

CONFIDENTIAL

Editorial Integrity in Public Broadcasting

Proceedings of the Wingspread Conference

November 28-30, 1984

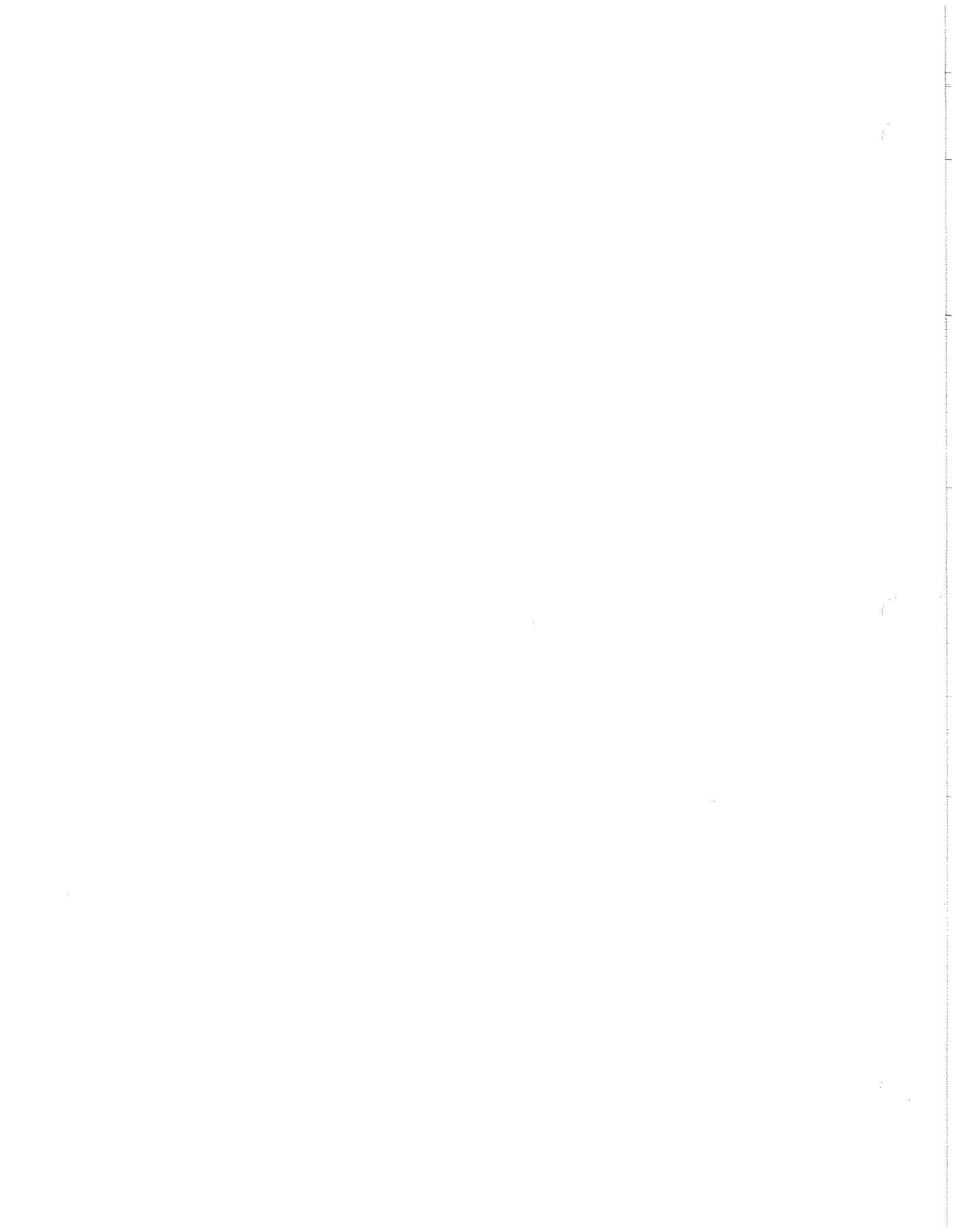
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EXECUTIVE SUMMARY

Recent court decisions reveal that public broadcasting licensees which are also state government entities have unclear First Amendment rights. Their legal position, the diversity of licensee types and governing structures, and the diversity of funding sources including the government, all combine to make these licensees particularly vulnerable to external pressures and intrusions into their independent exercise of editorial discretion.

These licensees convened at the Wingspread Conference on Editorial Integrity in Public Broadcasting to explore the implications of the legal decisions, and to discuss public policies and practices which, while honoring the suggestions and reactions of all members of the general public, would help to guarantee public broadcasting's editorial integrity in the future.

Participants discussed past and potential problems of intrusion in or undue influence on editorial decision-making with the aid of attorneys, journalists, and communications authorities. They examined various methods of program decision-making and the effects of licensee structures on these decisions, arriving at a consensus on several points:

--Editorial integrity in public broadcasting programming is the responsible application by professional practitioners of a free and independent decision-making process which is ultimately accountable to the needs and interests of a well-informed citizenry.

--The issue of editorial integrity in public broadcasting is one of public policy.

--The issue is significant for all public broadcasting entities,

national as well as local stations.

--Boards and commissions are the key to insulating public broadcasting's editorial decision-making process from undue influence.

--Undue influence is any influence that leaves the person normally and regularly responsible for programming decisions no alternative.

--The functions of the board/commission and the professional management of a public broadcasting organization and the relationships between them should be clearly defined and understood by both parties.

The participants also agreed that a code or statement of principles to strengthen public broadcasting's editorial integrity should be written. They recommended that the code be applicable industry-wide if at all possible, and they called for a clear statement of the division of responsibilities between public broadcasting licensee boards and station chief executive officers.

Conferees agreed that the code should be based on the following principles:

1. Public broadcasting responsibilities are grounded in constitutional and statutory law.
2. Because public broadcasting is a public service, it should be responsive to diverse public views and opinions.
3. Public broadcasting can be justified only by offering a consistent range of good program choices.
4. Public broadcasting must assure credible public service programming by:
 - a. Creating programming which meets the needs and stimulates the interest of the audience;
 - b. Ensuring that programming will be free of undue external

influences from all sources;

c. Basing programs on their value in the marketplace of ideas, not on financial considerations or pressure.

5. Public broadcasting must conduct its financial affairs in order to assure its supporters and its audiences that their time and resources are used efficiently and effectively.

Conference participants elected an eight-member group, composed half of lay members of governing boards and half of professional executive station directors, to carry forward the participants' consensus into a draft code or set of principles to guide public broadcasting licensees and their boards. The group will seek comment and endorsement of all interested bodies and citizens concerned with safeguarding public broadcasting's editorial integrity.

INTRODUCTION

Conference Background

". . . the goal we seek is an instrument for the free communication of ideas in a free society."¹

"An effective national educational television system must consist in its very essence of vigorous and independent local stations."²

". . . as state instrumentalities, these public licensees are without the protection of the First Amendment."³

A funny thing happened between the Report of the Carnegie Commission on Educational Television, which led to the Public Broadcasting Act of 1967, and the broadcast of "Death of a Princess" by the Public Broadcasting Service in May 1981. Envisioned by the Carnegie Commission to be "of fundamental importance in the preservation of our democratic ideals," the public broadcasting system in the United States discovered through a court dictum that the freedom of its editorial discretion might not enjoy the protection of those ideals. Legal study by Nicholas P. Miller, Esq., shows public broadcasting's First Amendment rights to be "unclear," analysis "a tangled web," and the law to be "murky." (See Appendix A.) Further analysis demonstrates that because of the diversity of licensee types and their governing structures, and the diversity of funding sources, including the government, the independent exercise of editorial discretion by public broadcasting professionals is extremely vulnerable to external pressures from individuals and entities who perceive a vested interest.

An examination of the issue points to the governing boards and/or commissions of public broadcasting organizations as a significant factor, liable as part of the problem and capable of being a major part of the solution by acting as a buffer between the operating professional and any

undue external pressures. The officials on these boards and commissions must be aware of the importance of their functional independence and of the dangers to a democratic society of interference with public broadcasting's editorial discretion.

The Wingspread Conference on Editorial Integrity in Public Broadcasting was convened, so that state administrators and representatives of the licensee boards and commissions could explore ways to strengthen their organizations' immune systems in order to provide a vital element in the immune system of the American body politic.

1. James R. Killian, Jr., et al. Public Television, A Program for Action. The Report of the Carnegie Commission on Educational Television. New York: 1967, p. 8.

2. Ibid., p. 4.

3. Muir v. Alabama Educational Television Commission, 688 F. 2d at 1041.

The Purpose of the Wingspread Conference

Virginia Fox
President, Southern Educational Communications Association

We're here at the Wingspread Conference to find the cause, diagnosis, treatment, and we hope the cure for the Licensee Acquired Immune Deficiency Syndrome, or LAIDS.

To do this, we've brought together licensees particularly vulnerable legally to LAIDS and experts to discuss the problem. The speakers and discussion leaders represent at least three of the following:

--They've been CEO, or chief program officer, or trustee of a local or national public broadcasting entity

--and/or have dealt as public officials with public broadcasting problems at the highest levels of government or academia

--and/or have special knowledge or are recognized experts in constitutional law

The speakers will provide background on the issue from several perspectives. Then the licensees and their discussions leaders will determine how important editorial integrity is to public broadcasting. Having done that, they will decide what they as licensees want to do about it: a lot or a little.

A Modern Fable

Edward J. Pfister, President
Corporation for Public Broadcasting

This may well be the most important public broadcasting meeting in some time. You're breaking new ground by dealing with constitutional law, especially the First Amendment; credibility in broadcasting; editorial integrity; accountability; and the resulting challenge to both trustees and professionals throughout the enterprise of public broadcasting. That's quite an order--it's never been done before.

I trust I won't embarrass you or the significance of your work if I choose to simply tell you a story. Because it is ageless, I ask your indulgence.

There once was an old woodcarver named Public, an alert and vibrant man. But he lacked companionship in his life, so he decided to carve himself a puppet, a little wooden boy, called Public Broadcasting.

When he was starting on the puppet's face, two very strange things happened. The puppet's nose seemed lifelike. And a cricket jumped out of the log the old man was using, and danced merrily into a corner to watch.

The finished puppet was a set of parts awkwardly joined together by wooden pegs. From the first, Public Broadcasting occasionally misbehaved, primarily because he never thought through the consequences of his actions. At first, whenever he erred, his nose would grow and embarrass him. But Public always pulled him out of trouble, aided by the cricket who yelled a lot, and who would announce that his name was Conscience.

As the puppet grew, his wooden parts became stronger, as if Public's support strengthened him. And as he grew he became more certain. His boyhood and adolescence were exciting, but he always noticed the difference

between himself and others. He sensed that none of the other boys had a cricket, constantly admonishing them about right and wrong.

He talked to Public about these differences regularly, and Public would explain that Public Broadcasting was a puppet, but the other boys were human beings. This troubled the puppet--he was educated and virtuous, and he especially believed he didn't need the cricket.

One day he said, "Cricket, I want your advice. I'm 18 now, people accept me, I work hard, I love Public in a way that lets me improve his life. Some people say life without me would be intolerable. But I'm still incomplete. When will I become whole? And when will you go away?"

"You will become whole and I will go away when I again become part of you," the cricket said. "I understand that you're tired of being a puppet. You want to be free. Public and I always taught you that your happiness and fulfillment depended not on what others say or do, but on your own ability to make decisions and stick by them. We've asked you not to conform to the thinking of others, not to let yourself rationalize your actions to fit the values of others. You've matured, but not enough, I'm afraid."

"Cricket," Public Broadcasting said, "I disagree. I'm very much my own puppet."

"No," Cricket said. "In spite of your accomplishments, your reputation, your understanding of Public's needs, you're still timid. You have the experience and the learning to make wise and independent choices, yet you don't. Until you do, you'll be wooden, and I'll still be around."

The puppet looked sad.

Cricket said, "Knowing good and choosing it are not acting in the right way."

"But I've always heeded the counsel of wise people like scholars, lawyers, policy-makers, and Public himself. And I've made my choices accordingly," Public Broadcasting said.

"Yes," said Cricket. "But your timidity increases as the effects of your choices become more troubling. Freedom is tough. Others' advice is for you to use in making wiser decisions. Eventually I hope you understand that you must make the decisions no matter what the consequences."

"You're just telling me I must assume responsibility for myself, that to do less is to disappoint Public," the puppet said. "You're telling me that although I'm ready to say 'no' to kings and princes, I don't seem to be able to accept the consequences. Now I know what I should be doing."

Though he didn't know it, at that moment the puppet became human.

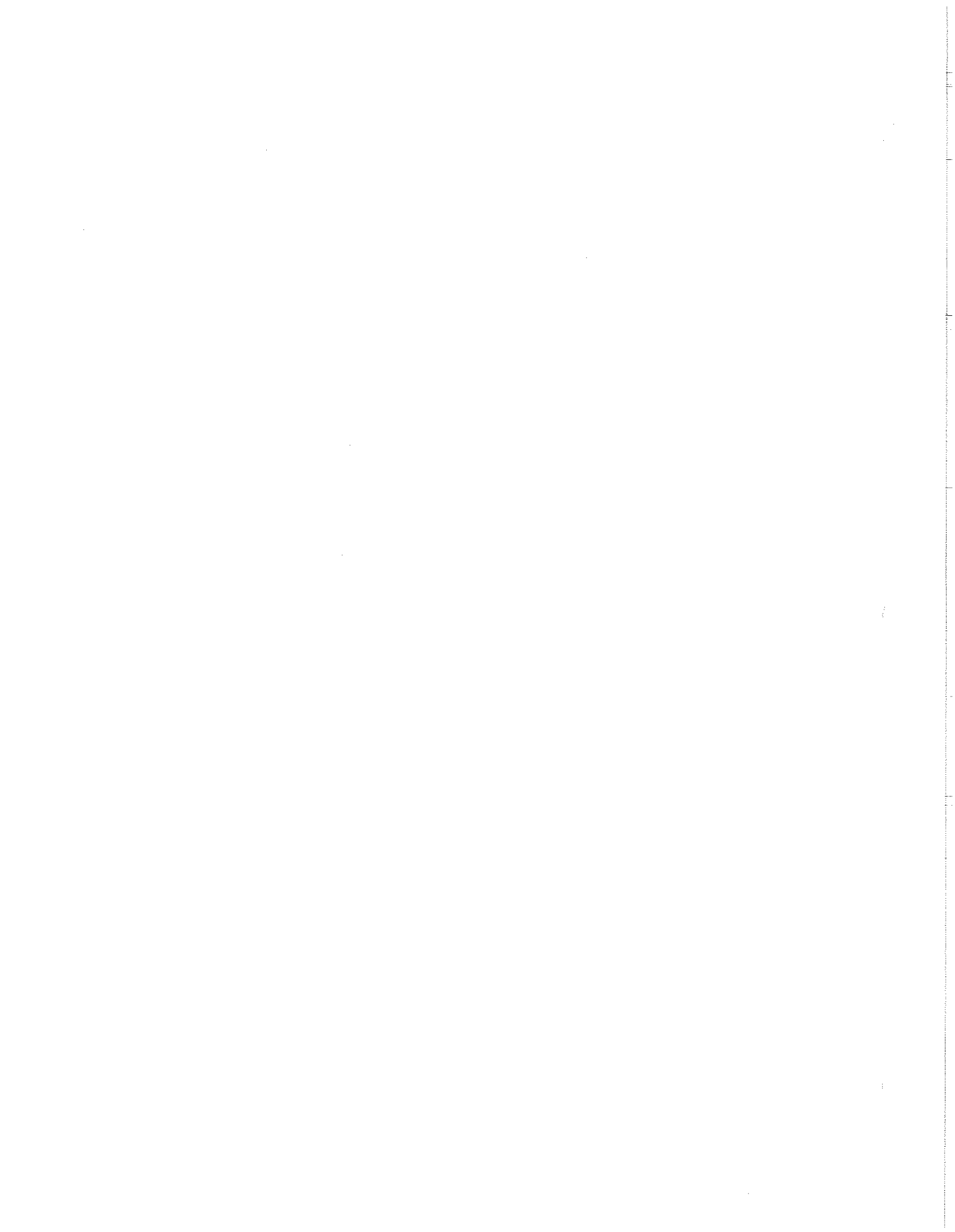
"Now I even understand you and your role," he said.

Cricket shook his head. "Men have always misunderstood me," he said. "I advise you never to let the confusion about me trouble you—just do what you are fully ready to do. The freedom you want will follow. Then others' thoughts will be most meaningful and most helpful."

The puppet was weeping. He had just discovered his humanity. When he looked up, the cricket was gone. Public came in and was overjoyed to see a young man, but distressed to see him weeping.

"The cricket is gone," the young man said, "because I have just made the most difficult decision I shall ever have to make."

With his arm around the young man, the old woodcarver whispered, "Perhaps."



Opening Address

Robert M. O'Neil
President, University of Wisconsin
Member, Board of Trustees, The Johnson Foundation

In the more than 20 years I have been teaching free speech and press law, I have found no cases more complex or challenging from a First Amendment point of view than those which involve public broadcasting.

My favorite case comes from New Jersey and it is one of the few state court judgments in this area. It illustrates the whole range of First Amendment issues for public broadcasting.

In the late 1960s, New Jersey created a Public Broadcasting Authority responsible for the state's four federally licensed public stations. Supplemental legislation in 1980 and 1981, dealing with political campaigns, required the stations to promote full discussion by candidates for governor in accordance with federal law and without charge.

During the last gubernatorial primary, the field included 21 candidates. Early in the campaign, some coverage with given the views of each of the 21. During the final weeks, however, the Authority focused upon ten leading candidates in a series of five focused-issue forums. Three of the excluded candidates brought suit against the Authority, claiming violations of federal and state law and of an evanescent First Amendment interest.

From a lawyer's point of view, there were four possible avenues of disposition. First, the New Jersey court might simply have dismissed the suit on the ground that federal law completely preempted the subject of candidate access, which is extensively regulated by Congress.

Second, a state judge might well have upheld the excluded candidates' claims. In fact, an intermediate court did order the Authority not only to include the omitted candidates in any future forums but also to broadcast

statements by each of them on the issues discussed in the programs already aired at approximately the same hour as the original segments were shown.

As a matter of policy, such a decree undercut the judgement of the persons charged by state law to make difficult decisions regarding coverage of public issues, and in the process effectively made the public stations into a public forum. This is something that courts in analogous contexts outside broadcasting have resisted.

As a third possibility, the New Jersey court might simply have dismissed the suit on the ground that the state law was itself in violation of the Constitution. Such a judgment might be based on federal preemption for reasons like those under the first option. Or the New Jersey court might have found even the broader obligation violative of public broadcasters' First Amendment rights.

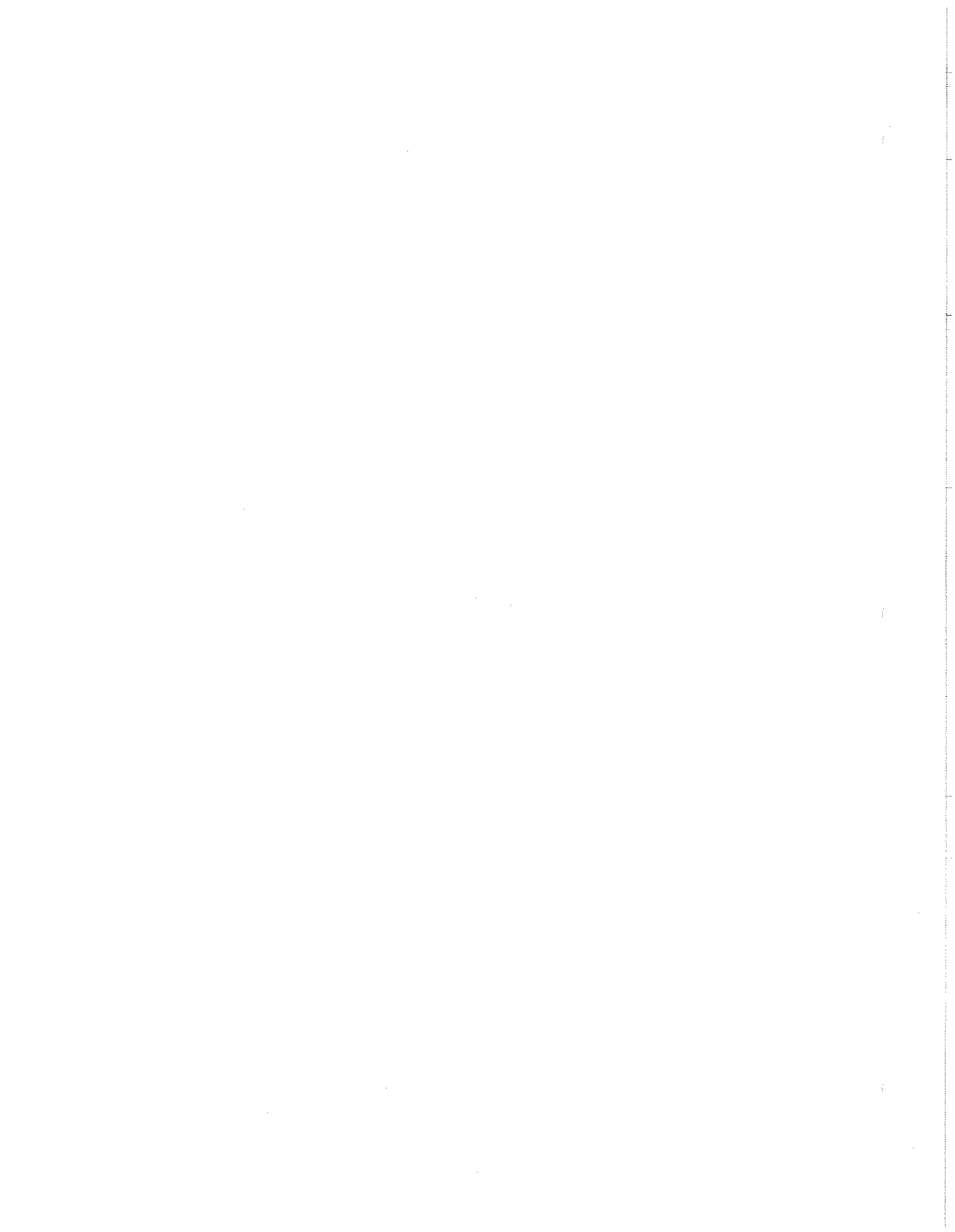
As the fourth option, the New Jersey state supreme court could, and in fact did, dismiss the individual complaint while upholding the framework of state law. It flatly rejected the appellate court's view of candidate access; nothing in the amended statute created either directly or by reference to federal law any kind of "equal time" obligation.

The remaining issue was the validity of the state statute. In the court's view, the status of public broadcasting as an instrumentality of the state was "dispositive of the preemption issue." New Jersey's legislation was "an exercise of discretion on the part of the state in its capacity as a federal licensee under the Federal Communications Act." Such actions were "perfectly appropriate within the federal scheme of regulation" and consistent with Congressional policy.

The other constitutional issue was, of course, the free speech or free press claim under the First Amendment. Again, the dispositive factor was

state ownership and support. While the First Amendment "limits governmental restraints on private participation in the marketplace of ideas . . . it does not prevent government itself from participating . . . and when the state exercises its freedom to speak it may express its own viewpoint . . . or it may neutrally relay the message of others." The court then dismissed analogies to commercial broadcasting and print media cases. "Here," said the court, "no private speech is being limited." Here the Authority's First Amendment claim failed; one might say the Authority thus won the battle and left the war for another day.

Both the result and the reasoning may tell us more about the judicial view of public broadcasting than any other case to date. The court recognized the critical role of editorial judgment and licensee discretion in the sensitive coverage of controversial public issues. The deference shown to the Authority's pruning of the primary field was critical and--like the ultimate dismissal of both suits brought to compel the showing of "Death of a Princess"--suggests that the narrow decision may be quite as important as general pronouncements about the legal status of public broadcast licensees.



THE QUESTIONS: LEGALITY, ACCOUNTABILITY, CREDIBILITY

The Legal Question

Nicholas P. Miller, Esquire
Partner; Preston, Thorgrimson, Ellis and Holman

I view lawyers and the law as a tool, a mechanism for avoiding and resolving disputes which evolve from real situations, when individuals find themselves in conflict in society. That means the law cannot and should not tell you the result that you want. Your job is to define your own self-interest, and your lawyer's job is to protect that interest and to develop the arguments to allow it to prevail.

The "Death of a Princess" case revealed that the problem was not what the law was, but what public broadcasting wanted. The legal inquiry quickly evolved into a search for support of what I took to be an assumed position: independence and integrity of editorial decision-making were very important to the public broadcasting community.

You have to read the legal analysis from that assumed position. But that is not a defined position, and it may not be a consensus position. When state network directors read the analysis they realized this was not a law-driven problem. That's why this conference is so important.

My "givens" in the legal analysis were:

It's a constitutional, not statutory or common law, analysis. So it has limited applicability, but it's the most important starting point, because media questions usually go back to the First Amendment.

The courts are adrift, with no clear idea of where this issue is headed or should be headed.

At first glance, the Muir decision was a victory for public broadcasting, but in the body of the opinion there were some things that made people wonder what kind of victory it was. The same is true of the League

of Women Voters case.

Each case seems to go too far, in part because the public broadcasting parties, I would argue, have not been communicating to the courts a coherent, consistent position that they want the courts to adopt.

One of the intriguing questions that the analysis does not get into is resolving the dilemma posed by the Federal Communications Commission requirement that the licensee not delegate its responsibility, and the constitutional mandate to create an editorial function that is not state-action oriented.

Finally, this analysis does not do much to protect you from the real pressures that public broadcasters deal with every day, both on the appropriations front and the job-security front.

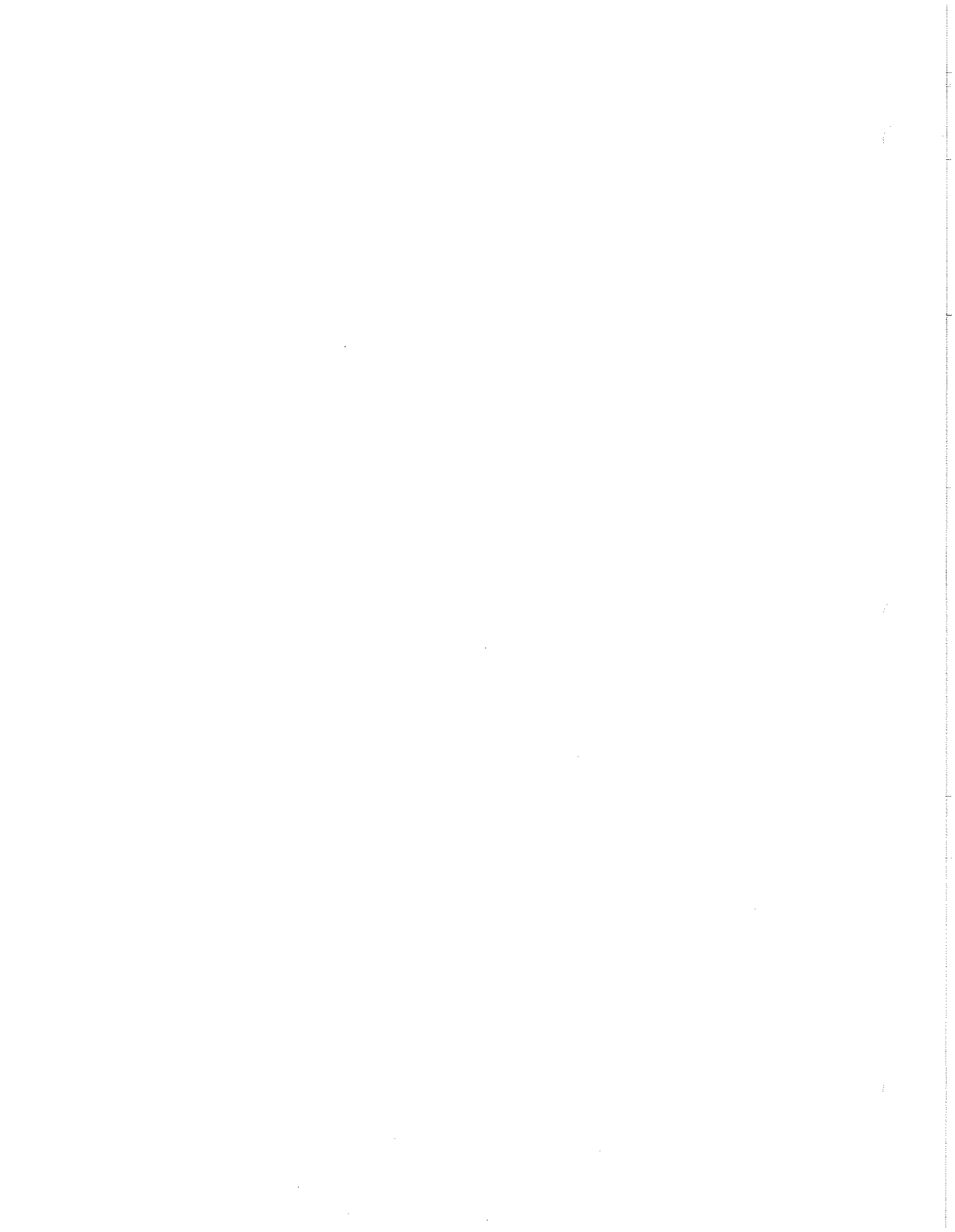
In conclusion, I don't think the law is the problem. It can be part of the solution.

My personal view is that the Constitution protects minority rights; the electoral process takes care of the majority. To the extent that public broadcasting in its pursuit of financial security becomes a voice for the majority, is it a given that the First Amendment is that important to public broadcasting?

My view of the Constitution leads to a rhetorical position that the majority does not support the First Amendment and the principles underlying the First Amendment, and some interesting public opinion polls in the past few years support that.

If public broadcasting through audience pressures becomes a voice for the majority in the next decade, I question whether the First Amendment is that important a concern. That frames the problem you face at this conference: How important is editorial freedom to public broadcasting?

You are the policy makers--you have to answer that question. You are capable of defining the future you want, and you are capable of pursuing in the courts, and in legislatures and with your respective elected officials the appropriate future for public broadcasting.



The Accountability Question

Henry Geller

Director, Washington Center for Public Policy Research
Institute of Policy Science and Public Affairs, Duke University

I agree with Mr. Miller--the issue of editorial integrity has to be worked out on the policy level within each state. You need a structural, legislative solution that suits you. The reason why is obvious--if it's worked out within that state it'll be accepted as not just the letter but the spirit of the law. As Mr. Miller said, there're a number of ways people can get at you, so you really do need that spirit working for you. Nevertheless, I'm going to talk to you about federal standards, for several reasons:

--not all states have laws on this

--federal action might encourage some otherwise indifferent states to act

--I'm a federal expert

You're all familiar with the federal example of the Corporation for Public Broadcasting. Its members are appointed by the president with the advice and consent of the Senate, and are supposed to serve as a heat shield. We'll come back to how effective that heat shield is later.

The 1984 Cable Law

A more important example is the 1984 federal cable law. In section 613(e) of that law it specifies that the local government can own the cable system. But if they do, they are to have no editorial control over the cable service other than on the educational, governmental channel, unless that control is exercised by an entity separate from the franchising authority, to prevent undue government control over programming contrary

to the First Amendment. It seems clearly applicable to the state-owned public broadcasting networks.

You can't ask why Congress hasn't acted in this area. When Congress turned to public broadcasting in 1967 it was educational, and the states do control educational facilities. But now it's time to review that, because public broadcasting is an important mass medium going into the home, and in the light of the 1984 cable law.

That cable law is very vague, and needs to be fleshed out, but I'm not so sure the FCC is interested in fleshing it out. I intend to file a petition early next year with the FCC on the cable law, saying that you need to define what you mean by "freedom of editorial control," and "entity separate from the franchising authority." The FCC has the power to adopt rules to carry out the Cable Act as part of the Communications Act. The House staff, where it originated, believes the FCC should adopt regulations in order to implement this very vague provision.

I think they also should consider adopting regulations for public broadcasting's state-owned networks. The argument can be made to leave it to Congress, which has acted in the cable area. But one can also make a very strong argument that the FCC has the power to act and should act.

We need a structure to work this out. LAIPS is a very insidious disease, difficult to diagnose and cure. A strong case can be made for taking structural action now.

The two concepts to deal with are: (1) editorial control and (2) entities separate from the governmental authority.

Editorial Control

I take editorial control to mean that the government should not be concerned with individual programming, not with whether "Death of a Princess" should be carried or not.

The state wants the network to carry out educational programming and should be concerned with accountability in a broad sense. It wants a contribution to an informed citizenry within each state. But it should not be concerned with the brush strokes instead of the big picture.

Now, how do you distinguish the big picture from the individual programs? Even though you might have a proscription against state's involvement in specific programs, there are many ways state officials can act in view of funding or changes of personnel to affect broadcasters profoundly. There's nothing that can be done about that.

But I would stress that it's important to have such a standard there, that describes the ideal or the law. It sets a different mood. Also as I said at the beginning, it's important to have it adopted by the states, and not imposed by the federal government.

Entites separate from the governmental authority

In cable the "separate entity" is the franchising authority; here it's the state. But still you need to define the expression, and the judicial decisions aren't much help. In the petition I intend to file, I would list a number of options, and I hope other people will add to those options.

What I hope to have ruled out is the CPE model. When you have the president, or the governor, or the mayor appointing members with the consent of the senate or legislature or city council, that is not an entity separate from the franchising authority. You've accomplished very little; it's just business as usual.

The Carnegie II report said, "Don't do it, it doesn't work well." So that's the one thing that should be ruled out.

Other options are:

1. Carnegie II indicates that CPE urged that the 5 names the presi-

dent must select from come from the librarian of congress, the endowment heads, the National Science Foundation head, and the Smithsonian Institution head. One can argue that method is elitist, and that these people are presidential appointees, so you're right back to the problem of pressure.

2. The Carter administration proposed that a broad-based, politically balanced presidential commission representing business, labor, minorities, women, education, and broadcasting select the five names to send to the president. The criticism of this option is that the president is still selecting the people, so you don't get complete insulation.

3. The CPB itself selects five names when a vacancy comes up. The original board might be appointed by the presidential commission method, option 2. Although this method provides terrific insulation, the criticism is that it's a closed club.

I think option 3 is the best, but I'll be interested to hear what you think. I don't think the federal government should specify any particular method; the states should choose.

If you do choose option 3, your board will be so completely insulated that you probably won't need to consider it separate from the editorial decision-makers, as Mr. Miller's legal analysis outlines.

I must point out that a petition outlining these options will be very difficult to get through the FCC, but I think it's worth going to focus attention on this issue and make individual states look at what they're doing. It gives you a catalyst for action within your state.

QUESTIONS AND COMMENTS

LEWARD PHISTER: The CPB model has been more successful than it had a right to be. There have been many instances of presidential intrusion

since President Nixon's era which illustrate the problems with the model. With that model the only check you have is the U.S. Senate, and senators are reluctant to say to a president, you can't have this or that nominee.

-----:* The presidential commission sounds very cumbersome to implement on the state level. Have you thought about having the people who contribute money elect the board, or some combination of election and appointment?

GELLER: Obviously electing a board the way you elect a school board, for example, is a democratic way to go. A combination board has been criticized because many people feel you shouldn't have two types of directors. On a board you want a broad mix of people, and it's easier to get that mix from an appointed board than an elected board.

-----: Are you saying that as a matter of license the state would have to create an entity separate from--

GELLER: Exactly. We'd give the states an appropriate time, like three to four years, and flexibility about how they'd go about it. But we'd rule out the CPB model. You might rule out other models. Such FCC regulations would be tested in court, but would have the force of law. Realistically, though, this commission might be reluctant to act on this, but I do intend to file the petition about mid-February.

MICHAEL RICE: You cite the new cable law as a model, but it states that if the local government is the owner of a cable system, except for its government and educational channels, it may not control content except through its separate entities. What if the public radio and television systems being licensed to states today belong to that first exception; that is, they are regarded as government and educational channels and therefore

Conference participants were guaranteed anonymity to ensure freedom of expression. Only presenters and discussion leaders will be identified by name.

can be controlled?

GELLER: I'd say a governmental channel simply broadcasts council meetings. And if these systems simply did educational programs to distribute to schools, no one here would be addressing this issue. The stations we're talking about are the alternatives to the commercial systems; they broadcast a wide range of programs. My argument is that there has been a change: these are no longer educational stations alone.

RICE: But in the view of many of those state governments, there hasn't been a change.

GELLER: Then that's a subject for a fact-finding group. If you have at least 40 percent public programming and 60 percent educational, that's enough to bring it within what I'm talking about.

VIRGINIA FOA: A problem with that is that a station which does 60 or 40 percent educational programming may justify 95 percent of its budget on the basis of education. I see some dangers for state licensees in your solution.

RICE: State legislatures might tell stations to go back and do only educational programs and have complete control.

The Accountability Question

David Gergen
Visiting Fellow, American Enterprise Institute

I disagree with Mr. Miller's reading of public opinion polls on the First Amendment--I think there's broad support for the mainstream aspects of the First Amendment, that the public will support broadcasters and the press on first amendment issues. There is less public support for issues like pornography, but I think you can count on the public's responding to a strong plea about the editorial integrity of public broadcasting just as they would for newspapers or commercial networks.

I do agree that the law is murky. It's likely to remain that way because of the nature of the licensing process, and the fact that the public puts the money in there through Congress or the state legislatures. That gives politicians a sense of ownership, so your problem in this area is more political than legal, and it should be approached as a political problem. It will be very, very hard to find a perfect legal solution, even if you had a strong case for First Amendment rights, because the funding plug is always there. Politicians, or citizens who're sufficiently antagonized, can always try to pull the plug, so public broadcasting has to maintain a broad base of public support in a variety of ways.

Funding Issue Critical

I don't think editorial integrity is your top priority problem right now, in view of the budget meetings currently going on in Washington. The funding issue is going to be the critical one for the next two or three years.

The kind of budgetary struggle you've seen in the past is only the prelude to a much more serious struggle that lies ahead. To succeed in that

struggle, it will be necessary to mobilize on a much wider scale than anything public broadcasting has done before. In the process of mobilizing support at the local and state level, you'll build a coterie of people who'll be with you on the editorial integrity question down the road.

On the issue of editorial integrity, your best defense is the excellence of programming that's earned you such a wide and devoted following. Beyond that issue is the diversity of opinions, especially in the political area. That's where I feel the conservative pressure coming from: they believe public broadcasting is a bastion of liberalism. Your best protection, then, is to make sure there's program diversity, and that those people feel they have a voice in the system. There's no substitute for that.

Mobilizing Support

Your second defense is in building up your allies among state governors, legislators, and people in Congress. You need to find people who're in the middle or on the right politically, so they can speak up for you.

I read the court dictum in the legal analysis, but I found no indication of how serious the problem was beyond the dictum. If you're going to mobilize support you need to document much more fully where the intrusions are. It's obviously not just one case. People need more than a dictum and the theoretical possibility of intrusion--they need examples of egregious things that've happened to prove why it's a problem worthy of attention.

A Model Code or Statement of Principles

As to an approach to the problem, a petition to the FCC doesn't seem at first to be the best way to go, because I agree about their reluctance to get into new regulatory areas. It might be more productive to consider a code drafted on a national basis, but which each state could adopt. For example, the bar associations have model legal codes for state laws in

criminal areas and civil areas. They're drafted by a national group, then presented to the state legislatures. That approach has worked very well in the law.

If you could develop a code for state commissions, boards, etc., to adopt as a statement of principles, then it would be quite easy to approach your major newspapers and broadcasters to gain support for this kind of code. It would give you a standard to refer to the next time there's an intrusion or attempt to intrude. It's stated, agreed upon; and any governor or legislator who wants to intrude knows that's out there. Now there is no such standard I'm aware of. That's my recommendation: to consider doing something at the national level that can be adopted by the states.

QUESTIONS AND COMMENTS

-----: I was very interested to hear your comment that people still think we're "liberal." In our state we have a show on labor unions, and the unions think we lean too much toward conservatives in business, and the businesses resent the fact that we have a labor union show. So I don't see any solution to the problem of convincing people that we're trying to present a diversity of views. It seems that the diversity is the very thing that upsets some people.

GERGEN: You're right about that problem. But when you're criticized by the labor union--they're not going to cut your money off. That pressure's going to come from the right. They don't necessarily have the votes, but they have the convictions.

While you do have an impressively diverse audience, there's still a ripple in the country that public broadcasting is the voice of the left.

SAMUEL HOLT: The lawyers have the American Bar Association to do what you suggested. Who could public broadcasting get to provide the kind of leverage ABA has in writing a code?

GERGEN: This group could be the instrument to do that. I don't think PES ought to. But you might add people outside the system, like commercial broadcasters, because they will speak very forcefully for you. You could bring up the issue at other conventions, like the NAB, because they will see an assault on you as an assault on them.

PHILIP HECKMAN: We in academia live by standards set in 1940 by the American Association of University Professors, which does nothing more than become censorious for those who abuse it. It's a very powerful force, and is a good precedent to look at.

VIRGINIA FOX: There's a problem with collecting the specific information Mr. Gergen was talking about. Nobody wants to talk about LAIBS, nobody wants to be used as an example, because the minute you're used, you're blackballed.

Two states are not represented here. One state network director was ordered by the governor to prepare a particular program on a particular hearing with a particular incumbent, refused to do it, and was ultimately harassed out of his job by his own board.

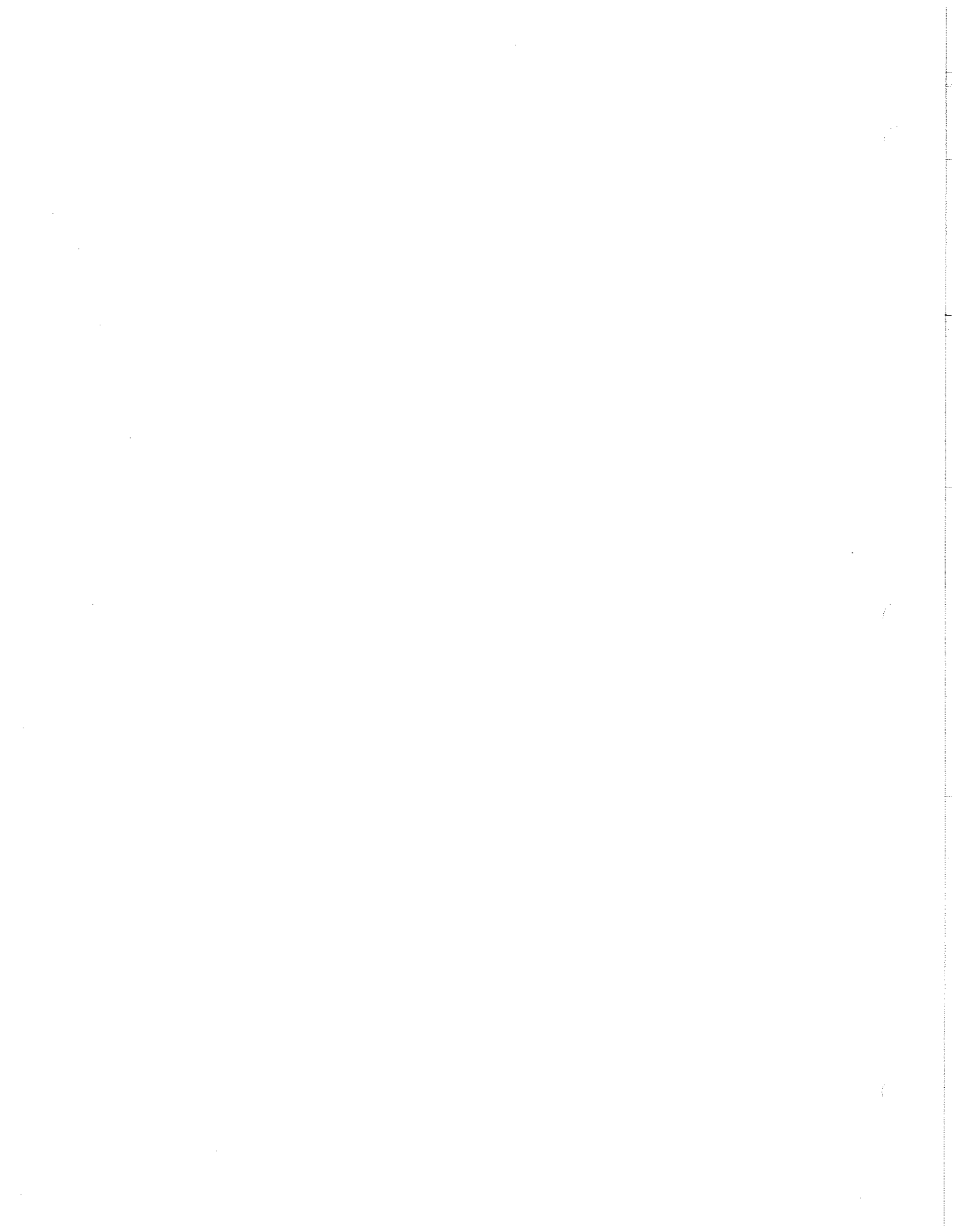
The other state which should have been here is one with a very powerful and popular governor who tried to have all boards and commissions appointed solely by himself. He wasn't after public broadcasting per se; he just believed that all boards and commissions should be appointed by (and by inference beholden to) the governor currently in power. His attempt to do that failed, and one of the most vigorous opponents of the bill was the public broadcasting authority board. The terms of five members of that board are expiring, and it appears that they won't be reappointed,

as punishment for their opposition to the governor's proposal. He is absolutely within his legal rights, but the appearances are devastating. His appointments may be even better people, but will the press or the staff regard them as being there to assure editorial integrity?

-----: Some governors feel very secure in the position that they've been elected by all the people, they're responsible for everything that happens in state government, and that therefore anything that happens is his or her responsibility. So if public broadcasting goes contrary to what the governor thinks should be done, he'll feel like he should change the director or the board. And they're very sophisticated--they do things very subtly.

-----The governors don't feel that way about state universities.

-----The model code sounds like the best way to go.



The Credibility Question

Les Brown
Editor-in-Chief
Channels Magazine

Credibility is vital. It doesn't just reflect on one institution, but on the whole institution of journalism.

In a sense the First Amendment is the right to be wrong, but it's never been mistaken for the notion that it's right to be wrong. It's always wrong to be wrong.

It's also important in journalism to have courage. I don't care how talented an editor is, without courage he or she isn't much of an editor.

I thought "Death of a Princess" was a very good thing for public television because it gave public broadcasting a lot of credibility--it was a really tough show to put on the air. The issue was very difficult, public broadcasting took a really strong stand, and there were shock waves, but it was a bold thing to do.

Anyway, I was asked to talk about public broadcasting's credibility--the view from outside.

In 1970 I wrote a book called The Business Behind the Box, and I looked up recently the chapter on PBS, then a network. I'd forgotten I'd said such harsh things about public television. I wrote about the cowardliness of public broadcasting, especially with documentaries, about the appointment of government hacks to run the CPB and PBS, the distrust of New York as an origination center because it was thought to be too liberal, the fact that the system was wired to the establishment with boards with people with strong political and social connections.

I deplored what happened to a documentary called "Banks and the Poor."

Many stations with bankers on their boards were very nervous about it and refused to run it.

I also deplored the famous case of Mobil's gift to WGBH to start "Masterpiece Theatre." WGBH had a program then, called "The Nader Report," and just at the time Mobil donated money there was a segment on the report criticizing the company. WGBH pulled the segment, but we made such a big stink about it in the press they finally had to run it.

All this happened before the Nixon administration made public broadcasting a whimpering little ward of the state and caused the whole industry to recreate itself according to the administration's prescription as a decentralized system.

I also wrote in the book that PBS is a monstrosity. It still is a monstrosity. No sane person would've invented such a system. The problems all began when public broadcasting, and we still don't know what that means, became an overlay of educational television. The educational systems already formed had a new mandate, which made things very complicated.

This is a system held together by one thing. It was the glue in 1970 and it's still the glue: the pursuit of money. All these stations need federal funds, and to a limited extent they need programming, but otherwise they have very little in common.

Now, what is the appearance from the outside when PBS sets itself up in Washington to be the network for the whole country? Contrary to what Mr. Gergen said, my perception of public broadcasting today is that it's loaded with shows that are pro-business and favor the conservative view of economics. There's "Wall Street Week," the Milton Friedman series, and a lot of other business shows that are underwritten by conservative, right-wing organizations and financial institutions.

You remember when the labor unions wanted a series on the history of the labor movement in the U.S. and PBS said they couldn't do it because it was a conflict of interest? But there's no conflict of interest, presumably, when a financial institution runs a show like Milton Friedman's.

What is the appearance when the three cities that have Boeing airplane plants are the only ones that don't carry stories about the crash of the Boeing planes?

What is the appearance when a kitchen supply company underwrites Julia Child's show?

What is the appearance when the CPB starts a revolving documentary fund? We awarded \$1.8 million in grants, but most of the shows weren't shown or weren't widely shown, because it was thought they'd be too controversial.

I could go on and on with this list of appearances where, when courage was called for, people who make editorial decisions didn't show courage. One could suspect that maybe these decisions were really censorial decisions. And that's a perversion of the First Amendment that doesn't contribute to the free marketplace of ideas or to robust, wide-open debate on the issues, when these organizations behave censorially.

The First Amendment works on one level for print media and another one for broadcast media. I think it's an appropriate system, because the first amendment wasn't written for the media, it was written for the people. We all have access to print; we can all hand out flyers on the streetcorner.

But in broadcast media, the First Amendment only works for the guy who has the "electronic press," the hardware. I can't go on and talk unless he

lets me on, so the First Amendment then becomes his editorial discretion and that's not what the First Amendment is all about. The public's First Amendment rights are built into the fairness doctrine and the limitations on the licensees. When he accepts the license, he vows to serve the public interest and accepts a limited First Amendment right.

Besides, it's not a right, it's a privilege. Broadcasting is a privilege. Print is a right; I have a right to have a magazine. You have a privilege to have a television station. It's an important, critical difference.

Having gone through all this, I'd like to know who are you? And what's public broadcasting all about?

QUESTIONS AND COMMENTS

----: How do you reconcile the problems of public funding leading to government television and private funding leading to censorship also? The money has to come from somewhere.

BROWN: I was in South Carolina recently and turned on the television to find a program on computers, sponsored by a computer company. I turned it off, because I perceived it as a "brochure."

_____: What's the good of this group's proposing model rules to the governors? We'd have a problem of credibility right there. Aren't we going to protect ourselves with the rules? Isn't this the reason the government imposes the rules?

BROWN: Not so much to protect yourself as to protect what you stand for. My magazine needs every page of advertising it can get. If we do a profile of somebody, I won't accept an ad from the same company, because it looks wrong.

SAMUEL HOLT: NPR established a program fund, which was also discussed

for public television. Underwriters would buy shares in the fund and get rotating credits in every program of the type.

BROWN: I've heard that and I like that.

HOLT: It's designed to distance the underwriters from the topic and it works pretty well. But what happens when in the normal rotation, Mobil comes up on a program that's about Mobil? There's a credibility problem if you break the rule or the cycle to avoid the appearance of conflict of interest. You're saying the model is no good, that you haven't insulated the process.

BROWN: But that happens, it happens in the magazine. It's very embarrassing.

MICHAEL RICE: You raised a hypothetical problem, but let's bring it into what actually happens, at least as I hear the credits on "Morning Edition." While there is a program fund, a grantor can designate funds to be used in a specific topic area: for example, the Joyce foundation for coverage of the midwest. Doesn't that give you the impression that the grantors are determining what areas are covered at all?

BROWN: The other thing you can do is add a disclaimer. We had a section on excellence in the last issue of the magazine. The sponsor agreed to buy the eight pages of advertising to sponsor that insert, on the condition that we add a disclaimer that they had nothing to do with the selections.

HOLT: NPR does that with the fund. Do you believe that takes care of credibility?

BROWN: I'm a lot more comfortable with that than with a program that's very close to the interests of the advertiser.

-----: As you probably know, PBS used to have a standard that no

funder could have a direct interest in the content of a program. As federal budget cuts came down, the feeling in Washington was to help public broadcasting any way they could, with liberal FCC interpretations of regulations. Meanwhile, there was pressure from national producers saying that the national underwriting dollars were dwindling, we've got to give more to the sponsor of these programs to get their dollars to maintain a high-quality national schedule. I think there's a lot of fear that we're galloping toward commercialism, yet no one in the press has taken that on to help us, or make it an issue.

BROWN: A very good point. It really is the role of the press, and the press has done a very poor job of helping public television and public broadcasting, mostly because they don't understand it. It's hard to understand, especially for some guy who has to grind out five columns a week.

The issue of commercialism is very dangerous. The closer you get to advertising, the more you're going to have to behave like commercial broadcasting, getting into the numbers game, because they're going to need to know that this is a "media buy."

The rules are very clear in commercial broadcasting--if you don't make the ratings, you lose your job. The rules here aren't clear at all. Programs stay on the air forever in public broadcasting.

-----: The problem with getting press assistance is that stories about public radio and television aren't sexy. The newspapers would rather run something on Arnold Schwarzenegger or God knows what. Put yourself in the place of a city editor--do you have any suggestions?

BROWN: I don't think many people know that state governments are public broadcasting licensees. Reporters would understand that that's the big issue if they knew how many there were, and that this is the real power

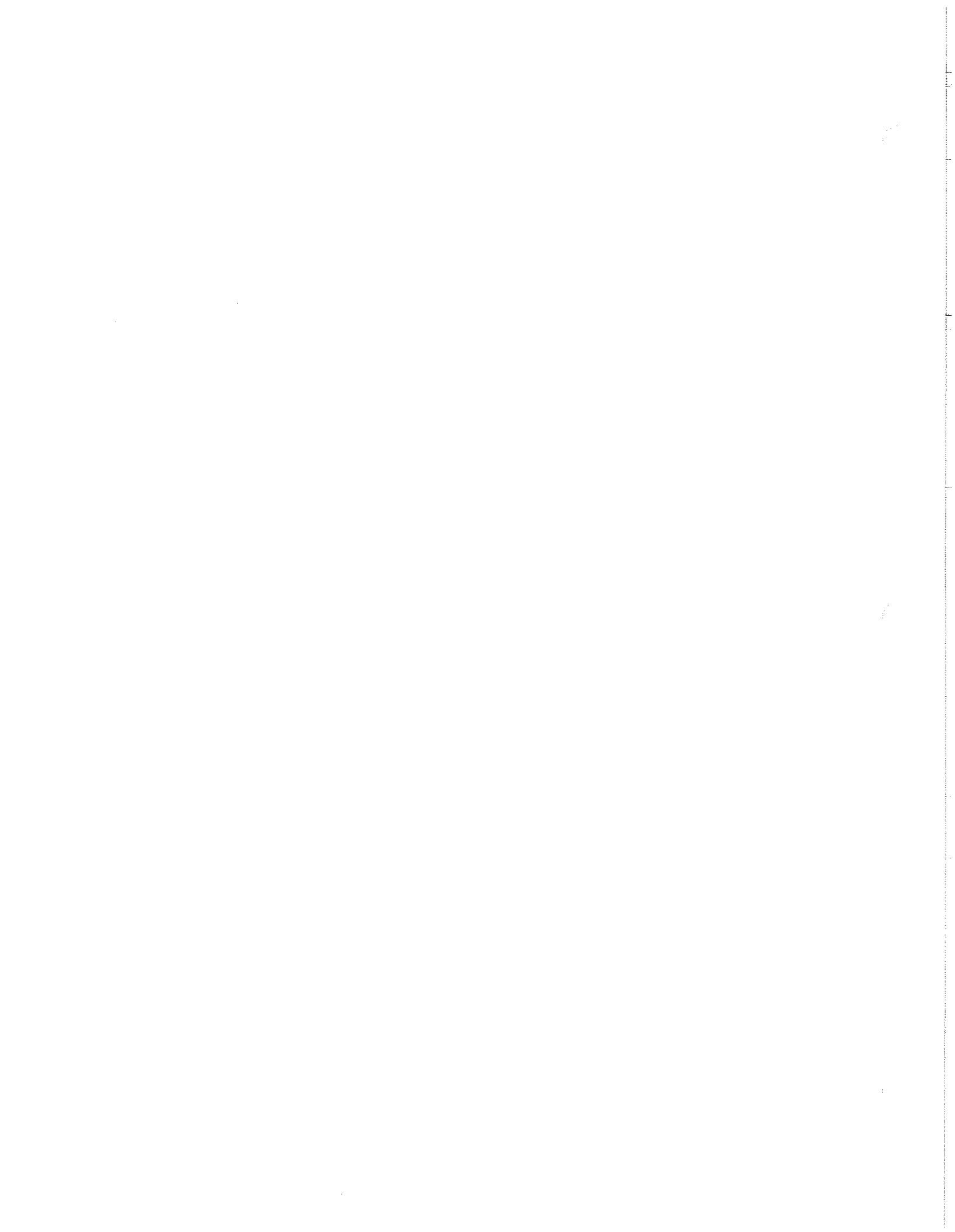
of the public broadcasting system.

-----: From the point of view of catching the attention of the press, would Mr. Gergen's suggestion of a draft model and bringing attention to the policy issue of governments' holding licenses--is this the kind of thing you think would catch the attention of the press?

BROWN: I certainly do. In fact, I'd go around the television press to the guys who cover government.

-----: This would be a policy issue rather than a media issue.

BROWN: Yes.



The Challenge of Board Membership

Dallin Oaks
Chair, Board of Directors, Public Broadcasting Service

A clear understanding of the separate functions of board and management is critical to protect the editorial integrity of the broadcast operation.

Editorial freedom is essential to accomplishing the mission of public broadcasting, and the board must perform in every instance so that the mission can be accomplished. Unless freedom is exercised responsibly, in the long run that freedom will be lost. And the board has a very important function to perform in connection with responsibility, as well as freedom.

What does the board do, so that management and staff can accomplish their mission? How does the board assure editorial freedom? First, boards need to educate the public, public officials and the policymakers in their chain of command so that they understand the need for editorial freedom. Second, we need to assure and certify to public officials and to the public that editorial freedom is being exercised responsibly.

The board must understand and honor the difference between its own policymaking function and the professional managers' management function, so that the board can protect editorial integrity. If the board is engaged in the day-to-day management of the station, instead of making policy, they are simply not going to be able to educate the public to the need for freedom. Their educational efforts will appear self-serving if they are arguing for editorial freedom which they themselves exercise rather than the freedom to be exercised by the professional staff.

Also, for the board to certify that editorial freedom is being exercised responsibly, they must certify someone else's function, not their

own.

As for the First Amendment issues, where law is complicated and unclear and sometimes unpopular in its content, we tend to put the law under a microscope and have conferences about its meaning. We get diverted by the content of the law and tend to forget the important policy questions that should be resolved.

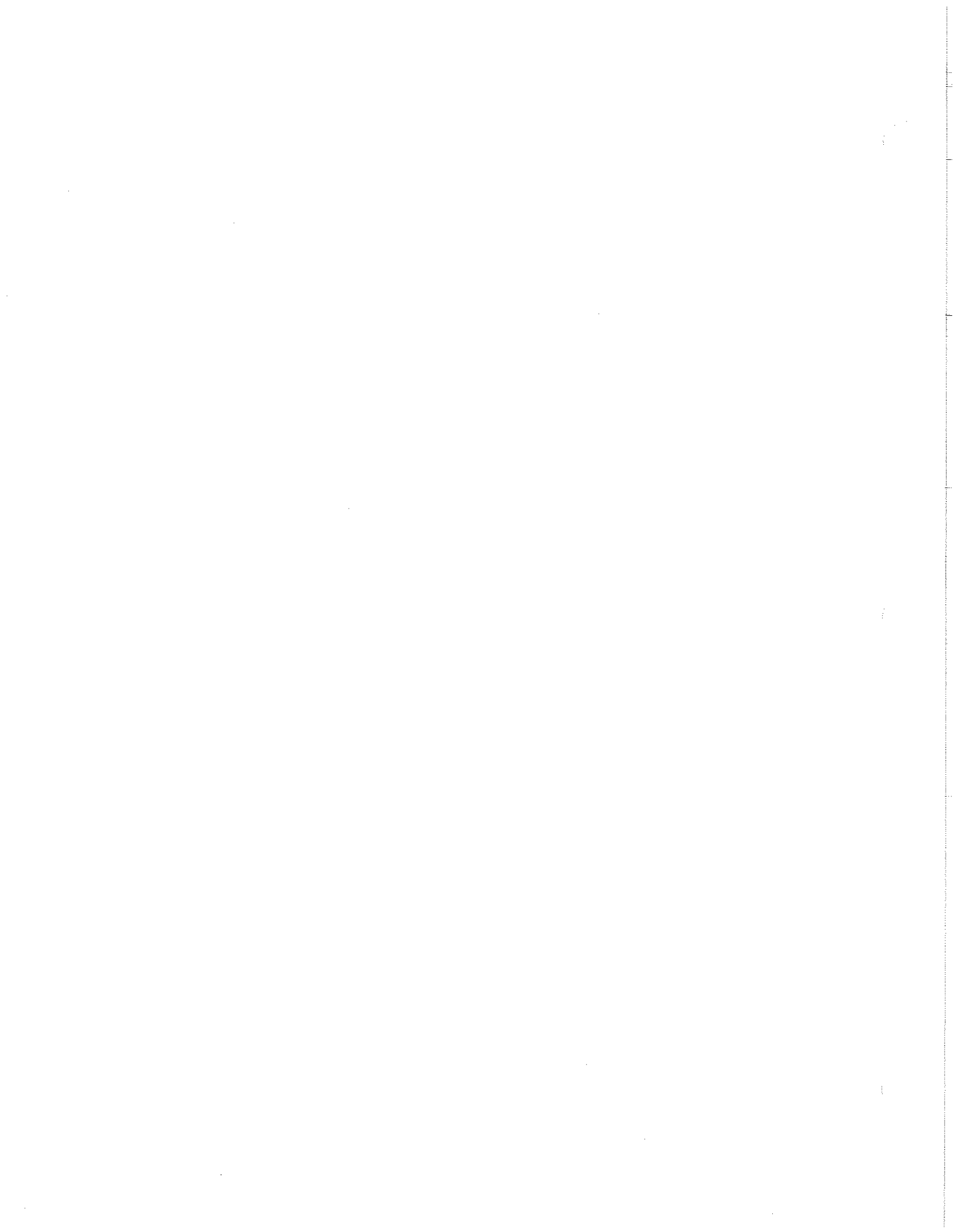
We should not be so concerned about the First Amendment implications of editorial freedom that we put all of our concentration on that question, which the lawyers advise is an unclear question. We cannot overlook the far more important policy questions which can be understood by the public, which need to be sold to the public, which can be understood by policymakers, which can be sold to them. We ought to concentrate on good policy, because if we put that across, it won't matter whether we have the First Amendment freedom or not.

Finally, we've got to prevail on a basis other than the law if we're to be secure in the long run.

It's very important to remember that the Supreme Court's decision in FCC vs. the League of Women Voters allowed editorializing by public broadcasting--it did not compel it. We must make a policy decision in our individual stations about whether to use the latitude granted. We should not let the resolution of the legal question dictate the resolution of the policy question.

In summary, boards serve the public interest by giving policy direction to station professionals, by overseeing to assure that those policies are being carried out, by leading public opinion on the need for editorial independence, by assuring continued public support for the public broadcasting station and by certifying that the independence is being used

in a responsible fashion. In my judgment, that is the way the board serves as a buffer and as insurance for editorial independence and integrity.



PLENARY SESSION I

REVIEW OF CASE STUDY ANALYSIS, DISCUSSION OF ISSUES AND PROPOSED SOLUTIONS

GROUP I PROPOSES "PRINCIPLES OF GOVERNANCE"

RICHARD GREFE: From the issues raised in the case study, it became clear that we needed to establish a number of principles to govern the relationship between boards, management, and other officers in the public broadcasting chain of command.

One way to do that might be a handbook for an educational process by which board members would better understand their roles from the start, and perhaps even before they're appointed. Maybe they shouldn't accept the appointment unless they were willing to accept the principles that govern their role and the role of management.

We also established the need for defining principles governing program selection, calling it principles of governance, and purposely went away from the concept of a code. We thought these principles should be communicated not only in briefing sessions for board members, but also in a handbook.

Someone mentioned the Girl Scouts of America system. Also suggested was an institute, to bring board members together to discuss issues and principles. The idea would be not unlike the institute the Kennedy School sponsors for new Congress members; a several-day, annual event where board members could be exposed to different entities in public broadcasting and the issues they deal with.

The audience for this handbook, or these principles, would be not only the board, to help educate new board members, but also management, to understand those roles. Clearly, there'd be a second audience: those outside public broadcasting like the legislatures, governors, or others.

There's an ancillary goal implied--not only helps define the relationship between boards and management in terms of programming responsibilities, but also would give the board a set of principles which can define their own performance to others outside. It's a defense mechanism for the boards. In that sense it makes it easier for boards to insulate themselves and to explain their behavior to others outside the board or management.

The format was suggested as a handbook or set of principles that would be a non-prescriptive model, and might vary state by state. The idea is to establish a means of discussion with each state on how things should be managed.

The Board's Role

The general format would begin by defining the trustee role, which we felt was not fully understood: that board members are trustees for the public. The definition would include the whole concept of insulation and why it's important. The handbook or process should include all the relevant documents, including the definition of trusteeship that comes out of the FCC or legislative documents, an explanation of the mission of PB, some model policies, definitions of policy versus management, and guidelines on board behavior.

We defined the principles governing the board's role as:

- Absolute responsibility to serve viewers' or listeners' interests as a public trustee.
- Protect the credibility of PB as a public institution.
- Protect against the erosion of public trust.
- Protect editorial integrity against government interference or interference from any funding source.
- Establish directional goals, and we clearly defined goal-

setting as opposed to objective-setting.

--The performance of the licensee is the responsibility of the board. It should be done through evaluation of management performance, which drew on Dallin Oaks comments about having to separate the programming or editorial responsibilities from the board; if, in fact, they are going to be able to evaluate the performance of the licensee.

--Fiduciary responsibilities, spending public funds.

A member of the group thought that defining the board's role this way might concern new board members in terms of their not having appropriate mechanisms available to fulfill their responsibilities. We discussed establishing goals, which govern the performance of the licensee, and evaluation, which is essentially the firing and hiring of an executive director or CEO. Was that sufficient to fulfill their responsibilities?

We defined the forms of control in a number of ways. One of course is setting goals and priorities, which in effect are implemented through the budget approval process. The second is thorough, annual evaluation of the CEO's performance toward the goals.

The mutual responsibility of the CEO and the board is continued communication, absolute responsibility of the board to ask questions at the time questions arose.

However, the forms of board control would not include program control: that would be delegated to the staff the board was charged with evaluating.

Principles of Program Selection

Then, there would be a clear-cut policy outlining editorial responsibilities. We came up with a number of principles on program selection which could be used to explain to board members and anyone else just how programs are selected:

1. Editorial decisions are made on a routine basis by a program

editor, rather than by a station executive or board.

2. All views are considered at the time program decisions are made.
3. A process exists to determine community views.
4. Program selections are based on editorial criteria, not funding decisions.
5. Funding sources will not have influence over program content.

The Chief Executive Officer's Responsibilities

The CEO has:

1. Sole authority to hire and fire program editors, although we realize in many states there are restrictions on that. But still, as a model, it is important.
2. Responsibility for developing objectives for the board's goals.
3. Discretion to act in the absence of policies.
4. Authority to delegate programming responsibility to a program editor in order to evaluate his or her performance.

DISCUSSION OF GROUP I'S PROPOSAL

HECKMAN: Is the whole idea for a handbook a good one? Will it help us and is it worthy of the time and trouble it will take?

-----: The lists were very detailed. I'm not sure we want to go that far describing who makes day-to-day program decisions within the staff. That will vary from licensee to licensee. We shouldn't get too bogged down in the process.

GREFE: We thought, according to Dallin Oaks's principles, that you have to delegate in order to evaluate, so the CEO needs authority to

politically useful to have this process going on even while you're fighting the legislative funding battle. It might be one way to rally support.

The group's main point was that a drafting committee be established.

Public Acceptance

Also, they said that the process by which the statement of principles was given legitimacy was almost as important as the statement itself. Unless the statement has real weight when it arrives, it means nothing. This group should consider how the statement could be certified to have the weight you want.

We were also concerned that this meeting be presented effectively to the outside world, that someone be designated principal spokesman for this meeting and for the process that follows it up. Also they recommended that some kind of common press release be given out so we can all go home and talk locally about the same thing. Some of the group had heard local talk that this meeting was over-stating problems or seeing problems where none existed. My group assumed that we in this forum are essentially state licencees with common problems.

BROAD PERSPECTIVE ON THE CODE

-----: We looked at the broad perspective of writing a code. The feeling was that there are a lot of codes out there to serve as models, and the process of writing is not something best done by a committee.

We began with the statement that editorial decision-making is a public trust. We thought the code should lay out the affirmative obligations of that trust.

Second, we raised the fundamental question of how good decisions are made. What can we do to create an environment for good decision-making? We explored what kind of codes, principles and daily operating situations

PLENARY SESSION III

DISCUSSION OF SMALL GROUP REPORTS ON CODE DEVELOPMENT

DOCUMENT CHARACTERISTICS

-----: Our group decided we didn't have a mandate from the larger group to develop a document. We did come up with four or five principles we'd be glad to turn over to a drafting committee.

Charge to the Drafting Committee

Our charge to a drafting committee is to develop a brief and effective statement of general principles, which could be understood by anyone and applicable, if possible, industry-wide, drafted as soon as possible in order to bring others into the process, and to respond to legislative schedules.

By brief, we meant one page if possible, but the effectiveness is more important than specific length. They want a statement of principles, but like some codes, there are elements of practice that might be blurred with the principles.

"Understandable by anyone" the group felt was terribly important. They wanted a statement of principles you could hand to a new board member, to a legislative assistant, to a reporter, to anyone who would not need to understand broadcasting law or the arcane nature of public broadcasting structure to have an idea what you're talking about.

They also wanted it broad enough that any public broadcasting entity could use it, not just for state licensees.

They thought it should be drafted by a small group quickly, to circulate back to this group, which could then get comments from outside. Based on what David Gergen said yesterday, we thought it might be

And the definition of "undue pressure" is going to be the STP for a type of situation which may vary. As Mr. Rice said, pressure is defined as a hundred angry phone calls while you're on the air, or one casual comment from a board member.

Pressure can be overt or covert. And you'll have to decide what that STP is in a given situation.

MILLER: It seems there're two very separate things on the floor:

Should we define standards for the profession, and editorial integrity?

Should we define what constitutes undue pressure?

-----: I think Mr. Miller has outlined in Analysis of First Amendment Rights of Public Broadcasting what editorial integrity is, and the cases define undue pressure.

-----: Let me propose three standards. One, how do you divide up the roles, and how do you decide who does what in a well-run television network? Two, how do we avoid undue pressure from inside and outside? Three, what standards can we agree upon which help us to do the first two?

HECKMAN: Take those questions and others into your small group sessions. We're saying we want to come up with a code we can offer to the industry to adopt or not. We'll share them later.

-----: If it's accepted that the problem is not influence on program decision-making but undue or improper influence, and you're asked in 30 seconds to explain what that is, what should we say?

-----: You've heard my sermon that we're moving from a profession to a craft in public broadcasting, because we've never really defined the standards of our profession. To me, that's what we're here for--to delineate something that in the past we've relied on the lay press to run up a flag and say, "It doesn't feel right." We should start to put down some standards to apply whether it's a question of editorial integrity or whether we're trying to decide about selling ads.

Accountants, attorneys and journalists have defined their professional standards. We can't claim that we are a profession, and by our actions in the last five years, we've moved so far from being able to claim it, that it's ridiculous.

I see this as the appropriate forum to say, "We don't really need someone from outside to set our standards." We are the appropriate people to set the standards of the profession.

HOLT: I think we have to understand the Constitutional premise we're looking at. One of the phenomena of the American Constitution, along with the attempt to balance all these kinds of powers, is that it understood that all it could do is proscribe certain kinds of behavior, not prescribe for other types of behavior, and then in fairly broad terms. The code you're talking about will have to be broader than some might like for a profession, because we're talking about something a little more complicated.

If you remember freshman physics, experiments are defined in terms of STP: standard temperature and pressure. That varies with the altitude.

Street"?

-----: Somebody said yesterday that we live by the golden rule: The person who gives the gold makes the rule.

-----: That's not necessarily true, but the cynic and the public think so. If you say you represent the people and you have an 8 percent market share, you're not statistically accurate. People are watching "Dynasty." You can't tell me you're representing the people and putting on "The Boston Pops"--You're representing People, with a capital "p," in some classical terms of what people could become. And you're providing what people ought to have as they become people.

Preventive Abuse of Power

-----: Our problem, how to prevent abuse of power, is no different from problems any other government has. Government influence and position are other kinds of power. All of these are subject to abuse. As someone said, absolute power corrupts absolutely. We want to divide the power so that no group has more than it should have. Someone may have to decide how much of that influence to choose from and how much to reject.

The real problem is who does that decision-making among all the legitimate groups that have influence.

-----: We give power a zig-zag direction in the political arena, by saying a certain amount of power and right is inherent in the current administration. There's a new code, or new document, every time we get a new administration, whether it's our governor or the president. And we accept those changes of direction in power, even if we get a bit of whip-lash. What we're trying to do is transcend that.

-----: We know that democracy has its limits. We can't have the majority running everything.

Definitions of "Undue Influence"

-----: We spend a lot of time on the air telling the people that what we're doing belongs to them. But when you talk about editorial integrity as a question or as a problem, obviously what goes on the air represents a decision by someone, and should represent the interests of the people. The question is, "Who's the best representative of the people?"

One answer here is that the governing bodies are not the best representatives of the people. The other answer is that station managers are not the best representatives of the people. But we have to hand that to somebody as our representative.

That's an attempt to get to Mr. Miller's question of what is the problem and how can that problem be stated to our good. We want to give ourselves tools as we hand that to somebody. Most of what was happening yesterday was saying, "Well, maybe the boards are the periodically selected representatives of the people." I don't think a lot of our board people see themselves as that.

Interference by Funding Sources

-----: I think our major board, management and programming concern is that in scheduling programs, as we're trying to get funding. The problem is that in the commercial world, the sponsor has a right to dictate what the show says, etc. But in our world, our primary purpose is to serve the public and we can't allow the funders to interfere with the editorial process.

-----: But the National Endowment for the Arts or Humanities, for example, has to examine program content and put strings on their grants, because they're mandated to support the arts, not health or medicine. Who's to say it's not legitimate for a local corporation in your community to say it wants its dollars to go to "Wall Street Week" and not to "Sesame

HECKMAN: We can put in terms of a problem to be solved, or of a question that we've come here to answer.

-----: I thought we were called here to study a question about how the editorial integrity of public broadcasting could be maintained.

-----: Against what?

-----: Against a lot of things. Ourselves, to start with; the boards, the dual manager bossing where he shouldn't; and lastly, but least likely to happen, outside bossing.

-----: You're telling us editorial integrity needs a little more definition. To managers does it mean, "Get off my back"?

-----: Quite often, yes. But sometimes they need to get off somebody else's back.

-----: Mr. Miller's legal analysis outlines the problem very well, and since he's been working with the problem for nearly two years, I'd like to turn back to him and see what the problem is from his perspective as he's heard it from all of us.

MILLER: The problem is the one you folks perceive, not the one I perceive.

-----: When the first public broadcasting act was passed, the question was, "How can the government funnel money to a mass medium without controlling that medium?" It was assumed that government's not controlling the medium was desirable. Now the problem is compounded by having money coming from local and state governments, and by having local governments as licensees. While we attempted to resolve the question at the federal level, the question still exists at the state, local or university level. It's never been resolved, and it's never really been faced. I think that's what we're doing.

Boards as Representatives of the People

I started out with might be too radical. But is there some way that, without taking the license away from the state, you can introduce a new level or new body in the command structure so that the kind of situations we've heard hinted to us might be prevented next time?

DISCUSSION OF GROUP III'S PROPOSAL

HECKMAN: Group III dealt with something much more cosmic in organizational structure. It seems less available to us now.

GREFE: I want to mention briefly something Mr. Rice brought up--a group that would include lawyers, people from academia, some of us in this room to help each other out. Perhaps it's the impetuosity of youth, but documents don't do a lot for me--action does. I'd rather, when you or I get in trouble, be able to call on a group. I don't mean a formal, organization with a name, just a group of people who're on call to help, whether it's with the press, the legislature, the governor. It would only come into being if someone called to ask for help, to focus press or public attention on an issue, to lobby, to defeat a legislator.

HECKMAN: My only suggestion is that if we ever do vigilante work, it be based on a written document.

-----: Absolutely.

PLENARY SESSION II DEFINING THE PROBLEM TO BE SOLVED

-----: There's been a lot of discussion about models for solutions, but it's not clear to me that there's agreement on what the problem is, or that we've defined in terms we all agree with, what it is we're trying to solve.

can't forbid a CEO from getting involved when there's a problem if she or he is responsible for the operation overall. But if she or he does get involved, it should be for reasons of journalistic principles, or the effectiveness of the program, a problem accommodating different views, and that the involvement of the CEO is not an automatic tip-off to cowardice, censorship, etc.

We were very impressed with the solution to the problem of university chain of command in New Hampshire. There were many layers of command between the station manager and the board of regents, so the station got no attention at the policy level. A special committee of the board of regents was established, called the board of governors of the public television system. The membership was three people from the board of regents, but four were public members who were not on the board of trustees but were chosen by them. Recently it's been expanded to 13 members, nine public members chosen by the board of regents. The board of regents still controls it and could abolish it at any time, but it's a little hard once you establish such a group to disestablish it.

The fact that there are nine public members who are not also bearing responsibility for running the rest of the university suggests that now the station manager reports directly to that board of governors, and not up through a chain of university vice presidents for public affairs, the board of regents, etc. The director has a board to act, both for policy guidance and as a buffer, particularly if improper pressure began to be applied from the board of regents or even from the office of the university president.

So here's an example of the kind of institutional innovation that state systems might yet wish to consider in structural terms. The solution

and all the staff. No board member, even the chairman, has any place second-guessing, reviewing, overturning the judgements about individual programs. Instead, the board's position, as Group I defined its role, is the over-all setting of policy, overall evaluation of the CEO's performance and by extension, all the staff and operation the CEO has put together. It's not to look into what happened to a given program, especially if that program has not been aired yet. It's another thing if it becomes part of the overall record by which the CEO is measured. Then it's considered with financial performance, fundraising, etc.

As to a forthcoming program, we even discussed whether there should be a policy that would prohibit any board member from seeking a preview of a program not yet broadcast, so that even the possibility of a board member's becoming so familiar with a program that he or she would want to start suggesting changes would be foreclosed. The whole group was reluctant to go that far. There were too many instances they could think of from their own experience, or that they could imagine, when it would be quite reasonable to allow board members to preview a program. Those who were CEOs seemed to feel secure that if the board member then went on to suggest something improper about changing the program, it would reflect political interest that the CEO could deflect, or bring in the whole board. Meanwhile, why make a fuss by saying, "You can't see the program?"

On the other hand, we agreed that in management terms, in First Amendment terms, in principle terms, a line was drawn between the board and what it does, and the CEO and his or her staff and what they do. We did talk about whether you could ever push program responsibility down further, and have a CEO as a kind of business or institutional manager. The program manager and even the individual series producer would bear the programming responsibility. It came out that routinely that might happen, but you

explain that we had an interesting case dealing with a university license which raises state agency questions of its own. Most of you are from states with boards appointed by the governor, instead of from a university system whose board governs not just public broadcasting but also all of higher education. One of the peculiarities of the university model, which suggested to some of us that they're in worse potential trouble than the state agencies, is that the manager got in trouble not with the board but with another individual who happened to be the next rank up in the university system, who reported to the president of the university. We never even got to the board of regents. But this poor manager could be told he wasn't the last word in the executive chain, whereas at least in the other state systems with a public broadcasting commission, when that commission chooses a CEO, there's only one. We were told that in one state with a university licensee, there are twelve levels between the station manager and the board of regents. Now, who's the CEO? Who's the editor-in-chief?

In the systems you're more familiar with, is the CEO the editor-in-chief? If not, is it the program manager? If the program manager's the editor-in-chief, does that mean the CEO can't overrule the editor-in-chief without--what? Violating his first amendment rights or tearing apart the insulation that would give the station first amendment protection if it came under attack?

The Need for CEO/Board Understanding

The more we discussed it, the more we came back to the principle that it should be understood between the board and the CEO, or between the station CEO and his boss at the university, that when it comes to individual programming decisions, the CEO is responsible for what he or she does,

There were some arguments that you'd lose state funds if you lost your state commission, although the examples of Connecticut and New York were cited. New York enjoys very handsome local funding but does not have a state governing commission. One might argue whether you'd lose state funding, or gain, or come out even on that score. Or one might argue that what is, is, and if you try to solve the problems by changing the structure, you'll be banging your head against it for the rest of the century and meanwhile the problems will keep coming up.

Our group would like for the entire group to consider whether the problems are so serious, and the policy solutions so weak or inadequate, that if at all possible a change in structure is desirable, to get broadcasting out of the arms of government.

SAM HOLT: Is there any precedent for this disestablishmentarian approach on the state level?

RICE: I don't know.

-----: There's no guarantee for most of us that we'll be funded by the legislature from year to year. In fact, the public broadcasting authority in one state was taken entirely out of budget five years ago. It was put back in a few months later, but we are creatures of the state. Nothing that says they have to fund me year after year.

-----: We need to discuss the 'down' side of the issue. I wouldn't call the make-up of the board as much of a serious problem as I would of having a commonality of principles, why we exist, the insulation of the editorial decision-making process. We all need that, no matter how the board's structured.

RICE: There may be no sympathy for discussing our proposal.

Problems of University Licensees

But back in the same area where the rest of you were working, I should

politics involved in the situation, especially when illustrated by the kind of case we looked at. So the argument was that the answer has got to be in structure.

The difference between what our group came up with and this, is that I assume that what you've been talking about basically leaves in place the shape of the state licensee authorities that now exist. You take as a given the commissions or whatever, appointed by the governor, etc., and try to find the principles that will teach them how to behave well, so that the result over time, however mediocre, might be at least acceptable.

Consider, instead, that the structure just won't protect you, you being the person trying to exercise program decision-making responsibility with integrity. It just won't protect you when the crunch comes. Therefore, you need a different structure to protect you to begin with.

Some members of the group arrived at Henry Geller's advice to the group this morning: whatever you do, throw out any system that has political appointees to the board. The ideal this group ought to establish, going back to its home states, is to adopt the Connecticut model which was described to us, where you have regular state funding of the state system, but it's governed by a board, half of whom are elected by the contributors to public television, and the other half are elected by the first half. It's not a state agency, but a state-wide non-profit corporation whose board is not appointed by the governor but by people who care enough about public television in that state to contribute something toward it and therefore have the power to cast a ballot. This system has not stood in the way of regular, annual state funding. On the other hand, given Mr. Miller's analysis, it affords full first amendment protection, which we can't be sure any of these other state authorities have at all.

adopted at the board level as a state's statement of principles. Then the handbook would be explication and gloss of that, some parts of which might be orientation and other parts might be guidance or whatever. I think this is different from what we talked about, the idea of producing a super document.

-----: I think it's the "Constitution."

-----: I think it's brief.

-----: Simple.

-----: Not over one page.

-----: You want the state attorneys general to endorse it, and the council on state legislatures, the association of land grant colleges, etc. It should be very general, but it should deal with what those groups will understand.

GROUP III PROPOSES A SIMPLE SOLUTION

MICHAEL RICE: I'm sure I speak for my group in expressing admiration for Group I and the complexity they derived from one basic problem. We tried just the reverse: to find a solution that would be as simple and precise as possible, with a wide, general application--more the kind of thing that would be on one page rather than the do's and don't's in a handbook.

Present Licensee Structures Inadequate Protection Against Intrusion

I should report that, lead by one of our most outspoken and passionate members, we discussed whether a statement of policy or a list of do's and don'ts, was altogether the wrong way to address the problem. That it was pointless, that no matter how long we spend drafting a policy, how many people you got to endorse it--that when it comes to the crunch, various models, principles and credoes fall away, given the reality of sheer power

ment. What we're talking about is these improper influences in the programming process, from a funder or governmental agency. That's what we're after in the code. We're not trying to say specifically that all telecommunications agencies will have nine-member boards, etc.

-----: That's not what I heard in Mr. Greffe's statement. He was defining roles, what a CEO will do or won't do.

-----: That's the handbook.

-----: It doesn't matter what comes first. It may be a code, or a handbook, or just instructions to us. It becomes a statement of this group. Then we have to put the content in it, and then my other question: Does it get legs?

-----: How do you get people to adopt it like the university professors have gotten their principles adopted?

-----: That has to do with authorship. And character: how good is it? I'm not sure we 40 people want to take on that responsibility and say this is the Wingspread document of November 1984. Perhaps each state and corporation will contribute money and therefore a vote of confidence to it.

_____: It's going to require a great deal of study, and the input of others besides this group and the imprimature of authority of a number of societies--PBS, various state institutions, private insitutions--that will say, "This is a good thing to do." And it would be embarassing if some state declined to adopt it.

-----: In our group we talked about the handbook in passing. I envision this not as two sides of the same tablet from the mountain, but the right one which we referred to as the statement of principles. I envision that much more as the constitution, and the handbook being case law, or a gloss. So I envision the common statement of principles to be

-----: But we have no authority, nor does PBS or anyone else, to tell local licensees exactly how they should govern themselves. A code implies that you have some power of coercion if you don't follow it, which we don't have. The coercion is a matter of moral authority, which might be just as well accomplished with the principles. You might want to change the name from "handbook" to "Principles Governing Public Broadcasting."

-----: This group could adopt a code which may or may not be adopted on the local level. A code has to start somewhere, somebody's got to draft it. Then you work for universal adoption of the code, and it'll take a while for people to accept it.

-----: If we look at what we're trying to get at, we're looking for a way to provide answers that the first amendment doesn't give us, to prevent undue intrusions or to deal with them when they do. It seems to me the code ranks above the handbook. We all agree in some manner on a code of operations like the NAB code.

-----: We agree on it, but our local boards agree to adopt it or not to adopt it. If you adopt it, then somehow you subscribe to it. If you don't, there's some kind of sanction. I think that's very important. The code ranks above the handbook. If we're going to get what we're after in terms of protection and a unification of our efforts, we need something beyond a model.

-----: I've tried to bring both the code and the handbook into non-loaded generic statements. A code is a statement of commonality, a handbook is an orientation document. We're trying to find ways of taking appropriate actions if we're faced with a situation of interference with editorial decisions. taking appropriate umbrage.

-----: The common statement or the code is not necessarily the principles of governance; i.e., the role of the board and the role of manage-

freedom did not exist. By the time that war was won, that document had a lot to say to colleges and universities. It's not a legal document, but it does allow somebody to be censorious and it picks up its power not because no one's ever cited but because a few are cited every year. If no one's ever cited according to a code, it becomes Pollyanna in its character.

-----: Why did Rick's group deliberately shy away from a code and decide on a handbook?

-----: It seemed that the word "code" implied penalties for those who don't follow it or live up to it, whereas 7 principles could be adopted or not by the individual organizations.

-----: Will it work as well if there's no possibility of censure?

-----: I think the first thing is to get something accepted in enough places so that it becomes practice.

-----: We're saying that for the handbook, everyone can develop his own. A code might be a national statement.

-----: You need the principles to develop the code.

-----: Some people might think it's the other way around--that you should codify what's good behavior and then build principles on that.

-----: It strikes me that the code we're talking about could easily be a piece of the handbook. But the code could also have a life of its own.

-----: Isn't it a matter of form, of the way statements are made? Code statements tend to say, "This is the way it is," while handbook statements don't quite do it that way.

GREFE: The group called the handbook "Principles of Governance" and intended it to be localized. Whether it's called a code or not, the idea was to develop a model that could be adapted.

delegate program decisions to a programming editor.

-----: I don't agree that you have to delegate in order to evaluate. But some of our stations are so small, their ranks aren't big enough to delegate.

HECKMAN: Can the handbook idea be universalized?

-----: In the content area, what do you want to give guidance in? What form do you want the guidance to take? Are these suggestions, a model to be adapted, or are these basic principles which should be a guiding catechism for the system? Other points seemed like administrative guidelines. Is that a correct perception?

GREFE: We were thinking in terms of an educational process, so let's not lock in on 'handbook' as a structure. If you use it as an educational process for board members and others, you do want to address the unique mission of public broadcasting and the issues at stake.

-----: I would opt for a descriptor with a little more positive connotation than yours.

HECKMAN: Certain principles should go into any handbook you write because they're powerful statements; others should be included depending on your circumstances.

Now, what can we do here to make it happen?

-----: First, somebody has to write a very general draft to send it out so that it can be adapted. Second, even though I'm told this group doesn't want to constitute itself as a group, the set of principles could still be the consensus of the 26 state authorities, which would give it wider distribution.

HECKMAN: How close is that to the code another group was discussing? I was thinking of the American Association of University Professors' code. It picked up its power in the 1950s when McCarthy was saying academic

make the best possible environment for the best possible decision-making.

Then we decided that what would distinguish this code from codes already written were the distinguishing factors of public broadcasting itself. We need to look at public broadcasting's unique problems that will be impacted by such a code. These include funding, government, the foginess of our mission, etc.

DEFINITION OF "UNDUE INFLUENCE"

-----: We spent about half our time trying to define "undue influence," on the theory that until we know what the danger to be averted is, or the problem to be solved, it would be hard to answer the questions at the end of the last plenary.

We made some interesting distinctions we'd like to throw out for you to consider. One is whether the problem exists all the time, for which a constant response is necessary, or whether it's more of a danger that may take shape occasionally, and you want to be ready when it does rather than have to scramble for the apparatus to deal with it. We can think of our code-writing exercise as preparation during the calm to be ready for the storm, which will break at different times in different ways in different places.

What is the danger? The danger is of attempts to influence programming--here's where we began to grope for definition--in any way that's wierd. Here's the list we came up with: trying to influence programming for narrowly political reasons or for excessively egoistical reasons, or venal reasons, or empire-building reasons, any of the reasons that violate the trust of public broadcasters on behalf of a larger public.

Motive for Interference

This lead us to discuss and realize that what makes undue influence,

as opposed to simply influence, is not the source of the influence. We considered that the governor might have a good program idea. Just because it comes from the governor, by itself, doesn't mean it's an improper or undue influence. But motive, which is a very slippery thing to deal with, does play a part. And if motive is any of these "wierd" things, then it's a problem to fight against.

But what if the motive is good? What if someone has a good idea, has the public interest at heart, has no selfish gain to be made, but it's backed by coercive tactics leaving you no alternative. It's not an idea to consider but one that you must adopt, either because your funding will be cut if you don't, or because someone in higher authority directs you to do it.

So the sort of influence from anyone other than the constituted licensee and its agent, its CEO, or any influence that leaves you no alternative, even if it's for a good motive, also is undue or improper influence.

In summary, there were two ways we felt influence over programming could be undue or improper:

1. When it's from a bad motive, politically, venally, self-serving, narrowly favoring the interests of one group, etc.
2. When the motive may be good but it's backed by coercion and threats.

Reward as Coercion

We also considered potential cases where the coercion takes the form of a reward--promised addition funding, for example. Then we had to recognize that if you take the governor out of the example and insert a group like the NEA, you face decisions like this all the time. There are grants available for particular purposes. If you want to serve those

purposes, you have a fair chance of getting a grant. You don't want to serve that purpose, then don't go for the grant. So the offer of a grant for a particular purpose is not in itself coercive, unless you have no alternative.

Although we were not able to agree, even among the seven of us, on an extensive definition of undue influence, we did endorse this phrase as its key concept: "Any attempt to influence programming that leaves you no alternative."

That is a danger that will certainly occur again and again throughout the system, and that is precisely the danger a policy approach is geared to try to deal with. You can't prevent these things happening--the question is to be in a strong position to deal with them when they do happen.

Purpose of the Code

No code, no matter how we write it, will help if we have, for example, a CEO of a state licensee that simply by temperament, slavishly defers to a strong board member or someone else before taking any action. The purpose of the code is to support the board or CEO with spine, not to give courage to the spineless. On the other hand, a new CEO or board might have less leverage in the first weeks or months than develops over time. To have an ideal sanctioned by a code is helpful in setting the sights and directing the board and CEO on ideal behavior.

Program Decision-Making

That behavior need not be elaborate. We came down to two or three planks of a statement of propriety about program decision-making.

Public broadcasting program authority always welcomes advice, comments, suggestions, criticisms at all times; will consider them; and will deal with them fairly. This is not an institution above reproach or criti-

cism. No one is disqualified as an individual from making his or her contributions to the general debate on what the station should do.

However, the policy must underscore that the board is designated as legally responsible for the performance of the station overall, especially its program service. That board, while bearing overall responsibility, delegates to its chief executive officer, the resp. for individual program decision-making. That CEO in turn deals with those decisions with staff, consultants, advisors, etc., and is subject to review of his or her overall performance.

But there is a distinction between the overall responsibility held by the board, and the delegated responsibility to the CEO, that should be clearly stated as the process by which the station deals with its program decisions. This concept refers to the "environment" for encouraging good decision-making.

The Code vs. Tactics for Dealing with Undue Influence

When it comes to dealing with problems of undue influence, we felt that was a question of tactics, not a matter that could be put into the code. You cannot predict how you might deal with particular cases, although we found it instructive in looking at our sample cases that the reflex was not to stand on rights or to quote prerogatives. Instead, we tried to deflect the threat by persuading the person who was bringing it that really there was a better way, and that the long-term interests of the institution would be better served by doing something else. In most cases that sort of response would be most effective.

A Casebook for CEOs

But even though that's not to be in a code, the idea came up that just as you might have a handbook for board members, CEOs might find useful a

casebook of how their colleagues in the past had dealt with the particular instances.

Professional Standards

As for the question of professional standards, we decided that the word "professional" shouldn't be there because to be a public broadcaster is not really analogous to being a lawyer, doctor or a CPA. There isn't a special graduate program, there's no admission to the bar. In fact, in a highly specialized society, public broadcasting might be the last bastion of the generalist. There might be dangers in putting professional trappings on a role it just doesn't suit.

But we did think that as part of a code about where and how program decision-making should be made, there ought to be a general statement about program standards, but not professional standards. "Professional" refers to how the individual behaves; "programming" applies to the standards of the service. We found out that a number of you already have such policies--you can take the programming policy you already have and link it to the credo.

GAINING THE SUPPORT OF OTHERS

_____: Our group was concerned about how we gain the imprimatur and support of other organizations and about how the drafting takes place from this point on.

Our first concern was defining the problem in a way that goes beyond simply protecting us. We want to express editorial integrity so that people understand it's not just to make our lives easier but it's a broader value. We're trying to protect public broadcasting and what makes it valuable.

Recommended Principles

We felt any set of principles should start with the state government, not necessarily with the board or the CEO, with a statement about the state's responsibility to contribute to the education and cultural life of its citizens. The state is responsible for creating an institution to achieve this goal, to fund it, while preserving the editorial integrity of the media serving its citizens. We want to make sure the state assumes responsibility for protecting those values, so it's not just our responsibility.

We felt the principles should state that the board has absolute responsibility to serve as the public trustee of the viewers and listeners, to protect the credibility of the public trust, and protect editorial integrity against interference from government or other sources. The board is also responsible for making a policy statement that accountability is through evaluation, not decision-making. We want to make it clear we're not trying to establish boards with no power, but trying to give them the tools they need to discharge their responsibilities without violating editorial integrity.

We thought the manager or CEO's responsibilities included stewardship of resources, management to carry out responsibilities, ability to hire and fire staff to control programming decisions.

Principles of program decision-making include:

- Program decisions are made routinely by a program editor
- Program decisions are based on editorial criteria, not funding considerations
- A process should be established to consider diverse views and opinions from the public to discharge the responsibility of program

decision-making.

NECKMAN: You've reported back with a minimum of collision. Group One has given us a preamble, has told us the document should be industry-wide, one page if possible.

The next group talked about the public trust and what guides the writing of this document, and encouraged us to think specifically in terms of public broadcasting. The third group defined "undue influence" and gave us planks--the one I especially don't think we should lose is the concept that the industry opens its doors to critics. If we're at all public, we're public about wanting to hear what the public has to say about what we're doing. They also recommended a guide on what to do when it hits the fan--a casebook of positive and negative examples.

Finally, the statements from the last group gave the drafting committee a number of tools.

Now, do we have enough content to give to a drafting committee?

(There is general agreement that there is enough information for the committee.)

COMMENTS ON THE GROUP REPORTS

(Mr. Holt reads his committee's "Draft Statement of Principles on Editorial Integrity in the Program process for State Licensees of Public Broadcasting Stations." For the full text, see Appendix A.)

-----: One thing that strikes me as really significant. What is the purpose of the board, and what is the purpose of this group? It's not to compel a uniform mission of each station. It's the goal of each individual board, and its fundamental role, to define the mission of that outlet, not to dictate to the rest of the public broadcasting system what its mission is.

-----: We should also try to formulate a perfect structure for a model public broadcasting licensee.

RICE: Maybe this is where we get into the structural question. I think the members of my group would be very concerned that if the code or principles had more than just a kind of pious usefulness to them in their home situations, they'd need something addressing structure, stating that the board will not act on program matters, that that is delegated to the CEO, that the board is resp. overall but delegates individual program decisions to the CEO and his or her staff. That came through clearly again and again, as a kind of fundamental security for editorial integrity that if that's lost in the incantation of quality, responsiveness, range, credibility, then what have you done but throw in some high-flown phrases without providing the structure that would permit a CEO to say to a board member, "You're out of line"?

-----: Other groups did talk about whether there were elements of practice which should be combined with these principles because they are so fundamental. Perhaps this procedural point should include a statement about the board and staff.

-----: A fundamental point is that the Ten Commandments are all behavioral mandates, but some are operational and some are theoretical. The first two are pretty theoretical, but keeping the Sabbath is operational. So there's a high precedent for combining principle and practice.

PLENARY SESSION IV

GAINING ACCEPTANCE OF THE PRINCIPLES, ELECTION OF STEERING COMMITTEE

Gaining Acceptance

RICE: Our group thought it should not necessarily be a universal document, but one specifically for and about state government licensees.

-----: We felt it was important to have endorsements, and we don't want to have a document created off somewhere and then later have someone say, "Gee, we could've endorsed it if it just said this instead of that." We need input all along to build in endorsements and supporters.

-----: If you're looking for an endorsement from CPB, it might at least be well to discuss it with them during the drafting process.

-----: I was concerned that when we hit the streets with this document to attorneys general, governors, etc. that it's still plastic and they can change it. I think we need to take them our document.

-----: I think we need to touch base informally with the heads of the organizations whose endorsements we want while we're drafting the document to ask for their input, on an informal basis.

FOX: What I hear is, "Do it as soon as possible." If you want the whole system or people outside the state networks to go along, you should have it done by May. If you want to make it general, that's your shot at the industry. But the steering committee will have the final decision on this.

-----: We need to say to the other stations who aren't system stations, "We've done this because we had some particular concerns, not to exclude you. On the other hand, we've made every attempt to come up with a document that has universal possibilities. If you like it, we'd be

delighted if you'd embrace it. If you don't, that's O.K., we just wanted you to know what we've been doing."

-----: Amen.

Steering Committee

The following participants were chosen as members of the steering committee to guide subsequent work on the code or principles, and other possible documents:

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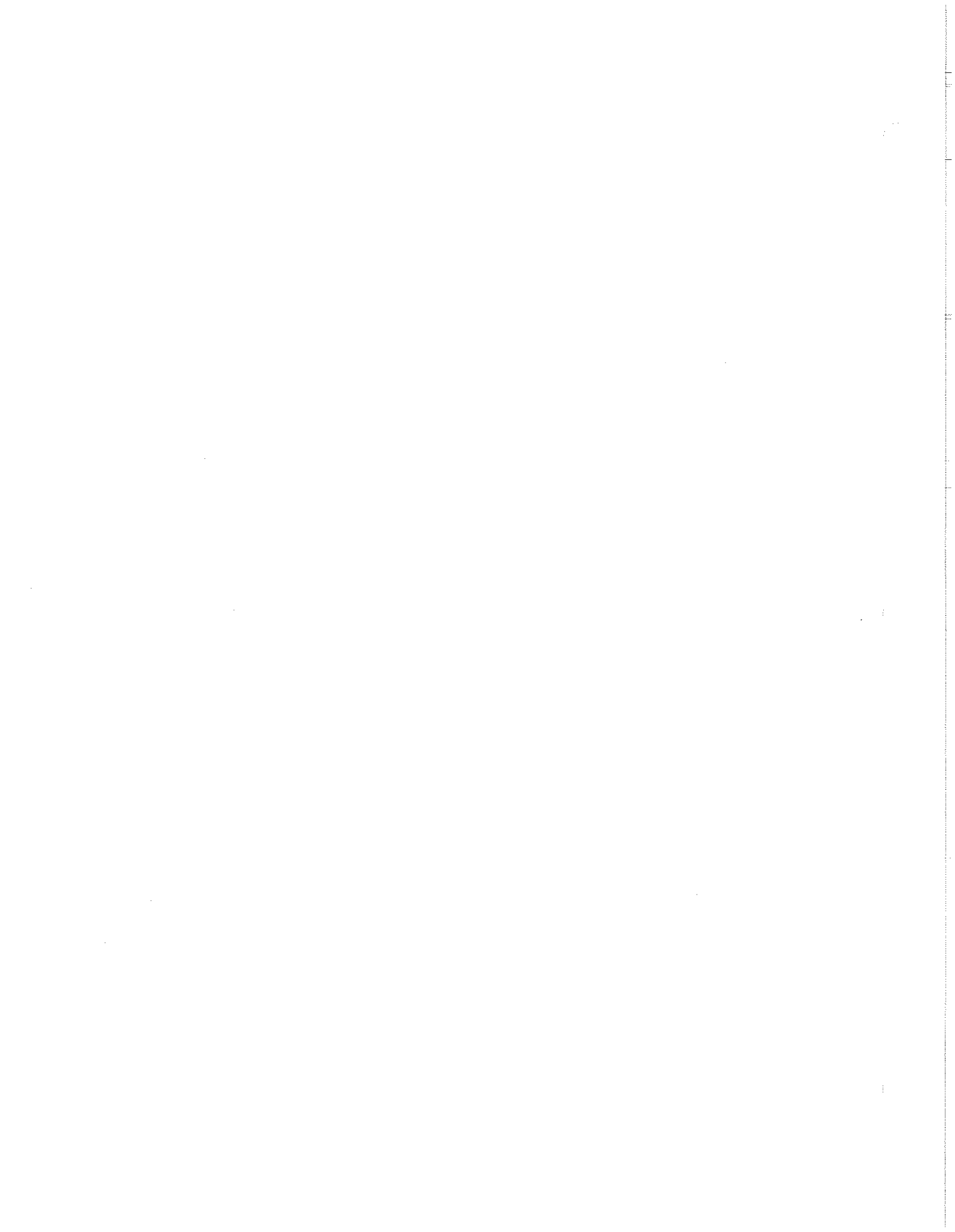
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APPENDIX A



Draft Statement of Principles on Editorial Integrity
in the Program Process for State Licensees of Public Broadcasting Stations

Samuel C.O. Holt, Communications Consultant

In order to guide us in discharging our public responsibility and to explain the basic premises of our enterprise, we as members of boards of governance of public broadcast operations adopt the following five basic principles:

1. Many of our responsibilities are grounded in constitutional or statutory law.

Public broadcasting is subject to a variety of legal requirements and restrictions, to which we as trustees must see that our stations adhere. Chief among these is the requirement that, as licensees of the Federal Communications Commission, we operate in the constitutionally protected area of public speech, according to the terms of the Communications Act of 1934, the Public Broadcasting Act of 1967, and other applicable statutes. We might also have other legal requirements and responsibilities as creatures of state or local government, or of educational institutions, or as managers of legally defined non-profit organizations, or as required in providing our services to the public.

2. We are trustees of a public service.

Public broadcasting was created to provide, free of the inevitable pressures and problems of commercial broadcasting, a wide range of services which can enlighten and entertain the American public which is its audience. We are responsible for maintaining these services at a high level of quality and responsiveness.

3. Our service is programming.

Public broadcasting can be justified only in terms of the programming

it can develop, acquire or produce and deliver to its audiences. All other activities of public broadcasting are finally merely efforts to ensure that the American public is offered a consistent range of good program choices delivered over their public broadcasting outlets.

4. Credibility is the currency of our programming.

To maintain a credible public service programming effort, we must assure its credibility by:

a. Developing and implementing a policy by which programming can be planned, developed, produced and promoted in ways which meet the needs and stimulate the interest of our audiences.

b. Assuring that this policy, once in place, can be implemented free from undue external pressures, whether from political, financial or other sources, and

c. Assuring that this policy, once in place, bases programming on its value in the marketplace of ideas and not on financial considerations or pressures.

5. We have a fiduciary responsibility.

We must manage our affairs in public broadcasting so as to assure our public and private supporters and our audiences that efficiency and effectiveness result from the investment in us of their time and resources.

APPENDIX B



DRAFT

LEGAL ANALYSIS SUMMARY

Nicholas P. Miller
~~William~~ Preston, Thorgrimson, Ellis & Holman

"Analysis of First Amendment Rights of Public Broadcasters," written as a memorandum to the Southern Educational Communications Association in November 1983, concluded that the First Amendment offers uncertain protection to public broadcasters. The memorandum analyzed the court cases arising from two public broadcasters' refusal to show the PBS program "Death of a Princess." These cases provided the most recent legal guidance on the First Amendment protections of public broadcasters.

As the memorandum explained, it is not clear when public broadcasters will be considered as acting on behalf of the state. The First Amendment protects only non-state licensees from state intervention. If public broadcasters are considered state actors, they are vulnerable to programming challenges by viewers and may not, themselves, be protected from state officials. The memorandum outlined an approach to the state action doctrine which could increase broadcasters' First Amendment protections by finding state action only if a governmental rule or policy is challenged. Individual programming decisions would be protected from constitutional attack, yet broadcasters themselves could challenge state regulatory policies which infringed their rights of expression.

The memorandum's second major conclusion was that courts will probably continue to hold that public broadcasting stations are not public forums for First Amendment purposes. This may allow state officials more control over public stations. However, it substantially reduces the chance that public broadcasters will be forced to accede to the programming demands of individual viewers.

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Finally, the memorandum found unclear the extent to which the First Amendment protects a public broadcaster's editorial function from official interference. Moreover, even if individual programming decisions are protected, public broadcasters must be concerned about the power of state officials to fire them or to cut their funding. Firings and funding cuts may be difficult to redress in court.

In the past year there have been several legal developments which are relevant to the conclusions of the earlier memorandum. Unfortunately, the First Amendment questions facing public broadcasters have not been resolved in the past year. The previous conclusions remain sound.

The Supreme Court decision, Federal Communications Commission v. League of Women Voters of California, ___ U.S. ___, 104 S.Ct. 3106 (1984), contains some language which supports broad First Amendment protection for broadcasters. It also indicates that licensees of state and local governments have First Amendment protection. However, it leaves open many First Amendment questions important to public broadcasters. These include the rights of viewers to compel programming, the constitutionality of an editorializing ban directed solely at public licensees, and the extent to which the First Amendment protects public broadcasters from interference by state and local officials. The decision reinforces the concern that state officials may nevertheless control programming decisions through funding cuts. It also reinforces the recommendation in the November 1983 memorandum that public broadcasters examine state regulatory systems as sources of protection from governmental interference.

Recent case law reaffirms the conclusion that public broadcasters are likely to be considered to be acting on behalf of the state unless courts use an approach which finds state action only if a governmental rule or policy is challenged. The governmental rule approach offers greater

protection to broadcasters.

Recent cases concerning public forums support the earlier conclusion that courts are unlikely to consider public television stations to be public forums. As a non-public forum, a public station has greater protection against challenges by individual viewers, but may have less protection against official interference.

A recent federal appeals court decision expands the legal remedies available to an employee fired for exercising First Amendment rights by allowing him to sue a private employer under state law. These suits may be difficult to win, however, and they would not protect against funding cutoffs.

APPENDIX C



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Wingspread Conference
on
Editorial Integrity in Public Broadcasting
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Wingspread Conference
On
Editorial Integrity in Public Broadcasting
Presenters and Discussion Leaders

LES BROWN

Les Brown is the editor-in-chief of Channels Magazine. He spent eight years as the television correspondent for The New York Times and was television and radio editor during 20 years with Variety. He is the author of six books, including Televi\$ion: The Business Behind the Box, The New York Times Encyclopedia of Television and Fast Forward: The New Television and American Society. He has taught at Yale University, Hunter College and the New School of Social Research and is a Poynter Fellow in modern journalism at Yale and an associate fellow of Morse College, Yale. He is a recipient of the Louis Cowan Award from the Aspen Institute for contributions to the public's understanding of the media. He serves on the boards of the Peabody Awards and the Humanitas Prize. Mr. Brown holds a B.A. degree from Roosevelt University, Chicago.

LARRY DICKERSON

Larry Dickerson is director of telecommunications planning for the Wisconsin Educational Radio and Television Networks. He also serves as chairperson of the University of Wisconsin Telecommunications Strategic Planning Task Force. Mr. Dickerson worked for 10 years as the director of programming and long-range planning at WHA-TV in Madison, Wisconsin. He was also the producer, director, on-air host, promotions director and program manager at public television station KNME in Albuquerque, New Mexico. He has been a consultant for a variety of organizations in public broadcasting in the fields of programming, planning, group process and decision making. He holds a B.A. degree from the University of New Mexico.

HENRY GELLER

Henry Geller is the director of the Washington Center for Public Policy Research. The center, which focuses on telecommunications policies and research, is a part of Duke University's Institute of Policy Science and Public Affairs. Mr. Geller was formerly assistant secretary for communications and information and administrator of the National Telecommunications and Information Administration of the U.S. Department of Commerce. From 1975-1977, he was a communications fellow at the Aspen Institute's Program on Communications and Society. He was associated with the Rand Corporation for two years. From 1964-1970, he was general counsel and then special assistant to the chairman of the Federal Communications Commission. Mr. Geller received a B.S. degree from the University of Michigan and a law degree from Northwestern University.

Presenters and Discussion Leaders continued

DAVID R. GERGEN

David R. Gergen is a visiting fellow at the American Enterprise Institute in Washington, D.C., and a commentator on contemporary affairs. Until January, 1984, he served as communications director at the Reagan White House, where he was responsible for coordinating the key communications efforts of the administration, including the media relations office and the speechwriting office. After leaving the White House, he became a fellow at the Institute of Politics at Harvard's John F. Kennedy School of Government. Since returning to Washington last summer, Mr. Gergen has written a nationally-syndicated newspaper column for The Los Angeles Times and is a regular political commentator for the MACNEIL/LEHRER NEWSHOUR. Mr. Gergen also served in the Nixon and Ford administrations as head of Nixon's speechwriting and research team and special counsel to Ford. Mr. Gergen is an honors graduate of both Yale University and Harvard Law School.

RICHARD GREFE

Richard Grefé is director of policy development and planning at the Corporation for Public Broadcasting and is responsible for strategic planning, technical research, spectrum and technology regulatory issues, and audience research. One of his main areas of emphasis at CPB is the educational programming needs of children. He headed Richard Grefé Associates for 10 years providing corporate and public sector clients with strategic planning and economic and public policy research. He is a former reporter for the Associated Press and Time Magazine. Mr. Grefé holds degrees from Dartmouth and the Stanford Business School.

PHILIP R. HECKMAN

Philip R. Heckman has been president of Doane College, Crete, Nebraska, since 1967. He is a member of the Nebraska Educational Television Commission, the board of Nebraskans for Public Television and the board of the Nebraska ETV Council for Higher Education. He is a member of the Executive Committee, National Council for Higher Education of the United Church of Christ. He served as vice president of Yankton College, Yankton, S.D., from 1965 to 1967. Prior to that time, he was the executive director of the United Fund of Fargo-Moorhead, N.D. Dr. Heckman holds a B.S. degree from State Teachers College, East Stroudsburg, Pennsylvania, and M.S. degree from the University of Pennsylvania, Philadelphia, and a Ph. D. from New York University, New York City.

Presenters and Discussion Leaders continued

SAMUEL C. O. HOLT

Samuel C. O. Holt is currently a communications consultant. As National Public Radio senior vice president for programming from 1977-1983, he initiated major new radio program efforts, such as MORNING EDITION, and received every significant American award for radio programming excellence. From 1970-1973, as one of the founding staff of the Public Broadcasting Service, he worked on the original design for a unique public television programming system involving planning, production and evaluation of programs used by over 150 public television stations. Mr. Holt has also been an independent TV producer, a history instructor at Harvard, and the news and sports director, later president, of WATV Radio in Birmingham, Alabama. He received an A.B. degree from Princeton University. He was a recipient of a Rhodes scholarship and received a B. Phil. degree from Oxford University.

NICHOLAS PATRICK MILLER

Nicholas Patrick Miller, an attorney specializing in communications and legislative law in Washington, D.C., is a partner in the law firm of Preston, Thorgrimson, Ellis and Holman. He served as communications counsel to the Senate Commerce Committee from 1975 to 1977. In 1977, he joined the Carter White House and the Office of Telecommunications Policy as private consultant. He advised the White House on issues of national communications policy, reorganization, regulatory appointments, and telecommunications common carrier and mass media regulation. Mr. Miller established his firm's communications law practice which today represents a wide range of communications clients, including broadcasters, telephone companies, local government regulatory authorities, entertainment and sports industry interests. He has authored many articles on the legal, policy and regulatory aspects of cable television and telecommunications. Mr. Miller holds a B.S. degree in economics and a law degree from the University of Washington.

DALLIN H. OAKS

Dallin H. Oaks has been chairman of Public Broadcasting Service's Board of Directors since 1980. He was also recently named to the Council of the Twelve, second highest authority in the Church of Jesus Christ of Latter Day Saints. Until he was called to his church position, he was a Utah Supreme Court justice. Mr. Oaks was a law clerk for U.S. Supreme Court Chief Justice Earl Warren, practiced law in Chicago and became a professor of law at the University of Chicago Law School. He has also served as executive director of the American Bar Foundation in Chicago. He was president of Brigham Young

Presenters and Discussion Leaders continued

University from 1971 until he was named to the Utah Supreme Court. Mr. Oaks became a PBS director in 1976, was elected PBS board chairman pro tem in 1978, and was appointed chairman of the board's transition committee in 1979. During the reorganization of PBS during 1978-79, the transition committee was charged with working out the specifics of a new PBS management and board structure. As PBS chairman, Mr. Oaks played a major role in leading PBS through another transition period, when the organization adopted its four-year plan, which included some structural changes and an overall retrenchment in staff and services. Mr. Oaks received a B.A. degree from Brigham Young University and a J.D. degree from the University of Chicago Law School.

ROBERT M. O'NEIL

Since 1980, Robert M. O'Neil has been president of the University of Wisconsin System, the fifth largest system of higher education in the country. He came to Wisconsin from Indiana University, where he was vice president for the Bloomington campus. Mr. O'Neil served in 1962-63 as law clerk to Justice William J. Brennan, Jr., of the U.S. Supreme Court. Mr. O'Neil is a member of the University of Wisconsin-Madison Law School faculty. He serves as a trustee of the Carnegie Foundation for the Advancement of Teaching and is on the boards of the Council of Postsecondary Accreditation, the Educational Testing Service and the Johnson Foundation. He is the author of many articles and books, including Free Speech: Responsible Communication Under Law and Classrooms in the Crossfire. Mr. O'Neil is a graduate of Harvard University and Harvard Law School.

EDWARD J. PFISTER

Edward J. Pfister has been president of the Corporation for Public Broadcasting since September of 1981. He served as president and general manager of KERA-TV/FM in Dallas/Fort Worth from 1976-1981. He spent three years at the Public Broadcasting Service, first as the director of PBS chairman's coordinating committee and then as executive assistant to Ralph Rogers, chairman of the board. From 1970-1972, Mr. Pfister was director of public relations and information services for the National Association of Educational Broadcasters. At the National Instructional Television Center (now the Agency for Instructional Telecommunications) in Bloomington, Indiana, Mr. Pfister was director of information services and assistant to the executive director. Prior to that assignment, he served as writer, editor and manager of information services for the National Educational Television and Radio Center in New York City. Mr. Pfister holds a B.A. in literature and philosophy from St. Peter's College, Jersey City, New Jersey, and an M.A. in professional education from Seton Hall University, Orange, New Jersey.

Presenters and Discussion Leaders continued

MICHAEL RICE

Michael Rice is the president of Michael Rice Media, Inc. and is a senior fellow of the Aspen Institute. He was with WGBH, Boston, from 1965-1978, first as radio manager, then television program manager and finally as vice president and general manager. During those years WGBH became one of the leading producers of programs distributed on the public system nationwide and abroad. Those programs included NOVA, THE ADVOCATES, THE NADER REPORT, RELIGIOUS AMERICA, EVENING AT SYMPHONY, MASTERPIECE THEATER and CROCKETT'S VICTORY GARDEN. He then became director of the Program on Communications and Society at the Aspen Institute. Michael Rice Media, Inc.'s recent client organizations include Atlantic Richfield, Diebold Group, WNET/Thirteen, the Bush Foundation and the American Can Company Foundation. Mr. Rice received an A.B. degree from Harvard University and was a Rhodes Scholar, Queens College, Oxford.



CONFIDENTIAL

Editorial Integrity in Public Broadcasting

Synopsis of the Wingspread Conference's Recommendations

for a Code or Statement of Principles



DRAFT

Editorial Integrity in Public Broadcasting
Synopsis of the Wingspread Conference's Recommendations
for a Code or Statement of Principles

PURPOSES OF THE DOCUMENT

David Gergen, visiting fellow at the American Enterprise Institute, recommended that the Wingspread Conference group consider drafting a code to provide a standard for dealing with intrusions into program decision-making, or attempts to intrude. Each state board or commission would then have the option to adopt the code.

Les Brown, editor of Channels, stated that a model code would be useful for gaining attention from the press for the issue of editorial integrity, especially as a public policy issue rather than a media or entertainment issue.

Group leader Richard Grefé reported that his group saw the code or statement of principles as a catalyst for discussion within each state on how editorial integrity problems should be managed.

Another participant saw the document as a way to provide answers that the First Amendment does not give public broadcasting, and a way to prevent undue intrusions or to deal with them when they do occur.

Having a common statement of principles on why public broadcasting exists, and how the editorial decision-making process should be insulated, was a primary need according to another participant.

The purpose of the code is to support the public broadcasting board or chief executive officer (CEO), another participant stated. Ideals of editorial integrity sanctioned by a code will help direct the board and CEO on ideal behavior.



CHARACTERISTICS OF THE DOCUMENT

Participants described a code or common statement of principles as the "constitution," a brief, simple, very general one-page document, that can be offered to the industry to adopt or not. The statement should be understood by anyone and applicable, if possible, industry-wide. Like other codes, there are elements of practice that might be included in the principles.

CONTENT OF THE DOCUMENT

Mr. Grefe reported that after studying issues raised in a case study, his group believed there was a clear need for establishing principles to govern the relationship between boards, management, and other officers in the public broadcasting chain of command. The group also established the need for defining principles governing program selection, calling it principles of governance, which would not only define the relationship between boards and management in terms of programming responsibilities, but also would give the board a set of principles to define their own performance to others outside.

Another conference participant stated that the common statement or the code is not necessarily the principles of governance; i.e., the role of the board and the role of management. Instead, it is a definition of improper influences in the programming process, from a funder or governmental agency, and that a handbook should cover board and management roles.

However, a second participant thought Mr. Grefe's group was defining roles for a CEO or board.

A third person added that the code was the "constitution," adopted at the board level as a state's statement of principles, and the handbook would be an explication and gloss of that "constitution."



Group leader Michael Rice reported that his group continually returned to the need for an understanding between the board and the CEO that the CEO is responsible for individual programming decisions. The board's responsibility, as Mr. Grefé's group defined it, is to set policy and to evaluate the CEO's performance and by extension, that of the staff and operation the CEO has put together. The board deals with specific programs only as part of the overall record by which the CEO is measured, along with fundraising, financial performance, etc.

Another participant added that editorial integrity should be expressed so that the public understands that it is of value to society, not just a ploy to make the lives of public broadcasting professionals easier.

Draft
1/31/84

Principles Governing Effective Public Broadcasting Management

Both state and federal governments have passed legislation to provide for Americans' educational and cultural life. Such legislation includes authorization for institutions like public broadcasting licensees, whose primary purpose is to serve the people with a wide range of excellent programs.

Because government created public broadcasting, the state is responsible for insuring excellence of public broadcasting programming. To make the maximum contribution to its citizens' educational and cultural life the state must protect public broadcasting's editorial integrity, the responsible application by professional practitioners of a free and independent decision-making process, ultimately accountable to the public.

Members of public broadcasting boards or commissions serve as public trustees for the viewers and/or listeners. Members also guard the public broadcasting professional from "undue" or "improper" influences from government officials or funding sources that prevent the exercise of editorial integrity in programming decisions.

To protect the credibility of their public trust, to insure the best environment for good program decision-making, and to assure fundamental security for editorial integrity, board members should:

1. Educate the public, public officials and policymakers so that they understand the need for editorial integrity for public broadcasting's professional staff.
2. Protect the credibility of public broadcasting against the erosion of public trust by certifying to public officials and to the public that editorial freedom is being exercised responsibly.
3. Assure continued public support for and funding of the public broadcasting station.
4. Establish broad directional goals for the licensee.
5. Evaluate the chief executive officer's performance annually.
6. Honor the difference between their own policymaking responsibility and the professional managers' management function.

The chief executive officer of a public broadcasting station has:

1. Responsibility for developing objectives for the board's goals, and for implementing them.
2. Authority to delegate programming responsibility to a program editor in order to evaluate his or her performance.
3. Sole authority to hire and fire program editors.
4. Discretion to act in the absence of stated policies.
5. Responsibility to ensure that community views are considered in making program decisions.
6. Responsibility to implement a process to obtain and consider advice, comments, suggestions, and criticisms from the community .

