furtherance of self-interest, contempt for government officials as well as the press, and an assumption that even as prestigious a news medium as the *New York Times* would, as a matter of course, want to present the news so as to serve best its own economic interests (as well as the economic interests of other large business corporations).

But for the brazen activities of ITT in this very proceeding, it would never have occurred to the three of us who dissented to suggest that the most probable threat to the integrity of ABC news could come from *overt* actions or written policy statements. After the hearing it was obvious that that was clearly possible. But even then we believed that the most substantial threat came from a far more subtle, almost unconscious, process: that the questionable story idea, or news coverage, would never even be proposed—whether for reasons of fear, insecurity, cynicism, realism, or unconscious avoidance.

Concentration of Control over the Media

SINCE the ITT-ABC case left the Commission I have not ceased to be troubled by the issues it raised—in many ways more serious (and certainly more prevalent) for wholly domestic corporations. Eventually the merger was aborted by ITT on New Year's Day of this year, while the Justice Department's appeal of the Commission's action was pending before the U.S. Court of Appeals. However, I ponder what the consequences might have been if ITT's apparent cynicism toward journalistic integrity had actually been able to harness the enormous social and propagandist power of a national television network to the service of a politically sensitive corporate conglomerate. More important, I have become concerned about the extent to which such forces *already* play upon important media of mass communication. Perhaps such attitudes are masked by more finesse than that displayed in the ITT-ABC case. Perhaps they are even embedded in the kind of sincere good intentions which caused former Defense

Secretary (and former General Motors president) Charles Wilson to equate the interests of his company with those of the country.

I do not believe that most owners and managers of the mass media in the United States lack a sense of responsibility or lack tolerance for a diversity of views. I do not believe there is a small group of men who gather for breakfast every morning and decide what they will make the American people believe that day. Emotion often outruns the evidence of those who argue a conspiracy theory of propagandists' manipulation of the masses.

On the other hand, one reason evidence is so hard to come by is that the media tend to give less publicity to their own abuses than, say, to those of politicians. The media operate as a check upon other institutional power centers in our country. There is, however, no check upon the media. Just as it is a mistake to overstate the existence and potential for abuse, so in my judgment, is it a mistake to ignore the evidence that does exist.

In 1959, for example, it was reported that officials of the Trujillo regime in the Dominican Republic had paid \$750,000 to officers of the Mutual Radio Network to gain favorable propaganda disguised as news. (Ownership of the Mutual Radio Network changed hands once again last year without any review whatsoever by the FCC of old or new owners. The FCC does not regulate networks, only stations, and Mutual owns none.) RCA was once charged with using an NBC station to serve unfairly its broader corporate interests, including the coverage of RCA activities as "news," when others did not. There was speculation that after RCA acquired Random House, considerable pressure was put on the book publishing house's president, Bennett Cerf, to cease his Sunday evening service as a panelist on CBS's *What's My Line?* The Commission has occasionally found that individual stations have violated the "fairness doctrine" in advocating causes serving the station's economic self-interest, such as pay television.

Virtually every issue of the *Columbia Journalism Review*

reports instances of such abuses by the print media. It has described a railroad-owned newspaper that refused to report railroad wrecks, a newspaper in debt to the Teamsters Union which gave exceedingly favorable coverage to Jimmy Hoffa, the repeated influence of the Du Pont interests in the editorial functions of the Wilmington papers which it owned, and Anaconda Copper's use of its company-owned newspapers to support political candidates favorable to the company.

Edward P. Morgan left ABC last year to become the commentator on the Ford Foundation-funded Public Broadcasting Laboratory. He has always been straightforward, and he used his final news broadcast to be reflective about broadcasting itself. "Let's face it," he said. "We in this trade use this power more frequently to fix a traffic ticket or get a ticket to a ballgame than to keep the doors of an open society open and swinging. . . . The freest and most profitable press in the world, every major facet of it, not only ducks but pulls its punches to save a supermarket of commercialism or shield an ugly prejudice and is putting the life of the republic in jeopardy thereby."

Economic self-interest *does* influence the content of the media, and as the media tend to fall into the control of corporate conglomerates, the areas of information and opinion affecting those economic interests become dangerously wide-ranging. What *is* happening to the ownership of American media today? What dangers does it pose? Taking a look at the structure of the media in the United States, I am not put at ease by what I see.

Most American communities have far less "dissemination of information from diverse and antagonistic sources" (to quote a famous description by the Supreme Court of the basic aim of the First Amendment) than is available nationally. Of the 1500 cities with daily newspapers, 96 percent are served by single-owner monopolies. Outside the top 50 to 200 markets there is a substantial dropping off in the number of competing radio and television signals. The FCC prohibits a single owner from controlling two AM radio, or two televi-

sion, stations with overlapping signals. But it has only recently expressed any concern over common ownership of an AM radio station and an FM radio station and a television station in the same market. Indeed, such ownership is the rule rather than the exception and probably exists in your community. Most stations are today acquired by purchase. And the FCC has, in part because of congressional pressure, rarely disapproved a purchase of a station by a newspaper.

There are few statewide or regional "monopolies"—although some situations come close. But in a majority of our states—the least populous—there are few enough newspapers and television stations to begin with, and they are usually under the control of a small group. And most politicians find today, as Congress warned in 1926, "woe be to those who dare to differ with them." Most of our politics is still state and local in scope. And increasingly, in many states and local communities, congressmen and state and local officials are compelled to regard that handful of media owners (many of whom are out-of-state), rather than the electorate itself, as their effective constituency. Moreover, many mass media owners have a significant impact in more than one state. One case that came before the FCC, for example, involved an owner with AM-FM-TV combinations in Las Vegas and Reno, Nevada, along with four newspapers in that state, seven newspapers in Oklahoma, and two stations and two newspapers in Arkansas. Another involved ownership of ten stations in North Carolina and adjoining southern Virginia. You may never have heard of these owners, but I imagine the elected officials of their states return their phone calls promptly.

National Power

THE principal national sources of news are the wire services, AP and UPI, and the broadcast networks. Each of the wire services serves on the order of 1200 newspapers and 3000 radio and television stations. Most local newspapers and radio stations offer little more than wire service copy as far as national and international news is concerned. To that extent one can take little heart for "diversity" from the oft-

proffered statistics on proliferating radio stations (now over 6000) and the remaining daily newspapers (1700). The networks, though themselves heavily reliant upon the wire services to find out what's worth filming, are another potent force.

The weekly newsmagazine field is dominated by *Time*, *Newsweek*, and *U.S. News*. (The first two also control substantial broadcast, newspaper, and book or publishing outlets. *Time* is also in movies [MGM] and is hungry for three or four newspapers.) Thus, even though there are thousands of general and specialized periodicals and program sources with significant national or regional impact, and certainly no "monopoly" exists, it is still possible for a single individual or corporation to have vast national influence.

What we sometimes fail to realize, moreover, is the political significance of the fact that we have become a nation of cities. Nearly half of the American people live in the six largest states: California, New York, Illinois, Pennsylvania, Texas and Ohio. Those states, in turn, are substantially influenced (if not politically dominated) by their major population-industrial-financial-media centers, such as Los Angeles, New York City, Chicago, and Philadelphia—the nation's four largest metropolitan areas. Thus to have a major newspaper or television station influence in *one* of these cities is to have significant national power. And the number of interests with influence in *more* than one of these markets is startling.

Most of the top fifty television markets (which serve approximately 75 percent of the nation's television homes) have three competing commercial VHF television stations. There are about 150 such VHF commercial stations in these markets. Less than 10 percent are today owned by entities that do not own other media interests. In 30 of the 50 markets at least one of the stations is owned by a major newspaper published in that market—a total of one-third of these 150 stations. (In Dallas-Fort Worth *each* of the network affiliates is owned by a local newspaper, and the fourth, an unaffiliated station, is owned by Oklahoma newspapers.) Moreover, half of the newspaper-owned stations are controlled by seven

groups—groups that also publish magazines as popular and diverse as *Time*, *Newsweek*, *Look*, *Parade*, *Harper's*, *TV Guide*, *Family Circle*, *Vogue*, *Good Housekeeping*, and *Popular Mechanics*. Twelve parties own more than one third of all the major-market stations.

In addition to the vast national impact of their affiliates the three television networks each own VHF stations in all of the top three markets—New York, Los Angeles, and Chicago—and each has two more in other cities in the top ten. RKO and Metromedia each own stations in both New York City and Los Angeles. Metromedia also owns stations in Washington, D.C., and California's other major city, San Francisco—as well as Philadelphia, Baltimore, Cleveland, Kansas City, and Oakland. RKO also owns stations in Boston, San Francisco, Washington, Memphis, Hartford, and Windsor, Ontario—as well as the regional Yankee Network. Westinghouse owns stations in New York, Chicago, Philadelphia and Pittsburgh, Pennsylvania, Boston, San Francisco, Baltimore, and Fort Wayne. These are but a few examples of today's media barons.

There are many implications of their power. Groups of stations are able to bargain with networks, advertisers, and talent in ways that put lesser stations at substantial economic disadvantage. Group ownership means, by definition, that few stations in major markets will be locally owned. (The FCC recently approved the transfer of the last available station in San Francisco to the absentee ownership of Metromedia. The only commercial station locally owned today is controlled by the *San Francisco Chronicle*.) But the basic point is simply that the national political power involved in ownership of a group of major VHF television stations in, say, New York, Los Angeles, Philadelphia, and Washington, D.C., is greater than a democracy should unthinkingly repose in one man or corporation.

Conglomerate Corporations

FOR A VARIETY of reasons, an increasing number of communications media are turning up on the organization

charts of conglomerate companies. And the incredible profits generated by broadcast stations in the major markets (television broadcasters *average* a 90 to 100 percent return on tangible investment annually) have given FCC licensees, particularly owners of multiple television stations like the networks, Metromedia, Storer Broadcasting, and others, the extra capital with which to buy the New York Yankees (CBS), Random House (RCA), or Northeast Airlines (Storer). Established or up-and-coming conglomerates regard communications acquisitions as prestigious, profitable, and often a useful or even a necessary complement to present operations and projected exploitation of technological change.

The national problem of conglomerate ownership of communications media was well illustrated by the ITT-ABC case. But the conglomerate problem need not involve something as large as ITT-ABC or RCA-NBC. Among the national group owners of television stations are General Tire (RKO), Avco, Westinghouse, Rust Craft, Chris Craft, Kaiser, and Kerr-McGee. The problem of *local* conglomerates was forcefully posed for the FCC in another case earlier this year. Howard Hughes, through Hughes Tool Company, wanted to acquire one of Las Vegas' three major television stations. He had recently acquired \$125 million worth of Las Vegas real estate, including hotels, gambling casinos, and an airport. These investments supplemented 27,000 acres previously acquired. The Commission majority blithely approved the television acquisition without a hearing, overlooking FCC precedents which suggested that a closer examination was in order. In each of these instances the potential threat is similar to that in the ITT-ABC case—that personal economic interests may dominate or bias otherwise independent media.

Concentration and Technological Change

THE PROBLEM posed by conglomerate acquisitions of communications outlets is given a special but very important twist by the pendency of sweeping technological changes which have already begun to unsettle the structure of the industry.

President Johnson has appointed a distinguished task force to evaluate our national communications policy and chart a course for realization of these technological promises in a manner consistent with the public interest. But private interests have already begun to implement their own plans on how to deal with the revolution in communications technology.

General Sarnoff of RCA has hailed the appearance of "the knowledge industry"—corporate casserole dishes blending radio and television stations, networks, and programming; films, movie houses, and record companies; newspaper, magazine, and book publishing; advertising agencies; sports or other entertainment companies; and teaching machines and other profitable appurtenances of the \$50 billion "education biz."

And everybody's in "cable television"—networks, book publishers, newspapers. Cable television is a system for building the best TV antenna in town and then wiring it into everybody's television set—for a fee. It improves signal quality and number of channels, and has proved popular. But the new technology is such that it has broadcasters and newspaper publishers worried. For the same cable that can bring off-the-air television into the home can also bring programming from the cable operator's studio, or an "electronic newspaper" printed in the home by a facsimile process. Books can be delivered (between libraries, or to the home) over "television" by using the station's signal during an invisible pause. So everybody's hedging their bets—including the telephone company. Indeed, about all the vested interests can agree upon is that none of them wants us to have direct, satellite-to-home radio and television. But at this point it is not at all clear who will have his hand on the switch that controls what comes to the American people over their "telephone wire" a few years hence.

What Is to Be Done?

IT WOULD BE FOOLISH to expect any extensive restructuring of the media in the United States, even if it were con-

sidered desirable. Technological change can bring change in structure, but it is as likely to be change to even greater concentration as to wider diversity. In the short run at least, economics seems to render essentially intractable such problems as local monopolies in daily newspapers, or the small number of outlets for national news through wire services, newsmagazines, and the television networks. Indeed, to a certain extent the very high technical quality of the performance rendered by these news-gathering organizations is aided by their concentration of resources into large units and the financial cushions of oligopoly profits.

Nevertheless, it seems clear to me that the risks of concentration are grave.

Chairman Philip Hart of the Senate Antitrust and Monopoly Subcommittee remarked by way of introduction to his antitrust subcommittee's recent hearings about the newspaper industry, "The products of newspapers, opinion and information, are essential to the kind of society that we undertake to make successful here." If we are serious about the kind of society we have undertaken, it is clear to me that we simply must not tolerate concentration of media ownership—except where concentration creates actual countervailing social benefits. These benefits cannot be merely speculative. They must be identifiable, demonstrable, and genuinely weighty enough to offset the dangers inherent in concentration.

This guideline is a simple prescription. The problem is to design and build machinery to fill it. And to keep the machinery from rusting and rotting. And to replace it when it becomes obsolete.

America does have available governmental machinery which is capable of scotching undue accumulations of power over the mass media, at least in theory and to some extent. The Department of Justice has authority under the antitrust laws to break up combinations which "restrain trade" or which "tend to lessen competition." These laws apply to the media as they do to any other industry.

But the antitrust laws simply do not get to where the problems are. They grant authority to block concentration

only when it threatens *economic* competition in a particular economic *market*. Generally, in the case of the media, the relevant market is the market for advertising. Unfortunately, relatively vigorous advertising competition can be maintained in situations where competition in the marketplace of ideas is severely threatened. In such cases, the Justice Department has little inclination to act.

Look at the Chicago *Tribune's* recent purchase of that city's most popular and most successful FM radio station. The *Tribune* already controlled two Chicago newspapers, one (clear channel) AM radio station, and the city's only independent VHF television station. It controls numerous broadcast, CATV, and newspaper interests outside Chicago (in terms of circulation, the nation's largest newspaper chain). But, after an investigation, the Antitrust Division let this combination go through. The new FM may be a needless addition to the *Tribune's* already impressive battery of influential media; it could well produce an unsound level of concentration in the production and supply of what Chicagoans see, read, and hear about affairs in their community, in the nation, and in the world. But it did not threaten the level of competition for advertising money in any identifiable advertising market. So, it was felt, the acquisition was not the business of the Justice Department.

Only the FCC is directly empowered to keep media ownership patterns compatible with a democracy's need for diversified sources of opinion and information.

In earlier times, the Commission took this responsibility very seriously. In 1941, the FCC ordered NBC to divest itself of one of its two radio networks (which then became ABC), barring any single network from affiliating with more than one outlet in a given city. (The Commission has recently waived this prohibition for, ironically, ABC's four new national radio networks.) In 1941 the Commission also established its power to set absolute limits on the total number of broadcast licenses any individual may hold, and to limit the number of stations any individual can operate in a particular service area.

The American people are indebted to the much maligned FCC for establishing these rules. Imagine, for example, what the structure of political power in this country might look like if two or three companies owned substantially all of the broadcast media in our major cities.

But since the New Deal generation left the command posts of the FCC, this agency has lost much of its zeal for combating concentration. Atrophy has reached so advanced a state that the public has of late witnessed the bizarre spectacle of the Justice Department, with its relatively narrow mandate, intervening in FCC proceedings, such as ITT-ABC, to create court cases with names like *The United States vs. The FCC*.

This history is an unhappy one on the whole. It forces one to question whether government can ever realistically be expected to sustain a vigilant posture over an industry which controls the very access of government officials themselves to the electorate.

I fear that we have already reached the point in this country where the media, our greatest check on other accumulations of power, may themselves be beyond the reach of any other institution: the Congress, the President, or the Federal Communications Commission, not to mention governors, mayors, state legislators, and city councilmen. Congressional hearings are begun and then quietly dropped. Whenever the FCC stirs fitfully as if in wakefulness, the broadcasting industry scurries up the Hill for a congressional bludgeon. And the fact that roughly 60 percent of all campaign expenses go to radio and television time gives but a glimmer of the power of broadcasting in the lives of senators and congressmen.

HOWEVER, the picture at this moment has its more hopeful aspect. There does seem to be an exceptional flurry of official concern. Even the FCC has its proposed rulemaking outstanding. The Department of Justice, having broken into the communications field via its dramatic intervention before the FCC in the ITT-ABC merger case, has also been pressing

a campaign to force the dissolution of joint operating agreements between separately owned newspapers in individual cities, and opposed a recent application for broadcasting properties by newspaper interests in Beaumont, Texas. It has been scrutinizing cross-media combinations linking broadcasting, newspaper, and cable television outlets.

On Capitol Hill, Senator Phil Hart's Antitrust and Monopoly Subcommittee and Chairman Harley Staggers' House Interstate and Foreign Commerce Committee have both summoned the Federal Communications Commission to appear before them in recent months, to acquaint the Commission with the committees' concern about FCC-approved increases in broadcast holdings by single individuals and companies, and about cross-ownership of newspapers, CATV systems, and broadcast stations. Representatives John Dingell, John Moss, and Richard Ottinger have introduced legislation which would proscribe network ownership of any nonbroadcast interests. And as I previously mentioned, President Johnson has appointed a task force to undertake a comprehensive review of national communications policy.

Twenty years ago Robert M. Hutchins, then chancellor of the University of Chicago, was named chairman of the "Commission on Freedom of the Press." It produced a thoughtful report, full of recommendations largely applicable today—including "the establishment of a new and independent [non-governmental] agency to appraise and report annually upon the performance of the press," and urged "that the members of the press engage in vigorous mutual criticism." Its proposals are once again being dusted off and reread.

What is needed now, more than anything else, is to keep this flurry of interest alive, and to channel it toward constructive reforms. What this means, in practical fact, is that concern for media concentration must find an institutional home.

The Department of Justice has already illustrated the value of participation by an external institution in FCC decisionmaking. The developing concept of a special consumers' representative offers a potentially broader base for similar action.

BUT the proper place to lodge continuing responsibility for promoting diversity in the mass media is neither the FCC nor the Justice Department nor a congressional committee. The initiative must come from private sources. Plucky Nader-like crusaders such as John Banzhaf (who single-handedly induced the FCC to apply the "fairness" doctrine to cigarette commercials) have shown how responsive government can be to the skillful and vigorous efforts of even a lone individual. But there are more adequately staffed and funded private organizations which could play a more effective role in policy formation than a single individual. Even the FCC, where the public interest gets entirely too little representation from private sources, has felt the impact of the United Church of Christ, with its interest in the influence of broadcasting on race relations and in the programming responsibility of licensees, and of the American Civil Liberties Union, which submitted a brief in the ITT-ABC case.

Ideally, however, resources for a sustained attack on concentration might be centered in a single institution, equipped to look after this cause with the kind of determination and intelligence that the Ford Foundation and the Carnegie Corporation, for example, have brought to bear in behalf of the case for public broadcasting and domestic satellites. The law schools and their law reviews, as an institution, have performed well in this way for the courts, but have virtually abdicated responsibility for the agencies.

Such an organization could devote itself to research as well as representation. For at present any public body like the FCC, which has to make determinations about acceptable levels of media concentration, has to do so largely on the basis of a hunch. In addition, private interest in problems of concentration would encourage the Justice Department to sustain its present vigilance in this area. It could stimulate renewed vigilance on the part of the FCC, through participation in Commission proceedings. And it could consider whether new legislation might be appropriate to reach the

problem of newspaper-magazine-book publishing combinations.

If changes are to be made (or now dormant standards are to be enforced) the most pressing political question is whether to apply the standards prospectively only, or to require divestiture. It is highly unlikely, to say the least, that legislation requiring massive divestiture of multiple station ownership, or newspaper ownership of stations, would ever pass through Congress. Given the number of station sales every year, however, even prospective standards could have some impact over ten years or so.

In general, I would urge the minimal standard that no accumulation of media should be permitted without a specific and convincing showing of a continuing countervailing social benefit. For no one has a higher calling in an increasingly complex free society bent on self-government than he who informs and moves the people. Personal prejudice, ignorance, social pressure, and advertiser pressure are in large measure inevitable. But a nation that has, in Learned Hand's phrase, "staked its all" upon the rational dialogue of an informed electorate simply cannot take any unnecessary risk of polluting the stream of information and opinion that sustains it. At the very least, the burden of proving the social utility of doing otherwise should be upon him who seeks the power and profit which will result.

Whatever may be the outcome, the wave of renewed interest in the impact of ownership on the role of the media in our society is healthy. All will gain from intelligent inquiry by Congress, the Executive, the regulatory commissions—and especially the academic community, the American people generally, and the media themselves. For, as the Supreme Court has noted, nothing is more important in a free society than "the widest possible dissemination of information from diverse and antagonistic sources." And if we are unwilling to discuss *this* issue fully today we may find ourselves discussing none that matter very much tomorrow.