Congress, Culture and Capitalism: Congressional Hearings into Cultural Regulation, 1953-1967

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ABSTRACT

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This dissertation describes the series investigations and hearings into cultural regulation that took place before the U.S. congress between 1953 and 1967. Beginning with Senate inquiries into juvenile delinquency and ending with the creation of the public broadcasting system in 1967, the dissertation argues that lawmakers and witnesses repeatedly emphasized internal industry oversight and the power of competition within the culture industry to regulate cultural products like comic books, movies and television. Public television was seen as a solution to the problem that met the demands lawmakers had placed upon their investigations. Existing works tending to focus on matters of quality or social science overlook the economic and regulatory aspects of congress's activities.

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TABLE OF CONTENTS

Page

LIST OF FIGURES

Page

INTRODUCTION

THE WORRISOME FIFTIES AND THE CONTEXT OF REGULATION

In 1950 Sociologist David Riesman, published one of the most widely cited critiques of American society. *The Lonely Crowd* became the largest selling sociological work in American history selling nearly 1.4 million copies, many in paperback editions. Todd Gitlin believes its arguments became topics of cocktail party conversation and elevated discussions throughout the country.[1] *The Lonely Crowd* was published at the beginning of a decade that saw widespread congressional hearings into the role of mass media in juvenile delinquency as well as investigations into potentially corrupt business practices in television and radio broadcasting. Without necessarily knowing it, Riesman helped frame a set of debates that America's lawmakers engaged from 1953 to 1967. These men of politics questioned what solutions could be found for the problematic mass culture America was fast becoming known for.

In his book, Riesman described perhaps the most famous and oft-quoted sociological transformation in American history, the shift from the inner-directed individual to the other-directed individual. Although Riesman defines one other personality type, the tradition-directed individual, he argues that this personality is most often found in highly organized and stable societies with largely unchanging traditional values. Members of these societies learn their behavior cues from strongly held customs and beliefs inherent to those societies. Modern, industrial societies rarely exhibit these

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[1] Todd Gitlin. "How Our Crowd Got Lonely." *New York Times*. Jan. 9, 2000 http://www.nytimes.com/books/00/01/09/bookend/bookend.html

traits and so are most commonly distinguished by inner-directed people who had well-developed internal ethical cues. At least, they once were.

According to Riesman, modern capitalism and industrialization created a new type of personality: the other-directed individual. Whereas an inner-directed person learned social norms and acceptable social behavior from elders as well as from church groups, schools and other traditional sources of social influence, the other-directed individual took cues from peers and the mass media. For societies that are predominantly inner-directed cohesion is a by-product of generalized norms and goals that are passed down through generations by elders and civic agencies. In the post-war years, though, mass communication and mass culture increasingly took the place of these institutions. "Increasingly, relations with the outer world and with one-self are mediated by the flow of mass communication," Riesman argued. This led to the development of a new type of personality: the other-directed individual.[2] "The child must look early to his mass-media tutors for instruction in the techniques of getting directions for one's life as well as for specific tricks of the trade."[3] Advertisements, television, radio and recorded music became the yardstick to test a person's ability to fit in.

At one point, Riesman called other-directed children "consumer trainees" and described their ongoing attempts to learn about new automobile models or television brands even before they could legitimately enter the consumer world. Through the

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[2] David Riesman with Nathan Glazer & Reuel Denney, *The Lonely Crowd: A Study of the Changing American Character* (New Haven, CT: Yale University Press, 1961), 15, 21. It should be noted that Riesman's arguments extended into the realm of personal fulfillment, as well. Other-directed individuals, he said, often based their own self-worth and feelings of contentment on external cues.
[3] *Ibid*. 149.

bombardment of advertising as well as constant interaction with like-minded consumers the other-directed individual learns all he or she needs to know about how to fit into a preferred peer group. Riesman pointed to the role of culture and advertisements targeted specifically at young people as a necessary tool to guarantee that future generations will continue to power the consumer industry.[4]

Some have read Riesman as suggesting that the mass media turned the public into a lump of receptive conformists. "The consumer," Riesman argued, "has most of his potential individuality trained out of him by his membership in the consumers' union."[5] Whereas success for the inner-directed type came from the accomplishment of a goal or ambition inculcated by well-developed internal cues, the other-directed personality defined success by the acquisition of goods and knowledge that will allow him or herself to fit more easily into a peer group.

Riesman's work was extremely influential and was a salvo in a set of culture wars that erupted during the 1950s and 1960s. Many social critics of the time commented on Riesman's path-breaking work. Post-war social, political and economic developments tied to the end of WWII (and the coincident installation of the U.S. as a global superpower), the rising tensions of the Cold War and the recent brush with McCarthy's demagoguery, meant the time seemed right to evaluate just what America's cultural legacy was.[6] In their 1957 volume *Mass Culture: the Popular Arts in America*, Bernard

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[4] *Ibid*. 97.
[5] *Ibid*. 79.
[6] M. Keith Booker, *The Post-Utopian Imagination: American Culture in the Long 1950s* (Westport, CT: Greenwood Press, 2002). Booker argues that the emerging and expanding hegemonic consumerism which developed in post-war America combined with the anxieties of the Cold War and domestic social problems

Rosenberg and David Manning White compiled forty-nine historical and contemporary comments on mass culture from an American perspective. Rosenberg argued that mass culture in America was based more on the technological and productive capacity of our society rather than being rooted in any fundamental "American-ness." Partly because of the impersonal nature of mass culture, then, it tended toward the vulgar and emphasized distraction.[7] Throughout *Mass Culture*, writers such as Gilbert Seldes, Marshall McLuhan, Irving Howe and Dwight Macdonald debated the value and role of mass culture in American society.

In books like *Heroes, Highbrows and the Popular Mind* by Leo Gurko (1953) and *Is the Common Man Too Common* edited by Joseph Wood Krutch (1954), the American character appeared in tension between "serious" or "high" culture and the shallow, vapid productions of Hollywood, television and pulp fiction. While Gurko suggested that exposure to such vacuous culture tended to breed a hunger for better things, Krutch and others disagreed. As Krutch saw it, America's acceptance of poor quality culture destroyed serious culture and would lead to a downward spiral.[8] Given the Cold War

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(juvenile delinquency and the civil rights movement most notably) to dismantle Utopianism in cultural and literary works. Moreover, the social criticism of the era also lacked the Utopian spirit common to earlier works. This was due in part to the fact that one could not suggest alternatives to consumer society without treading dangerously close to advocating socialism or another taboo socio-economic structure. Kevin Mattson, *When America Was Great: The Fighting Faith of Postwar Liberalism* (New York: Routledge, 2004), 148. Mattson also points to the damage done by America's consumer society, saying that it tended to eliminate public debate and community in favor of materialism and the pursuit of personal satisfaction.

[7] Bernard Rosenberg, "Mass Culture in America," in *Mass Culture in America: the Popular Arts in America*, ed. Bernard Rosenberg and David Manning White (Glencoe, IL: The Free Press, 1957), 3-12.

[8] Leo Gurko, *Heroes, Highbrows and the Popular Mind* (Indianapolis: Bobbs-Merrill, 1953). Joseph W. Krutch, "Is the Common Man Too Common?" in *Is the Common Man Too Common? An Informal Survey of Our Cultural Resources and What We Are Doing About Them*, ed. Joseph W. Krutch (Norman, OK: University of Oklahoma Press, 1954).

tensions of the time, America's slipping cultural authority carried broader implications in the political arena, as well.

The realization of a potential "culture gap" to rival the "missile gap" between the U.S. and the Soviets led to the implementation of cultural diplomacy in an attempt to improve America's cultural reputation abroad. Perhaps most notable among these projects was the Congress for Cultural Freedom (CCF). Formed in 1950 with significant logistical and financial support from the Central Intelligence Agency, the CCF sponsored cultural events around the globe, maintained offices in more than thirty countries and regularly published tracts designed to discredit artists from communist or fascist nations while extolling the virtues of those from liberal democracies.[9]

The connection between the cultural and political spheres was a significant concern in the era of McCarthy and the HUAC hearings. A debate over censorship erupted during these years. Writing for *The New Republic* in 1953, Pulitzer Prize-winning playwright Elmer Rice argued that the Red Scare carried unintended consequences for American culture. Though there was no direct censorship in the strictest sense, fear of public exposure, blacklists and audience abandonment caused authors and artists to alter their creations accordingly.[10]

Recent authors have argued that much of the censorship debate during the period was sparked by Cold War tensions. Cyndy Hendershot, for instance, sees the anti-communist paranoia of the 1950s and 1960s as an outgrowth of social tensions peculiar to

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[9] Frances Stonor Saunders, *The Cultural Cold War: The CIA and the World of Arts and Letters* (New York: New Press, 2000). It should also be noted that the Ford Foundation, one of the major voices to speak out in support of public broadcasting the mid-1960s, was also a significant supporter of the CCF.
[10] Elmer Rice, "Entertainment in the Age of McCarthy," *The New Republic* 13 April 1953.

the time. Generalized fears over organized crime, and juvenile delinquency manifested themselves in the culture of the Cold War as well as in the drive toward censorship that seemed to characterize much of the reaction to popular culture. Oftentimes censorship of mass culture was justified by pointing out that communists could use sexual imagery to manipulate or distract the individual and make him or her more susceptible to coercion.[11] Since sex has historically been the foremost target of censors, attacking suggestive culture in the Cold War could serve to limit the danger of communism without appearing to be overt politically-motivated censorship.

Ronald Cohen argues that censorship was viewed as a means to protect America's youth from the potentially pernicious effects of mass society as well as to reassert adult authority in the face of an apparently disintegrating public sphere. Rifts in society centering on class, racial tensions and generational divides compelled adults to look to censorship as a way to reestablish themselves as the legitimate arbiters of appropriate culture. The Red Scare served to couch post-war censorship in a cloak of legitimacy and the anti-communist movement added fuel to the fire of the cultural debate of the era.[12] Because of the pervasive anti-communist attitude at the time, cultural matters were often seen through the lens of the ideological battle between capitalist democracy and socialist totalitarianism.

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[11] Cyndy Hendershot, *Anti-Communism and Popular Culture in Mid-Century America* (Jefferson, NC: McFarland & Co., Inc., 2003), 4-10.
For more on the relationship between sex or gender and the Cold War see: K.A. Cuordileone, *Manhood and American Political Culture in the Cold War* (New York: Routledge, 2005).
[12] Ronald Cohen, "The Delinquents: Censorship and Youth Culture in Recent U.S. History," *History of Education Quarterly*. vol. 37, no. 3 (Autumn 1997): 253-264.

It should also be noted that America has had a tradition of censorship especially in the areas of literature and motion pictures. The motion picture industry was the first part of the culture industry to suffer the brunt of local and state agencies organized specifically to review content and prevent the showing and distribution of its product. The National Board of Censorship, organized in 1909, managed to limit distribution of nearly 85 percent of films in the United States. Though it did not censor films, per se, and later changed its name to the National Board of Review, the group operated in conjunction with studios and theaters to use "'moral coercion'" to influence moviemakers at various stages of the process. The Board was not a government agency. Beginning with Pennsylvania in 1911 several states began flirting with the idea of developing statewide censorship boards. It was the operation of these boards, often based on vague and arbitrary standards of decency, which led to the first legal challenges to government censorship. With its 1915 decision in *Mutual Film Corporation v. Industrial Commission of Ohio*, the most famous of these challenges, the Supreme Court denied movies the constitutional protections of free speech enjoyed by other media. This essentially opened the door to widespread censorship by state and local boards of review which based their decisions on powerful undercurrents of Protestant morality. These censorship boards worked with varying degrees of effectiveness for more than thirty-five years. It was not until the so-called "Miracle" decision in 1952, just three years before Kefauver opened his hearings into films and juvenile delinquency, that the Court reversed its earlier

decision and found that local censorship organizations were a restriction on films' freedom of speech.[13]

Although movies in the 1950s were emerging from the shadow of government censorship, the world of literature was not so lucky. Viewed with suspicion because of their contrarian and occasionally drug-fueled lifestyle, Beat writers faced concerted efforts at censorship by state and local agencies similar to those regulating motion pictures. Perhaps the most famous example was Allen Ginsberg's seminal poem "Howl." Declared obscene by San Francisco's Collector of Customs in 1957, the poem and poet soon found themselves in court. In fact, the primary concern for San Francisco authorities was the possibility that "Howl" might find its way into the hands of impressionable youth. The poem was ultimately found to have enough socially redeeming qualities that its publication and distribution did not violate obscenity laws.[14]

Like much Beat literature, "Howl" was critical of the impersonal (and as the Beats saw it, soulless) nature of post-war America. The period saw the collapse of the triumphalist self-perception Americans had developed with their victory over evil in WWII. While simultaneously championing the American dream as finally within reach of all citizens through the combination of economic prosperity and technological advancements, there was a powerful undercurrent of anxiety and doubt over the future.

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[13] Garth S. Jowett, "'A Capacity for Evil': the 1915 Supreme Court *Mutual* Decision," in *Controlling Hollywood: Censorship and Regulation in the Studio Era*, ed. Matthew Bernstein (New Brunswick, NJ: Rutgers University Press, 1999), 16-37.
[14] Bill Morgan and Nancy J. Peters ed., *Howl on Trial: The Battle for Free Expression* (San Francisco: City Lights Books, 2006).

The threat of global annihilation and the impersonality of corporate life contributed to a sense of anxiety felt by many.[15]

It was in the midst of this tension over cultural production that the debates discussed here took place. More than focusing on First Amendment matters or the political and cultural ramifications of censorship, though, congressmen pointed to the role of capitalism in driving the culture coming out of Hollywood, Madison Avenue or network television. Legislators repeatedly worried that greed and the promise of higher profits motivated broadcasters or filmmakers to make products that would sell. And, since audiences seemed to prefer action and sex to Shakespearean tragedies, the culture industry was reluctant to break from what made the most money.

Congress held a series of charged debates into mass culture between 1953 and 1967. The arguments and issues broached at the time have much to say about how legislators viewed the intersection among federal regulation, capitalism and mass culture. By normal standards nothing was accomplished by Senator Estes Kefauver's (D-TN) investigation into culture's role in juvenile delinquency. Nor did the payola and quiz show scandals result in anything but legislation related to the specifics of unclear advertising. This despite representatives' repeated worries about how the unfair business practices the scandals pointed out would affect audiences and the free market system. No new federal agency was organized nor were any existing regulatory bodies expanded in an attempt to protect young people from the dangers of mass culture or to ensure

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[15] Tom Engelhardt, *The End of Victory Culture: Cold War America and the Disillusioning of a Generation* (Amherst, MA: University of Massachusetts Press, 1995). William Graebner. *The Age of Doubt: American Thought and Culture in the 1940s* (Boston: Twayne Publishers, 1990). Paul Goodman, *Growing Up Absurd* (New York: Vintage Books, 1960).

responsible behavior on the part of the culture industry. Perhaps due to the lack of measurable results, historians have either tended to ignore the hearings discussed here or have treated them independently of one another.

Current works dealing with the juvenile delinquency hearings tend to focus on a narrow spectrum of the debates. Historian James Gilbert, for instance, views the proceedings of Kefauver's committee strictly through the lens of juvenile delinquency and largely omits the economic and regulatory aspects of the senators' work. Other authors have chosen to treat the quiz show scandal or the development of public broadcasting as isolated incidents in the development of mass culture or the breakdown of ethical standards in American society. I have chosen to see these hearings as part of a larger concern with culture that arguably reached its apex in the period between the juvenile delinquency hearings and the creation of PBS. Taken together, these hearings stand as a central moment in the government's repeated attempts to address their concerns about America's media culture. In essence, what *did not* happen during these hearings is as important as what did.

It became apparent while reviewing the transcripts of the congressional investigations described here that lawmakers were involved with themes that were far larger than has hitherto been supposed. Moreover, the paucity of quantifiable results is significant in its own right. It makes the debates themselves central to our understanding of congressional attitudes toward cultural regulation. Given the importance congressmen placed on their activities it begs the question why they did not simply legislate a reasonable solution? Why was there no attempt to create a national cultural policy like

that advocated by Arthur Schlesinger, Jr. and John Kenneth Galbraith? Why was the establishment of the Corporation for Public Broadcasting one of the only tangible outcomes of such a concentrated series of legislative hearings into mass culture?

The Regulatory Tradition in America

One of the central debates running throughout congress's investigations was the matter of regulation in the media industry. Through the first half of the twentieth century American legislators and the business community worked out a regulatory tradition emphasizing a market economy operating under limited oversight. Such oversight would manifest itself in private groups like chambers of commerce and better business bureaus, quasi-public agencies like the Committee for Economic Development or direct government regulation such as the Federal Trade Commission or the Federal Communications Commission. Each of these groups worked to guarantee consumer protections while ensuring that such protections would not severely hamper businesses' right to secure the blessings of profit and success within a capitalist system. As such, the entire thing was a balancing act. Whereas regulation appealed to president Truman in the late 1940s and early 1950s, the more *laissez faire* conservatism of Eisenhower looked toward free enterprise to solve problems of monopoly and product quality.[16] Though Ike won each of his campaigns in a landslide, Democrats parlayed the recession of 1953-1954 into a victory in the midterm elections. Thus, with the exception of a scant two

[16] Wyatt C. Wells, *American Capitalism, 1945-2000: Continuity and Change from Mass Production to the Information Society* (Chicago: Ivan R. Dee, 2003), 47.

years from 1953-1955, the political landscape was dominated by Democratic attempts to retain and enhance the regulatory agencies born in the first half of the century while hoping that industry self-regulation and competition would allow for better quality media and popular culture.

Debates throughout the hearings discussed here often centered on the ability of the Federal Communications Commission to regulate American broadcasting. The FCC was in many ways unique among the government's various regulatory agencies. The Communications Act of 1934 had established that the airwaves existed as part of the public trust. This issue of protecting the public interest meant that the FCC implemented the government's belief that regulation was necessary to guarantee that no monopoly arose to limit competition. As such, broadcasters operated via licenses granted them by the federal government. There was no inherent right for any corporation or entity to run a broadcast station. In fact, Robert McChesney argues that many intellectuals and social critics in the 1920s and 1930s worried that corporate ownership of broadcasting was "undermining the core tenets of the laissez faire marketplace of ideas and liberal democratic political theory." Others felt that commercial broadcasting fostered banal culture and that advertisers could influence if not overtly control programming.[17] The obvious corollary was that a publicly-owned radio system would foster an elevated and sophisticated cultural life in America. These worries all helped to guide the creation of the FCC as a regulatory agency to exert government control while still retaining a

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[17] Robert McChesney, *Telecommunications, Mass Media and Democracy: the Battle for the Control of U.S. Broadcasting, 1928-1935* (New York: Oxford University Press, 1993), 91-95. Such a view resurfaced during Congressional discussions about the quiz show scandals in 1959.

commercial system. However, debates over the possibility of monopolistic corporate dominance of broadcasting that emerged in the 1934 hearings at the FCC's creation resurfaced in the 1950s during the senate hearings into monopoly dangers in regulated industries that are discussed here.[18]

In addition, the oversight power vested in the FCC existed in a strictly review capacity. There was no specification of prior restraint in the commission's mandate. This added another level of problems to debates around cultural quality during many of the hearings described here. Since the FCC was only granted limited power to review broadcast content or quality, and then only through the lens of public interest, lawmakers were faced with several options. Congress could make laws specifying content both acceptable and unacceptable in cultural products. Obviously, this could limit the freedom necessary for creative talent to blossom. Congress could strengthen the mechanisms in place through the FCC and FTC to guarantee honesty and ex post facto review. This could result in an even larger and more cumbersome regulatory bureaucracy faced with mounting workload demands on its review staff. Or, the government could rely on market forces to drive out the bad and raise the level of quality in mass culture. This approach ran headlong into significant evidence that either the market conspired to maximize profits by producing large amounts of similar product once it became popular – thus inherently limiting choice – or that audiences genuinely preferred the facile culture provided them by the culture industry. Finally, lawmakers could develop an alternative source of mass culture that would be connected to some extent to government regulation.

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[18] *Ibid*., 177.

This was ultimately the chosen alternative with the creation of public broadcasting and its parent agency, the Corporation for Public Broadcasting (CPB). As we shall see, lawmakers reacted to the problems confronting them in different ways.

There were in these reactions, however, common threads that tied them to certain traditions in American history. At no time did legislators seriously consider censorship as a viable option despite the pressure for such action (especially with regard to comic books). Throughout the hearings one is also struck by the pervasive faith in self-regulation demonstrated by senators and representatives. In nearly every instance considered here, lawmakers focused on industries' right and ability to regulate themselves. Even when investigating whether television networks constituted a monopoly, there was consternation over whether the government should empower the FCC to regulate the networks directly rather than simply review and renew station licenses.

Finally, there was a powerful belief amongst nearly all the congressmen that competition would result in an improved cultural output and would restore some measure of harmony to America's increasingly centralized and complex capitalism. It is interesting to note that this was often in theoretical conflict with many liberals' belief that America's postwar, post-capitalist economic system was a necessary evil that should be overseen by government regulatory agencies or quasi public groups like the Council of Economic Advisors.[19] Congressmen seemed to want to connect President Eisenhower's

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[19] Kevin Mattson, *When America Was Great: the Fighting Faith of Postwar Liberalism* (New York: Routledge, 2004), 98-99. Throughout his book, Mattson argues that liberalism and pluralism went hand in hand. A pluralist vision, he maintains, was necessary to develop a strong government able to ensure

interpretation of Hoover's voluntarist / corporatist ideal with a more traditional *laissez faire* capitalism.

The Public Broadcasting System was an eminently practical and logical outgrowth of these hearings. It fits precisely within the traditions surrounding corporations and culture that drove many of the legislature's investigations. Operating under the auspices of the Corporation for Public Broadcasting (CPB), public television was insulated – at least in theory – from the potential of government abuse or influence. It also seemed to fulfill at long last the promise for cultural improvement many lawmakers and professionals saw in television. More importantly, it did so without direct government involvement in the media and created an automatic tool of competition within the broadcast market.

Each of these hearings revolve around a specific aspect of the tension between government and culture as well as reflecting general developments in American society of the time. In 1954 and 1955, when the senate subcommittee first looked into its effects on juvenile delinquency, television was a new medium with seemingly limitless potential to improve the cultural tastes of Americans and one which promised to enhance everyday life for millions. As the industry evolved over the next decade, however, the vast wealth to be gained resulted in networks and advertising agencies engaging in occasionally unscrupulous business practices. The 1950s also saw a surge in the use of scientific and statistical measurements known as ratings to gauge audience size in an effort to provide potential advertisers with information on which programs and times would be most

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personal liberties. Men like Arthur Schlesinger, Jr. hoped this qualitative liberalism would serve as an antidote to the psychic anxiety that came with rampant consumerism.

profitable to them. The 1950s saw a growth in the use of scientifically compiled statistical data to develop "lifestyle marketing" so that products were more precisely advertised to the audience most receptive and most likely to purchase to item.[20] Though certainly a boon for sponsors – and to some extent for the networks – executives' reliance on ratings statistics raised red flags for many lawmakers at the time. Each of these issues found their way into the hearings discussed here.

When the juvenile delinquency subcommittee, this time under the chairmanship of Thomas Dodd, returned to its investigation of television in 1964, the failure of the industry to regulate itself to the politicians' satisfaction resulted in a distinct change in the tone of the hearings. Suddenly Dodd and others were much more vocal in their intimation that, should the industry continue to fail in its responsibility to serve the public interest, the government would step in with mandatory oversight either through the FCC or via direct legislation.

The power of the profit-motive and rampant commercialism, a worry during the testimony of FCC commissioner Freida Hennock during the Kefauver juvenile delinquency hearings in 1955, resurfaced later in the decade when representatives looked into the quiz and payola scandals. The power of advertising and the role sponsors played in influencing network programming reemerged as a significant feature of Arkansas

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[20] Juliann Sivulka, *Soap, Sex, and Cigarettes: A Cultural History of American Advertising* (Belmont, CA: Wadsworth Publishing Co., 1998), 265. Vance Packard, *The Hidden Persuaders* (New York: David McKay Company, Inc., 1957). Packard pointed out that Madison Avenue during the 1950s had begun looking to behavioral scientists and psychoanalysts to help them develop "motivation analysis" in an effort to create advertising that discovered what compelled consumers to purchase certain goods. Thus, advertising was not only researched from a statistical and ratings perspective, it was occasionally consciously designed to play upon certain basic desires or fears in order to manipulate buyers. Packard explained, however, that such an approach was not widespread but was confined to a relatively small portion of the advertising industry.

representative Oren Harris's investigations of the two scandals. Harris worried that advertisers exerted an undue amount of pressure over how networks and independent producers ran their shows. Hearings into payola in 1960 also connected the commercial nature of mass broadcasting with the power to manufacture demand for a particular cultural product. These worries echoed those of public intellectuals like David Riesman and John Kenneth Galbraith who saw media as a powerful tool in shaping many aspects of America's social and economic life.

During the payola hearings, which were a direct outgrowth of the quiz show investigation and were also under the chairmanship of Oren Harris, advertising was again a major concern. This time, however, congressmen debated about the line that payola blurred between legitimate advertising and manipulation. They also echoed many of the debates found in the mass culture critique. Was it possible, they worried, that repeated exposure to a product of inferior cultural quality could manufacture a synthetic demand for that product? Due to the predominance of payola in stations airing rock and roll and the representatives' self-admitted dislike for the music, they quickly came to the conclusion that such barbarous music could only have become popular by illicit means. Impressionable youngsters, they reasoned, purchased rock and roll because they were almost brainwashed into liking it. Clearly, both the quiz show hearings and those into payola brought out concerns over the lure of profit and its power to damage the morals of the culture industry.

Senators investigating motion pictures and comic books in light of juvenile delinquency also discussed the role of the market to regulate cultural quality.

Surprisingly, the hearings into motion pictures dealt less with their quality than with ads used to entice audiences into theaters. As many histories have pointed out, the senate hearings into comic books resulted in the most obvious example of industry self-regulation. Faced with direct government intervention, comics publishers chose instead to beef-up their existing code and essentially outlaw the horror and crime comics that raised the most ire amongst politicians, civic organizations and concerned parents.

By 1967 congressmen had settled on public broadcasting as a possible solution to many of the problems they perceived with mass culture. They focused on television, choosing to create a public television system. The initial impetus for the creation of PBS and its corporate organization under the CPB was provided by philanthropic foundations – especially the Carnegie Commission and Ford Foundation. Foundation leaders and the politicians overseeing the CPB's creation hoped that the proposed organization would limit the threat of government pressure while simultaneously allowing the medium to flourish as a high-quality counterpoint to network television's much-maligned programming.

Each of the hearings described in the following chapters illuminates the often prickly relationship between the culture industry and the government. Since each of congress's attempts to deal with mass culture began with different goals in mind, they seem like disparate entities. As such, it may here be useful to make clear the nature of this work as well as some of the arguments it will make. First, the following chapters are not intended to follow certain actors or individuals over the course of a series of directly related hearings. It is not a history of American broadcasting, comic books or motion

pictures. Nor is it a history of youth culture or juvenile delinquency. There are many excellent books covering each of these topics. Instead, I hope to study these debates to shed light on how congress viewed the matter of cultural regulation at a time when the opportunity for direct government involvement was seemingly significant. Legislators' attitudes revealed here in many ways laid the foundation for all subsequent debates about the government's role in media and culture and established that future attempts to regulate cultural product would always by pre-limited by earlier decisions to rely on self-regulation and competition.

Though there are a number of arguments throughout the work, there are two that stand out as most significant. First, there was an underlying belief in the power of competition to improve mass culture. Many witnesses and legislators championed the free market as a way to regulate culture and improve programming in television without the need for government involvement. As audiences fled from cultural product that was below their tastes, so the theory went, they would seek out better things. The corollary to this belief was that, when presented with an alternative to the baser culture criticized by congressmen, consumers would choose the better material. This assumption would lead to much of the discussion surrounding the creation of a national public broadcasting system in 1967.

Second, lawmakers consistently emphasized self-regulation on behalf of the industries involved as the most attractive option for affecting the product of the culture industry. Whenever possible, representatives and senators pressed industry officials to enact new codes for self-policing or strengthen existing mechanisms to ensure that their

cultural product would improve without the need for federal legislation. Even in the rare instances when congressmen did suggest the possibility of direct government intervention, such as during the juvenile delinquency hearings under Sen. Thomas Dodd in the 1960s, they seemed to favor what economic historians call the "public interest model" of regulation. This view of regulation argues that "economic regulation is a response by government to some sort of market failure."[21] Either through executive agencies or through specific legislation such as anti-trust laws, government regulators could ensure that capitalism and corporate interests would not threaten consumer rights. Indeed, it was this belief that underlay the FCC's mandate to grant station licenses and oversee programming.

Probably most famous for his failed presidential campaigns and his chairmanship of senate hearings into organized crime and juvenile delinquency, Tennessee senator Estes Kefauver made perhaps his biggest political impact as a champion for consumer rights. Thus, it is no surprise that his economic considerations dominated much of the debate over culture and juvenile delinquency. Long interested in economic matters, Kefauver served as chair of the Senate Anti-trust and Monopoly Subcommittee beginning in 1957 and devoted much of his energy while in congress to securing competition as a way to protect consumers. In 1963, Kefauver pressed for the creation of a cabinet level Department of Consumers to protect the buying public from untoward business practices.

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[21] Richard H. K. Vietor, "Government Regulation of Business." in *The Cambridge Economic History of the United States*, ed. Stanley L. Engerman and Robert E. Gallman, (New York: Cambridge University Press, 1996), 970.

Throughout his political career, Kefauver championed competition and lamented what he felt was a dangerous and expanding problem with economic centralization in America.

For instance, in 1950 he joined with New York's Emmanuel Celler in co-sponsoring a bill outlawing mergers that negatively affected a free market and, though his most significant book, *In a Few Hands,* was published posthumously, it contained the fullest realization of Kefauver's ongoing attempt to secure competition and limit monopoly in America. In it, he pointed to the drug and auto industries as evidence of capitalist centralization and presented a number of possible solutions to the monopoly problem.[22]

Kefauver saw government regulatory control over industry as well as moral persuasion and the mobilization of public opinion pressures as ways to encourage competition. He believed that Congress should work to reverse the trend of centralization he saw in the economy and restore competition in order to maintain a certain balance in the market. When discussing the auto industry, for instance, the senator echoed John Kenneth Galbraith's criticism of manufactured demand by commenting on the industry's ability to turn their product "from a durable good into a perishable item as ephemeral as the latest fashions." A necessary extension of such production was the use of "saturation

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[22] Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York: Vintage Books, 1995), 9. Kefauver's views on competition and the government's involvement in the market are similar to the "reform liberalism" Brinkley describes as having emerged during the Progressive Era at the start of the 20th century. Like Kefauver, "reform liberals" believed in an interconnected society that necessitated the protection of "individuals, communities, and the government itself from excessive corporate power."

advertising" that convinced the buying public that superficial gimmicks were more important than real improvements.[23]

Recognizing the role of government in economic centralization viz a viz tariffs and tax favoritism, Kefauver believed that lawmakers could be swayed to enact economic reform once public pressure could be brought to bear. To this end, it was the duty of committees – his and others – to bring issues before the public to encourage a public outcry and thus reform. This was even more necessary since, Kefauver argued, monopolies often justified their practices "in terms of value of the service to the public" they provided.[24]

This is largely reflected in the hearings into mass culture described here; many lawmakers hoped that an informed public could motivate industries to correct themselves and that the expanded competition mandated by federal legislation would help to solve many of the problems surrounding the quality extant in television, music, movies and comic books. Allowing competition to regulate the quality of mass culture would address a major concern of many committee members and witnesses while limiting the threat of government censorship or cultural fascism.

While many industries involved in the various hearings had developed their own production codes before the start of the congressional inquiries, lawmakers repeatedly expressed their belief that the codes were not doing enough to effect real improvement. As perhaps the first major industry to organize a self-regulatory agency, the motion

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[23] Estes Kefauver, *In a Few Hands: Monopoly Power in America* (Baltimore: Penguin Books, 1965), 83.
[24] Charles L. Fontenay, *Kefauver: A Political Biography* (Knoxville, TN: University of Tennessee Press, 1980), 377. Kefauver, *In a Few Hands*, 212, 40.

picture code was a benchmark for comic book publishers and television broadcasters when setting up their own code mechanisms.

The American tradition of self-regulation: the motion picture code

With the introduction of motion pictures as a mass culture form in the early 1900s, many people recognized the powerful impact the industry could have on audiences. Over the course of movies' first thirty years numerous attempts were made to find the best possible way to control content. Largely because the industry was in its infant stages prior to World War One, little effort was made to limit content or marketing more directly. As profits increased and the industry gathered momentum, though, it became clear that the largely unorganized world of Hollywood would need some structure in order to reach its full potential.

One of the first moves toward regulation came with the development of the Committee on Public Information (CPI) during the first months of America's involvement in World War One. In addition to the CPI's mandate to encourage public support for the war effort, George Creel, the committee's head, looked to regulate the activities of the fledgling motion picture industry. Included within the Creel Committee's Domestic Section was a Film Division charged with ensuring that Hollywood was not damaging American morale or aiding the enemy in any way. Scenes of Americans acting unlawfully or contrary to social norms, Creel worried, would

encourage our enemies. If producers refused voluntarily to limit such displays in their films, Creel intimated that the federal government would get directly involved.[25]

At war's end, Hollywood began operating largely without restraint. Profits increased dramatically during the ten years between 1918 and 1927 as filmmakers learned their craft and regularly pushed the boundaries of cinematography and technical perfection. As historian Robert Sklar describes, this period also saw the emergence of a Hollywood lifestyle culture that ran counter to traditional American values. Stars like Fatty Arbuckle and Rudolph Valentino pushed the boundaries of sexual and social acceptability.

Paradoxically, the public was put off by such behavior while simultaneously displaying a morbid fascination with the lifestyles of screen icons. During the first generation of Tinseltown's existence, stars' behavior imprinted on the minds of the American public a very definite image. Spellbound audiences expected their stars to pursue self-gratification hedonistically, setting up a situation where fans could vicariously escape the restrictive Victorian standards of the day while ensuring that such lecherous behavior would be contained both psychically and geographically within the limits of Los Angeles.[26]

What few observers realized during this freewheeling time was that Hollywood's excessive flaunting of social traditions would soon backfire. The American public grew increasingly worried that slipping morals in the film industry could pose a risk to society

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[25] James M. Myers, *The Bureau of Motion Pictures and Its Influence on Film Content During World War II – The Reasons for Its Failure* (Lewiston, NY: The Edwin Mellen Press, 1998), 7-8.
[26] Robert Sklar, *Movie-Made America: A Cultural History of American Movies* (New York: Random House, 1975).

at large. As such, they demanded that some sort of regulation be put in place. In order to head off any potential government censorship, Hollywood studio executives closed ranks in 1922 to form a self-regulatory association under the control of Postmaster General William Hays.[27] The Hays committee grew out of the largely ineffectual Motion Picture Producers Association. Renamed the Motion Picture Producers and Distributors of America (MPPDA), the group developed a list of restrictions to outline what would and would not be considered acceptable for motion pictures. Before long the MPPDA mutated into the Motion Picture Association of America (MPAA). By the early 1930s the MPAA, still in existence, would become the dominant mechanism for industry self-regulation.

Early in the MPAA's life, the Committee on Public Relations was formed to give the leadership of various civic organizations a say in the Hays committee's activities. The CPR operated independently of the MPPDA and included, among others, executives from the Boy Scouts of America and Campfire Girls. This outside agency would gauge public attitudes and tastes, reporting its findings to the Hays committee. Often a cumbersome arrangement, the CPR was largely defunct inside three years. Its existence, however, points to the industry's recognition of the power of public opinion as well as the power of civic-minded organizations to influence Hollywood's self-regulation. Clearly, industry leaders saw a need to involve the public (albeit in a somewhat indirect way) in its attempts at self-policing. This would seem to indicate that Hollywood was honest in its assertion that it provided what the public wanted, even if it lasted only briefly and was

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[27] *Ibid*., 82, 90.

centered on input from organizations and sources that were largely conservative in their outlook. Unfortunately, the failure of the CPR meant that no similar agency emerged to help deflect the criticisms that were leveled at Tinseltown in the 1950s.

Hays was personally repulsed by any notion of government censorship and used his position within the motion picture industry to work tirelessly against state and federal attempts to enact such prior restraint. By 1922 seven states – NY, PA, OH, VA, FL, KS and MD – had passed laws censoring films. It was clear to the MPPDA, then, that it was up to Hollywood to ensure that its own self-regulation would be sufficient to satisfy the demands of those in American society who hoped for direct government control of motion pictures. Things seemed even more threatening in 1925 when hearings began in the House of Representatives to decide on whether the Department of the Interior should initiate a Federal Motion Picture Commission to review movie content. Hays' testimony and President Coolidge's stand against such legislation helped kill the idea in its earliest stages. Clearly, though, studio executives were going to have to work to ensure that they retained as much control as possible over their creations.

Adding to Hays' difficulties were the often silly complaints he received from industry leaders, concerned citizens and union representatives who worried that Hollywood was damaging their reputations. The list of complaints would be laughable if it was not so clearly in earnest. For instance, the Yellow Cab Company objected to scenes showing police officers using taxis to chase robbers. They did not want a "frightened public avoiding the use of their cabs."

Another complaint came from the National Billiard Association. It

> protested scenes of smoke-filled, low-grade pool halls. The American Hotel Association wanted Hays to stop scenes showing actors smoking in bed while at a hotel. Public school authorities complained that comedy actors should not stammer, since it appeared to teachers that their students were beginning to imitate them. An organization of glass blowers even objected to film characters drinking beer from cans.[28]

Clearly many were convinced of the film industry's ability to influence behavior and public perception even during the medium's formative years. While few of these complaints were centered on the sort of morality worries that characterized the Kefauver hearings, they indicate a willingness of interested groups to make clear their concerns. Like the CPR's reliance on civic organizations to guide its public opinion research, the groups described here seemed to support Kefauver's belief that a successful congressional hearing was one that would motivate public responses that could press for changes in the culture industry. Whether this response came from organized groups or simply concerned citizens acting independently was less important than their combined attempts to make their wishes known directly to the purveyors of mass media and mass culture. It was up to congress to shine the light on problems in an effort to spark that public outcry and reaction.

With the occasional failure of the MPPDA to enforce its rules of "don'ts and be carefuls" came the realization that the task of self-regulation would be made much easier if scripts were screened prior to production. In this way Hays and his review board could suggest that inappropriate scenes be excised before the film was on the market and making money. Put another way, successful films could give their producers great

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[28] Myers, *Bureau of Motion Pictures*, 19.

leverage in resisting the MPAA's code system in the future. If a producer or studio was able to reap sizeable profits from a film that had not earned the MPAA's approval they would probably feel less beholden to the code in the future.

Hays's prefered new system of prior review was put into place with the adoption by the industry in 1930 of the Motion Picture Production Code. This mechanism lasted until the 1960s when the MPAA developed the rough draft of the ratings system used today.[29] The Motion Picture Production Code was also the system in use at the time of Kefauver's hearings into juvenile delinquency. The Production Code was designed with the extensive input of Daniel A. Lord, a Catholic priest and professor of English and Dramatic Literature at St. Louis University.[30] As such, it was developed largely around questions of morality on screen. Each aspect of the code was created so as to ensure that no film would "lower the moral standards of its viewers."[31]

Despite the motion picture industry's best efforts, though, the federal government was still not satisfied. In an interesting attempt to fuse the concepts of self-regulation and government control, 1933 saw the development of the Patman Bill before congress. The

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[29] Garth Jowett, "'A Significant Medium for the Communication of Ideas:' the *Miracle* Decision and the Decline of Motion Picture Censorship," In *Movie Censorship and American Culture* ed. Francis G. Couvares (Washington, D.C.: Smithsonian Institution Press, 1996), 273. A series of court cases at all levels led to the end of the Production Code and its replacement with the ratings system in use today. The current system was expected to allow "freedom of expression" while maintaining the industry's ability for a certain amount of self-regulation. It also placed the responsibility squarely on parents to allow children to see certain films. Rather than limit content, then, it intended to limit viewership by impressionable youngsters. Thus, it was solidly in the tradition of parental responsibility that many lawmakers and social scientists advocated.

[30] Sklar, *Movie-Made America*, 172-3. Robert Sklar details the process by which the 1930 Production Code came into existence and why it was so heavily influenced by Catholic authorities. Lord had become involved in the process by virtue of his relationship with Martin I. Quigley, an influential Catholic layman and publisher of a motion-picture trade paper. In 1930, the two men had developed the Production Code in an attempt to stave off the threat of censorship. They also hoped to set guidelines to establish criteria for moral values in the industry.

[31] Myers, *Bureau of Motion Pictures*, 24.

Patman Bill authorized the president to appoint a panel of nine individuals (five men and four women) who would review films and would prevent the distribution of films that violated the MPPDA Production Code. The Patman Bill failed in large part because President Roosevelt repudiated government involvement in movie censorship. Like Roosevelt's ambivalent attitude toward liquor production, FDR may have wanted to allow the motion picture industry to operate largely unfettered for similar reasons. The repeal of Prohibition in 1933 allowed the sale and consumption of alcoholic beverages sending thousands back to work as well as restoring taxes on liquor as a potentially sizeable revenue stream for the government. Finally, Roosevelt may have recognized the psychological role both movies and libations played as leisure activities to help citizens escape from their problems.

In addition, the president hoped to lump the entire motion picture industry together in his National Recovery Administration (NRA). Whereas most industries were regulated by a series of price and wage controls, FDR tried unsuccessfully to combine all aspects of Hollywood into a single system. It is possible he hoped to use the movies as an example to other industries of the type of corporate responsibility the NRA championed. In any case, protests and criticism emerged almost immediately. An extraordinarily complex industry, motion pictures included a myriad of fiercely independent and territorial unions which quickly saw the NRA codes as threatening their livelihoods. They joined with small theatre owners who protested the studios' influence

on their businesses. Before any significant changes could come about, the Supreme Court struck down the NRA in 1935.[32]

With the failure of the Patman Bill before Congress in 1933, the government largely focused on the more pressing demands of the Great Depression and later World War Two. Although the Bureau of Motion Pictures oversaw the cinema during the war, Hollywood and the MPAA were largely left to enforce their Production Code without interference. As the juvenile delinquency problem grew during the 1950s, though, congress once again looked at motion pictures to determine if the government should step in and over see movies' content and quality. However, that the Kefauver-led hearings into the connection between movies and juvenile delinquency tended to focus on feature films' advertisements rather than the content of the movies themselves.

By the mid-1950s Hollywood had struggled through a number of potentially devastating developments. The HUAC hearings and blacklisting turned members of the industry against one another in an internecine battle unlike anything Tinseltown had ever faced. Moreover, the industry was faced with a fundamental shift in how it distributed its product. In 1948 the Paramount Case saw the U.S. Supreme Court requiring studios to divest themselves of interest in theater chains, thus fundamentally altering the ways in which movies reached audiences. No longer would studios distribute their pictures to wholly-owned or affiliated movie houses. Instead, individual theater owners could choose any films they wanted to show irrespective of the studio that produced them. The

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[32] Sklar, *Movie Made America*, 168-170. For extensive coverage of filmmaking during the 1930s see Giuliana Muscio. *Hollywood's New Deal* (Philadelphia: Temple University Press, 1996)

studio system that had existed for decades was thus dismantled. Finally, the 1950s witnessed the emergence of television as a growing threat to motion pictures' former dominance in visual entertainment. Though they eventually achieved success with producing their own television programs, studios were initially unwilling or unable to meet the competitive demands television presented. Throughout all these tensions, though, Hollywood always relied upon its regulatory code to maintain order within the industry as well as to stave off potential interference by government or civic organizations.

Moreover, the motion picture code was used by other industries as a guide for their own attempts at self-regulation. Television broadcasters and comic book publishers each based their oversight codes on the example of the MPAA code. In 1954 the Comics Magazine Association of America (CMAA) was quite successful at withstanding government and social criticism by implementing a strict code similar to that used by studios. This success was not easily reached, however, as the industry suffered attacks from all sides for its possible role in the juvenile delinquency problems of the late 1940s and early 1950s. Called to testify before the Senate Subcommittee to Investigate Juvenile Delinquency in the United States in 1954, industry representatives faced the culmination of years of civic and political criticism. We shall see that Kefauver's hope that the combination of government investigation and an engaged public could spur industry reaction seemed to be evinced in the comic industry's move toward the CMAA.

With the comic book hearings in 1954, the senate opened the floodgates to more than a decade of congressional debate over mass culture. The first period in this spate of

hearings was sparked by concerns over the apparent rise in juvenile delinquency after WWII. Looking into comic books, motion pictures and television, each of the hearings which took place in 1954 and 1955 tended to view cultural matters in light of how they affected America's young people. Nevertheless, they contained distinct points of emphasis on economic and regulatory matters that would resurface many times during later inquiries.

PART ONE

THE J.D. HEARINGS: YOUTH CULTURE BEFORE CONGRESS

Senator Estes Kefauver, a Democrat from Tennessee, first became interested in the possible connection between mass culture and juvenile delinquency when nearing the end of his hugely popular (and televised) investigations into organized crime. The last research his committee conducted during those hearings was a survey sent to members of the justice system in New York asking whether crime comics seemed to have any impact on the amount or nature of cases of youth crime in their jurisdictions. Though the responses were at best ambivalent, Kefauver may have seen the issue as another platform from which to further his public standing as well as his potential ambitions for the presidency.

As has been discussed, juvenile delinquency was a serious concern for many in the United States in the roughly ten years following the end of World War II. And, although debates over the nature and social impact of mass culture had circulated for decades, the apparent spike in adolescent crime in the postwar years seemed to many to be directly linked to the increase in comic book readership and the rapid growth of television. In 1953, Robert Hendrickson, a Republican senator from New Jersey, opened hearings into various aspects of juvenile delinquency. Recognizing at the outset that the problem was multifaceted, neither Hendrickson nor his Democratic successor Sen. Kefauver placed the blame for juvenile crime solely on culture. However, in the midst of hearings into illegal drugs, obscene materials and the operation of juvenile courts, the

hearings into comic books, motion pictures and television were among the most complex. They raised issues that would resurface time and again during other congressional investigations into mass culture which took place in the 1950s and 1960s.

In every case, however, all those involved in the hearings – congressmen, committee counsels and witnesses alike – agreed on two central beliefs. First, they were fundamentally opposed to any form of government censorship. They argued for self-regulation through internal policing, industry-wide codes or similar mechanisms. Second, many participants repeatedly expressed their belief that competition between television networks, comic publishers, motion picture studios or record companies would help raise the quality of culture by forcing its creators to abandon their tendency to cater to the lowest common denominator.

In many respects, it was this concern with the economic aspects of the culture industry which is the most interesting. There emerged in the Hendrickson / Kefauver juvenile delinquency hearings a number of threads which reemerge throughout other hearings discussed here. These threads can reveal connections between hearings that are often overlooked in existing histories. For instance, the practice of bundling comics with other more "reputable" magazine titles was almost identical in many ways to the network television practices known as the "must buy" and "option time" whereby local affiliates were required to air only network programming during the most profitable hours of the day. Moreover, advertisers were required to purchase mandatory coverage during those prime time hours regardless of their actual advertising needs.

Kefauver's discussion during the motion picture hearings often revolved around commercial matters, as well. He was worried about the advertising used to entice audiences into theaters. Many of his concerns were echoed by Thomas Dodd of Connecticut when the irascible Democrat took over the juvenile delinquency subcommittee in the early 1960s. Though Dodd's comments were directed toward network executives, both men criticized the content of teasers designed to spark audience interest in programs and saw in both Hollywood and network advertising a suspicious emphasis on sex and violence.

In this part, we can also see the beginning of the curious intertwining that seemed to exist between many of the genres of mass culture. For instance, the motion picture code described in detail in the introduction served as the model for the Comics Code adopted in 1954 by publishers hoping to avoid the threat of government intervention. It also was the inspiration for the Television Code which would come under fire in nearly every subsequent hearing into television practices. Curiously, with the introduction of the comics code the much maligned horror comics were tamed leading many publishers to look to television programs for their ideas. By the early 1960s, then, comics like *The Untouchables* and *77 Sunset Strip* were selling in the millions with content that was far less risky than their television namesakes.

The connections do not stop there, however. After years of viewing television as a threat to their monopoly on moving pictures, Hollywood studios in the late 1950s began producing television programs. The ongoing competition between networks as well as between television and movies led networks to air pre-packaged programming such as

quiz shows in an attempt to keep production costs down and revenues up. These programs would soon become fodder for congressmen worried not only about the sex and violence of television programming but also the seeming power of corporate entities in influencing what audiences saw. This development stands at the center of the hearings discussed in Part Two.

CHAPTER 1

THE HEADLESS MENACE: COMIC BOOKS, JUVENILE DELINQUENCY AND CULTURAL REGULATION

In the fall of 1954 the beleaguered comic book industry came together to form the Comics Magazine Association of America (CMAA). The CMAA was led by the so-called "comics czar" Charles F. Murphy and enforced a code which was supposed to regulate the industry and hopefully stave off potential government intervention in the creation of the publications. Within six months, Murphy and the new association had successfully guided the comic book industry out of the woods of public criticism. It is interesting to note, however, that the October 1954 comics code of the CMAA was not the first such document in the industry's history. It was, in fact, the second attempt by the industry to regulate itself. In 1948, publishers had come together to form a very similar organization with a very similar code. As we shall see, though, the predecessor of the CMAA, the Association of Comics Magazine Publishers (ACMP) failed to address the social and economic pressures that came with policing an industry that was so lambasted by civic organizations and government inquiries. Many of these pressures were revealed during hearings conducted by the Senate Subcommittee to Investigate Juvenile Delinquency in 1953 and 1954. In effect, these hearings forced the industry's hand and it was no coincidence that publishers' second attempt at self-regulation came even before the subcommittee presented its report to congress.

The most obvious reason for the rise in interest in comics after the war was the coincidence between growing comic book sales and an apparent spike in incidents of

juvenile delinquency. Many saw this as more than simply a correlation, assuming that the two must have had a causal relationship. Men like psychiatrist and social theorist Fredric Wertham accused comics of being directly responsible for much of the adolescent crime and antisocial behavior he discovered during his own investigation. It would appear, then, that when civic groups and government authorities started their own investigations into comic books, they did so specifically to discover any links that might exist between those comics and juvenile delinquency.

Such an interpretation overlooks the fact that much of the debate that took place within the senate hearings centered on issues that were unrelated to the comics as seedbeds for delinquency. Instead, lawmakers focused much of their investigation on matters of self-regulation and questionable marketing and distribution practices within the comic book industry. In fact, an article in *Time* magazine published after the hearings concluded acknowledged that "the committee never found out exactly what the impact" of comics was on juvenile crime but "it did get some interesting testimony on how comic books [were] distributed."[1]

Lawmakers expressed concern over the way comics reached the shelves of newsdealers. A good deal of debate centered around the practice of bundling whereby crime and horror comics would be packaged with other, often middlebrow magazines and publications. Combined with constraints on how sellers could return unsold items, bundling seemed to ensure that the culture industry got its way no matter the personal preference of the individual sellers. The discussion surrounding this aspect of comics

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[1] "Horror Comics," *Time*, 3 May 1954, 78

distribution was very similar to debates over network practices during the House and Senate hearings into television monopolies as well as during the juvenile delinquency subcommittee's television hearings under the chairmanship of Sen. Thomas Dodd's (D-CT).

Although the senate subcommittee on juvenile delinquency failed to develop any specific legislation to control comic book publication, the hearings led directly to the industry's second comics code in 1954. Historians of comics point to this development as having sounded a virtual death-knell for the industry during the 1950s. Many scholars and popular writers who write comic book history point to the comics code that developed out of the hearings as a major blow to the industry as a whole. This is ironic given the reason the code came into existence in the first place. The industry instituted the code chiefly to protect their merchandise from potential government legislation at the local, state or federal level. There was, however, a certain hope among some publishers that improving their quality would increase sales of comics and lessen the ongoing public outcry over comic book content.[2] Thus the comic book hearings – like each of the hearings discussed here – show lawmakers interested in both industry self-regulation and the role of the market in cultural production.

While comics had been subjected to varying amounts of public and critical scrutiny since their emergence as a significant cultural product in the 1930s, the rising delinquency rates of the postwar years tied with increased comic sales seemed to show a

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[2] William W. Savage, Jr., *Commies, Cowboys, and Jungle Queens: Comic Books and America, 1945-1954* (Hanover, NH: University Press of New England, 1990), 99.

definite causal relationship.[3] As such, many social commentators increased their attacks on the magazines as links in the chain leading to youth crime.[4] In the beginning most of the crusade against comics was directed by civic and private organizations. Groups like the National Organization of Decent Literature and the Committee on the Evaluation of Comic Books took the lead in sponsoring scientific and pseudo-scientific studies of comics' connection to delinquency. Many of their findings made their way into prominent national magazines like *Parents' Magazine* and newspapers throughout the country. According to Amy Nyberg, the American public's eyes were opened to the persistent dangers of comics in 1947 and 1948 largely because of the activities of such committees. From these associations, the matter gradually came to the attention of local and state legislatures, finally making its way to the U.S. senate.[5]

There were two periods of intense interest in the dangers of comics: 1947-1948 and 1953-1955 and one man more than any other stands at the center of both major spikes in public and governmental concern over comics. Dr. Fredric Wertham began his personal research into the effects of comic books on young minds by way of his work as a psychiatrist. Wertham was born in Germany in 1895 and emigrated to the United States in 1922 where he began a career that became surprisingly popular for a psychiatrist. Although he became known initially as an expert giving forensic testimony in criminal cases, Wertham's work with children at his free clinic, in his private studies and at his

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[3] John Springhall, *Youth, Popular Culture and Moral Panics: Penny Gaffs to Gangsta Rap, 1830-1996* (New York: St. Martin's Press, 1998). Springhall cites figures of 75 million copies sold at the peak of the horror comic craze in 1953-54.
[4] Bradford W. Wright, *Comic Book Nation: The Transformation of Youth Culture in America* (Baltimore: The Johns Hopkins University Press, 2001), 88.
[5] Amy Kiste Nyberg, *Seal of Approval: The History of the Comics Code* (Jackson, MS: University Press of Mississippi, 1998), 22-30.

various hospital positions opened his eyes to the dangerous effects of comic books. Convinced that comics were a significant contributor to juvenile delinquency, Wertham began writing articles for academic journals and national magazines in 1948.

For the next few years, Wertham stood as the most visible anti-comic champion in America. His articles appeared in such prominent publications as *Readers Digest* and *Saturday Review*. Both James Gilbert and Bradford W. Wright suggest that Wertham's critique of comic books was based on a worldview that saw America's capitalist system as a danger perhaps larger than the comics themselves.[6] Ultimately, Wertham's "assault on comic books was…rooted in a general, almost Marxist critique of American commercial culture." He worried that the culture industry, operating without any restrictions on content, chose to include sex and violence in much of its product. This culture, he felt, freely subverted children's morals in its search for profits.[7]

In his recent book, *Fredric Wertham and the Critique of Mass Culture*, Bart Beaty places Wertham squarely into the trend of post-war cultural critique that began to emphasize the effects of media rather than focusing on criticism based on aesthetic grounds. Wertham and others began to worry that the expansive government apparatus that was the legacy of the New Deal and Truman's Fair Deal threatened to impinge upon individual freedoms. Like David Riesman, Wertham's ultimate concern with popular culture was with the ways it could prevent individuals from achieving autonomy from the

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[6] James Gilbert, *A Cycle of Outrage: America's Reaction to the Juvenile Delinquent in the 1950s* (New York: Oxford University Press, 1986). and Wright's *Comic Book Nation* both describe Wertham's role in the comic book debate. Each author argues that the doctor's concerns were more complex than many earlier authors describe. Both works are excellent resources for understanding Wertham's arguments more fully.

[7] Wright, *Comic Book Nation*, 94.

mass society. Beaty argues that Wertham's attack on comics was certainly aesthetic and psychoanalytical in nature. Beyond this, however, was the subtle critique of capitalist society that Wertham included.[8]

Not everyone agreed with Wertham's wholesale attack on the comic book industry. There were many professionals who worried that his arguments were dangerously oversimplified. Reducing the causes of juvenile delinquency down to a single source like comics (or even the multifarious source of mass culture) was dangerous and threatened to lessen social science's ability to understand the problem fully. Others worried that Wertham and his sympathizers pointed too directly toward state censorship.[9] Robert Warshow commented that Wertham's approach was far too black and white, taking everything his interviewees said at face value. Since those interviewees were almost exclusively patients at his practice, this was a questionable tactic that established no control population against which to test his hypotheses. In the ultimate insult, though, Warshow accused Wertham's landmark book *The Seduction of the Innocent* as being little more than "a kind of crime comic book for parents."[10] Reuel Denney, who contributed to David Riesman's landmark sociological text, *The Lonely Crowd*, agreed

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[8] Bart Beaty, *Frederic Wertham and the Critique of Mass Culture* (Jackson, MS: University Press of Mississippi, 2005), 11. Beaty attempts to "reinsert" Wertham into the historiography of the mass culture critique and to locate him as a significant figure the equal of intellectuals like Lionel Trilling, C. Wright Mills and Gilbert Seldes.

[9] One of the primary voices of reason to contradict Wertham's assertions was NYU education professor Frederic Thrasher. Frederic Thrasher, "The Comics and Delinquency: Cause or Scapegoat," *Journal of Educational Sociology* 23, 4 (December 1949). Thrasher rejected Wertham's claims as stemming from personal bias and poor investigative method.

[10] Robert Warshow, *The Immediate Experience* (New York: Doubleday, 1962), 98. No fan of comics himself, Warshow wished that they could be banned or eliminated. He tempered his fanaticism, though, by saying that oftentimes children (including his own son Paul) managed to develop normally even when exposed to crime and horror comics.

that Wertham's jeremiad might "keep [parents] more sleepless than 'Supergirl' [was] supposed to keep their kids."[11]

Nonetheless, Wertham and the private organizations' exposure of the threat of comics, though, succeeded in leading several state legislatures to begin their own investigations into comic book content. More notably, though, these investigations quickly moved to include economic issues and discussions of the distribution practices within the industry. In an effort to head off any potential punitive legislation the comic book industry in July 1948 organized its first self-regulatory code and association, the Association of Comics Magazine Publishers (ACMP). The ACMP based much of its code on the Motion Picture Production Code discussed in the Preface. Almost doomed from the start, the ACMP never achieved full membership by all major comic book publishers. Some feared that their association with less reputable publishers would be problematic. Others considered their own internal editorial codes were sufficient. Still others could not afford the cost of the ACMP's screening process. For every comic with a circulation of over half a million copies the ACMP charged members $100 to screen it against the code. One major distributor calculated that such a system would cost it $3,000 a month.[12]

Although the ACMP and the first comics code would last less than seven years, it did help divert criticism by suggesting that the industry was trying to police itself. By 1949, then, the limited success of the code and the greater success (by virtue of local boycotts, letter-writing campaigns and a regular presence in the national media) of the

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[11] Reuel Denney, "The Dark Fantastic," *New Republic*, 3 May 1954, 18.
[12] Wright, *Comic Book Nation*, 103.

various civic organizations created to oversee comics' quality meant that comics seemed to be out of the woods. Perhaps more important, the industry received a positive, or at least ambivalent evaluation by Sen. Estes Kefauver's subcommittee investigating organized crime. As the subcommittee came to hearings regarding juvenile delinquency, they looked into comic books as a potential catalyst for antisocial behavior. In light of the lack of solid evidence tying comics with delinquency and due to the industry's successful defense of its product, Kefauver and his colleagues announced in 1950 that they could find no causal relationship between comics and crime.[13] Unfortunately, though, this new freedom seemed to make the industry complacent. Starting in 1950 a number of publishers began circulating comics with far more violence and sexual innuendo than ever before.[14] This rise in what would come to be known as crime and horror books would lead to the most concentrated attacks on the industry.

Once again Dr. Wertham rose to the challenge. Though he had been out of the public limelight for some time, Wertham's absence had not been due to his satisfaction with the comic book industry. In fact, Wertham had been doing research and interviewing children in preparation for the most infamous salvo in the battles over comic books. Wertham's book *Seduction of the Innocent* was released in the spring of 1954 and ushered in another round of investigations into comic books. *Seduction of the Innocent* was filled with descriptions and reproductions of gruesome comic books which, according to the psychiatrist, could not help but stimulate youngsters toward brutal acts. But Wertham was not simply arguing that comics caused juvenile delinquency. Instead,

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[13] Mike Benton, *Crime Comics: The Illustrated History* (Dallas, TX: Taylor Publishing Co., 1993), 78.
[14] Wright, *Comic Book Nation*, 155.

Wertham worried about the psychological effects that constant exposure to images of violence and sex had on children who read large numbers of comics.

His book was immediately taken up by anti-comics activists. It contained many admonitions against the dangers of comics including a description of what Wertham characterized as the "superman conceit." Wertham explained that many children reading comics were unable to distinguish reality from the fictional world of magazines. As such they internalized superheroes' ability (and freedom) to solve any and all situations through force. While these psychological developments were significant in their own right, more worrisome for Wertham was that the superman conceit seemed to be an "exact parallel to the blunting of sensibilities in the direction of cruelty that [had] characterized a whole generation of central European youth fed on the Nietzsche-Nazi myth of the exceptional man who is beyond good and evil."[15] While these concerns certainly worried Wertham and his supporters from the standpoint of child development and juvenile delinquency, they were also the foundation for his arguments in favor of broad government regulation of the industry.

The only solution to the pernicious danger of comics, Wertham argued, was to develop a law to regulate their sale and display. The psychiatrist denied that such a practice would be censorship. Censorship, he explained, was the imposition of the will of the few on the many. His solution would represent the protection of the many against the few. This would be a step toward "real democracy."[16] Given that the decision over what

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[15] Fredric Wertham, *Seduction of the Innocent* (Laurel, NY: Main Read Books, 1953), 97.
[16] Senate Committee on the Judiciary, *Comic Books: Hearings before the Subcommittee to Investigate Juvenile Delinquency*, 83rd Cong., 2nd sess., 1954, 302. [hereafter Comic hearings]

comics to limit would be made by a small, distinctly homogeneous group of lawmakers, certainly the law would be created by the few to impact the many. Moreover, Wertham seemed to be advocating direct government control over a part of the culture industry in a form far more problematic than anything suggested by legislators in any other hearing described here. Such a policy could not help but resemble state censorship.

Indeed, the psychiatrist's call for government regulation worried some commentators. "The legal problems of control" as envisioned by Wertham, "arise out of well-founded doubts," cautioned the *New Republic*'s Reuel Denney. Lawmakers, he said, often lack the sophistication to pass legislation appropriate to the problem, especially when doing so "at the behest of people who press one-sided views of the process involved."[17] Taking a page out of John Stuart Mill's views on liberal freedoms in his review of Wertham's book, *The Nation*'s Ward Moore reminded readers that free speech only exists when its protections extend to the "despicable as well as to the upright." Censorship of crime comics may start with the best of intentions but experience has shown that it leads almost inevitably to broader and broader limits on publications. The cure in this case would almost certainly be worse than the disease. In addition, Moore argued that it would be inappropriate and potentially dangerous to involve the government in such matters.[18]

In a way, Wertham's testimony presaged some of the arguments made by Federal Trade Commission Chairman John Doerfer during later hearings that corporate responsibility was a necessity in a democracy. For both Wertham and Doerfer the

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[17] Denney, "The Dark Fantastic," 19.
[18] Ward Moore, "Nietzsche in the Nursery," *The Nation*, 15 May 1954, 427.

democratic process centered on the need for the culture industry to recognize its responsibility to serve the public's interests rather than working strictly for maximum profits. Wertham, however, saw the culture industry's failure to put aside the profit motive as justification for more explicit government regulation and control over the offending groups.

Unlike Doerfer's views on corporate responsibility, Wertham never expressed any faith in the ability of the comic book industry to police itself. As will be shown later, the doctor was convinced of the evil nature of most comic book publishers and expected that only specific legislation could deal effectively with the threat they posed to America's youth. Despite his repeated calls for such a law, the U.S. senate followed the lead of most state legislatures by pressing the comic book industry to do a better job of self-regulation.

Self-regulation

As described earlier, the comic book industry's reaction to the subcommittee's investigation was perhaps the most famous of all the groups described in this work. Many books describe the glory days of comic publication before the damaging effects of the comics code drove dozens of titles out of existence.[19] Before the more well-known comics code was developed by publishers in the mid 1950s, there were other agencies

[19] Mark Christiancy Rogers, *Beyond Bang! Pow! Zap!: Genre and the Evolution of the American Comic Book Industry* (Ann Arbor, MI: UMI Dissertation Services, 1997), 36. Rogers notes that 22 out of 32 companies collapsed between 1954 and 1958.

designed to self-police the content and distribution of comic books. In the late 1940s a group of publishers had gathered together to form the Association of Comic Book Publishers. Testifying on its behalf, the general counsel of the association, Henry Schultz, described the few successes and many failures the group experienced prior to the start of the subcommittee's hearings.

At the association's outset nearly ninety percent of publishers were members. Almost immediately they set about creating a code to oversee the industry's operation. When the group formed in 1947 George Hecht, the publisher of *Parents* magazine, was charged with heading the code committee. Apparently, the publishers hoped that their identification with such a reputable periodical would help limit future criticism of comic books' content. The choice also points to the power of the established publishing community. Rather than putting the creation of the code in the hands of a comic publisher, Hecht represented a traditional answer – a man who had experience with helping adults regulate their own children in households across the country.

According to Schultz, shortly after the adoption of the code there was a series of defections by publishers who left the association. He assured the subcommittee that this was not necessarily a direct result of the publishers' rejection of the code itself. Instead there were a number of publishers, "some of them … the finest publishers of comics in the industry; some of the largest ones" which left in order to avoid being in any way connected with those publishers who produced "inferior" comics. In other cases a "great deal of internecine warfare" in the industry limited the likelihood of cooperation within the association. "A lot of old differences … mitigated a strong, well-knit attempt to

organize," Schultz explained.[20] The impetus of congressional investigations and a broad public outcry against comics in the 1950s would soon force the industry to put its house in order regardless of internal conflicts. This was representative of Kefauver's belief that congressional investigations and hearings into matters that concerned the public could be beneficial by mobilizing popular activism even if lawmakers did not pass any legislation. The committee, Kefauver believed, was important for exposing problems and gathering testimony and evidence to allow the public to make informed decisions.

By the subcommittee's investigation in 1954, there were around a dozen members of the association, only three of which were publishers – the rest being distributors, printers, and engravers. Clearly, oversight of the entire industry would be nearly impossible with such numbers. Those who remained, Schultz explained, hoped that some miracle might resuscitate the original idea of a self-regulatory code. When pressed on the matter, Schultz admitted that at least two publishers left the association because they refused to abide by what they felt were "excessive, kind of narrow, restrictions." Schultz explained that he had refused to approve certain magazines, sparking the resignations.[21] Often times Schultz tried to enforce the "spirit and intent" of the code rather than punish specific violations. This was due partly to the fact that the "weird kind of terror comics" that raised the most concern were largely unknown at the time of the code's creation. As such, there was no detailed provision to deal with material that was inappropriate but did

[20] Comic book hearings, 69-70.
[21] *Ibid*., 71.

not violate the code per se. Schultz assumed that many of the defections were due to his less rigid interpretation of the code.[22]

This development reveals another significant problem with the concept of self-regulation. Without a membership that chooses to abide by the decisions of the code authority, regardless of the possible negative impact those decisions might have on one's profits, a self-policing organization is largely irrelevant. The members of any voluntary association are responsible for its effective operation. This is especially true in the absence of any realistic punitive measures which might compel cooperation.

Schultz described the original code's attempt to "precensor" material by reviewing all publications prior to their distribution and release. Operating as a counterpart to the motion picture code, the association gathered a number of educators to organize seminars with publishers in an effort to raise language and content levels. Other members of the code board were hired to read the comics "in the boards" – the raw state of material before the magazine goes to the printer. Because the association was funded by dues collected from member publishers, the mass defections caused a downward spiral of resources. Eventually the group could no longer afford to preview all the books that came before it. As such, the only self-regulation in effect by the time of the hearings was that done by the editors for the various magazines. Any impact the code might have had was reduced to the slim possibility that it influenced the decisions of publishers, distributors, artists and writers as they developed their product.

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[22] *Ibid*., 72.

Beyond this, the books that carried the seal of approval did not necessarily pass any specific review process. Some three years earlier the association had "adopted a provision in which they agreed [publishers] would do their own censoring" thereby completely removing any vestiges of genuine regulation. The only restriction over the use of the seal of approval was whether publishers felt they conformed to the code. And since there were no sanctions the code authorities could enforce, the publisher who chose to put out a magazine without review would be free to do so.[23] To add insult to injury, the seal was not copyrighted and could be used by anyone who chose to imply their product had received the association's approval. Schultz's only recourse was to write a letter to the offender and urge them to cease and desist. Given the state of his rather anemic association, Schultz could likely not even muster the funds or man-hours to get a legal injunction.[24]

Senator Kefauver, soon to take over the chairmanship of the subcommittee from Robert Hendrickson (R – NJ), expressed his support of the association's code. It was, he declared, "a very excellent code that [had] been given a great deal of thought. If the publishers would follow this code," many of the problems that plagued the industry would not exist. Sen. Hendrickson echoed his compatriot's sentiment, saying the association's regulations "would do the trick" if they were observed. Schultz himself agreed that ninety percent of the "trouble" would be eliminated.[25] All this support for self-regulation despite the problems Schultz described shows just how powerfully all

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[23] *Ibid*., 72.
[24] *Ibid*., 78.
[25] *Ibid*., 73-74.

sides believed in the notion that the industry could, and should police itself rather than open itself to government involvement.

Apparently referring to the perceived spike in juvenile crime rates, chairman Hendrickson asked if adherence to the code would eliminate "the dangers." To this, Schultz argued that comics were certainly not the single cause of juvenile delinquency. Much of the criticism, Schultz said, had been leveled by people who made the issue a national scandal for motivations of their own – almost certainly this was a jab at Dr. Wertham, who had been a thorn in the industry's side for nearly a decade. This threatened to do a disservice to the people and to the problem the subcommittee was trying to deal with. By trying to boil delinquency down to a single cause, the subcommittee would likely overlook other, possibly more important aspects leading to juvenile crime. Ultimately, such an approach would detract "from the ability to understand the real basic cause of juvenile delinquency." Like Warshow and Thrasher pointed out, there were clearly significant problems with assigning total blame for social problems on cultural products.

Schultz went on to worry that scapegoating comics would impede "intelligent investigation into those causes," and it would gratify and placate "the feelings of parents and others that something is being done about [juvenile delinquency] when everybody blames the mass media, comics or television or motion pictures." In this light, Schultz hoped that the subcommittee would excoriate "the bad taste and the vulgarity sometimes bordering on obscenity" in the comic book industry. It should be criticized for its failure in its "duty to mothers" by debasing a "wonderful vital" medium. However, "the whole

problem of comic books" must be put in "proper focus" and should be seen as merely one possible factor in the apparent increase in juvenile delinquency rates in America.[26] Here is another example of the subcommittee's role as an information gatherer and distributor. Whereas Kefauver hoped that the subcommittee would bring matters out into the open and allow the public to make informed decisions, Schultz imagined that the hearings could serve to pressure the industry into correcting itself.

In something of a late salvo in the battle over comic book content, August 1955's issue of *The American Mercury* included a guide to concerned citizens about how to solve the comic problem locally. The author, Ruth A. Inglis, traced the pros and cons of self-regulation and censorship before listing five things the public could do on their own to influence the sale of objectionable comics. Her grassroots suggestions were well in-line with the magazine's traditionally conservative, libertarian approach. Among them were protesting questionable material at the point of sale or contacting postal officials or legal authorities if the publication violated obscenity laws.[27] Once again, the public was encouraged to be as active as possible to affect change within the bounds of the law.[28]

As described earlier, Schultz lamented the virtual impotence of the association as a self-regulatory body with the defections of the major publishers. He went on to describe the group's operation as being little more than that of a "reporting agency." He

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[26] *Ibid*., 74-75.
[27] Ruth A. Inglis, "The Comic Book Problem," *The American Mercury*, August 1955, 121.
[28] Lizabeth Cohen, *A Consumers' Republic: the Politics of Mass Consumption in Postwar America* (New York: Alfred A. Knopf, 2003). Cohen describes how consumers in the 1930s and 1940s (especially women and African Americans) began to see their role as purchasers as a way to exert influence on the market. They organized into loose associations like the People's Consumer Co-Operative or acted independently but with similar motives and goals. Thus, there was a precedent for the sort of grassroots economic pressure Inglis advocated as a way to compel comics publishers to improve their product.

and his staff would gather news clippings from around the country that criticized comic books and pass them along to the industry. Apart from occasional meetings called to discuss industry-wide problems and despite his earlier praise for the ACMP, the association was, in the words of senator Kefauver, "out of business." Schultz even admitted that, had he been empowered to do so, he would have rejected the publication of many of the crime and horror comics the subcommittee was investigating.[29]

The most significant damage to the association's power to self-police came with the defection of many large and important comic book publishers. According to Schultz, these publishers may not have published the more odious types of books. However, they "did not recognize their responsibility to the total industry" by remaining members and they failed to abide by the "practices and rules which would have become a bible for the industry."[30] Almost before it had a chance, the Association of Comic Book Publishers had disintegrated as a legitimate self-regulatory group. In later hearings, television network executives and the heads of the FCC and FTC would revisit this belief in industry responsibility. Not only would an active self-policing program in cultural production lessen potential government regulation and public outcry, it was part of the corporate world's civic duty to be responsible capitalists.

Dr. Frederic Wertham saw a much more united comic book industry than did Henry Schultz. Wertham described an enterprise that closed ranks very effectively against him and any other individual who dared criticize its product. An entire chapter of his *Seduction of the Innocent* was in fact devoted to the ways the comic book publishers

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[29] Comic book hearings, 77.
[30] *Ibid*.

and distributors dodged, redirected or rebutted criticism by parents and professionals alike. Wertham explained that the experts who came to the industry's defense were nearly always the same few people. Moreover, they were often financially connected to the comic publishers to greater or lesser degrees.[31] His testimony portrayed a cabal of comics publishers who worked in concert to limit the opportunity for critics to spread the word. This was a far cry from the self-interested, individualistic and atomized community Schultz described. Apparently, the industry joined forces to defend itself against a common enemy more easily – and successfully – than it did when trying to police itself.

Wertham explained how the comic book industry "interfere[d] with the freedom of publications in all fields." With their "hands on magazines, … newspapers, … [and] advertisers," they exerted a great deal of influence on what could be said about their product. The proof of this, Wertham suggested, would be revealed as circumstances developed surrounding his book *Seduction of the Innocent*. Wertham's book had been announced as a potential Book of the Month Club selection. Convinced of the power of the comic book industry, Wertham expected that "the sinister hand of these corrupters of children, of this comic-book industry" would prevent its distribution. When the book was suppressed (which Wertham simply assumed would take place) the subcommittee would see first-hand "how difficult it [was] for parents to defend their children against comic books" when they could not learn what those comics contained.[32] A similar

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[31] Wertham, *Seduction*, 220-226.
[32] Comic book hearings, 92-93. Moore, "Nietzsche in the Nursery," 426.

argument would emerge when the subcommittee expanded its hearings into motion pictures and the advertising posters and billboards that advertised them.

Rather than supporting the type of self-regulation favored by many in congress and the industry itself, Wertham hoped for direct legislation to fight the threat of comics. The apparently unstoppable comic book industry also managed to prevent passage of such laws, though. In the several states where restrictive legislation was proposed "the comics conquered the committees" and the laws were never instituted.[33] In light of such testimony and the descriptions in Wertham's book it would seem that the comic book industry was nearly all-powerful. The subcommittee was exceedingly deferential to Wertham throughout his testimony and never pressured him about his assertions. While lobby pressures are nothing new, it seems insupportable that none of the senators saw a problem with Wertham's description, especially coming as it did without any shred of evidence. Amy Nyberg suggests, for instance, that at least in New York such legislation made it out of the assembly only to run squarely into the governor's concerns over freedom of speech. In this case, the laws were upended by fundamental debates about constitutional guarantees of free speech and traditional beliefs about free markets and were not quashed by comic book companies.[34]

Although much of his testimony was somewhat far-fetched, some of Wertham's conspiracy theories seemed to have been borne out by the testimony of Gunnar Dybwad.

Moore seemed to agree with Wertham's characterization of the comic book industry. He declared that it was "so interlocked with paper mills and respectable magazines that it [could] coerce outlets doubtful about handling its products, influence legislation, and scare off well-meaning crusaders."

[33] Wertham, *Seduction*, 302.

[34] Nyberg, *Seal of Approval*, 43.

Mr. Dybwad was the executive director of the Child Study Association of America based in New York City and attempted to defend the group from accusations that it was nothing more than an official-sounding mouthpiece for the comic book industry. One of Sen. Kefauver's primary concerns was that parents seeking objective commentary and assistance would be mislead by a group that seemed unbiased but was in fact a self-serving attempt by the industry to whitewash itself into acceptance. In fact, Kefauver questioned whether it was a fair presentation to have a "fine-sounding association" using "two people … in the comic-book field" to evaluate crime and horror books. At the very least, he argued, parents seeing "these rather favorable appraisals of horror and comic books" should be informed that they were "written by someone who [had] been paid by the publishers."[35] Kefauver pressed the issue, saying that the entire thing was a deception. Parents who saw the material coming from a "high-sounding association" should know whether its members were "paid by the comics." Of course, Kefauver recognized, doing so would show the partisan nature of their publications.[36]

Some of the most notorious testimony given during the subcommittee's hearings was that given by William Gaines of Entertaining Comics Group. Gaines's testimony regarding the content of his magazines has since become almost legendary in comic book lore. One of the most interesting events of his appearance was the debate over an industry-circulated flyer titled "Are You a Red Dupe?" which suggested that anyone

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[35] Comic book hearings, 132-133.
[36] *Ibid*., 136-137. The substance of this debate, if not the specific topic, would be repeated during hearings into motion pictures' role in juvenile delinquency. In the next chapter, we shall see how lawmakers and witnesses discussed the role of advertising in helping parents gain a better understanding of the content of the films in question. As such, the marketing system intended primarily to drawn in audiences could serve an educational purpose as well.

attempting to censor comic books was nothing more than a pawn of communist ideology. In the face of what they surely viewed as McCarthyish attacks on their industry, then, comic book publishers responded with a cleverly ironic retort.[37]

When questioned by the subcommittee about the code, though, Gaines admitted that many of his books would not pass close examination. Although he had long been a subscriber to the code, by the time of the hearings into juvenile delinquency Gaines had chosen which parts of it he would follow and which he would discard.[38] Clearly, the industry's earlier well-intentioned attempts at self-policing were almost totally ineffectual. That a single publisher – in the case of Gaines, the most powerful publisher in the industry – could eviscerate the central feature of an industry-wide regulatory code indicated the failure of such a system.

Despite these problems, Monroe Froehlich, the business manager of one comic book publishing company, still championed the idea of self-regulation as a reasonable way to keep the industry in order. He also declared that the "serious and directed effort" by the industry to oversee itself helped raise the quality of other, lesser publications. Froehlich took special pride in his company's role in "constant improvement at self-regulation."[39] Beyond the preference of self-policing over government run censorship, Froehlich emphasized the power of free market competition to weed out comic books of inferior quality. "In the main," Froehlich said,

> the public interest is best served through enlightened self-regulation

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[37] David Hajdu, *The Ten-Cent Plague: The Great Comic-Book Scare and How it Changed America* (New York: Farrar, Straus and Giroux, 2008), 260.
[38] Comic book hearings, 106.
[39] *Ibid*., 171.

> resulting from full public discussion and resulting open competition. Invariably undesirable publications and those put out hastily by marginal publishers fall by the wayside and worthy publications produced by conscientious publishers endure to entertain young and old.[40]

This belief in the regulating power of a capitalist system would resurface many times throughout the series of congressional hearings into mass culture. It would also provide some of the most useful material for analysis. In fact, this support for competition was one of the most repeated aspects of all the hearings discussed here. And it was one of the central arguments in favor of the creation of public broadcasting as a high-quality option for audiences looking for alternatives to network programming.

Almost immediately there emerged potential problems with the belief that market processes would necessarily result in better product. Froehlich himself admitted that, as a profit-driven enterprise, comic book publishers changed their products to "meet the demands" of public taste. He went on to describe how strong companies were those most alert and sensitive to sales patterns. These sales patterns were most often initially set by the consumer and the manufacturer then shifted production "to conform to those patterns."[41] Froehlich's company was no different. When it noticed the rising demand for "weird or fantastic" comics, Magazine Management Co. changed its product to meet that demand, feeling "it was wise … to have a relatively few comics in the field."[42] Froehlich's emphasis on the consumer's ability to affect cultural production is significant.

During all the hearings discussed here, both legislators and witnesses regularly defended the power of the market to influence culture. Many, though, were ambiguous

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[40] *Ibid*., 170-171.
[41] *Ibid*., 173.
[42] *Ibid*., 174.

about the relationship between audience demand and the culture industry. Clearly there is something of a discrepancy when a person enthuses about the ability for market competition to regulate production and then, almost in the next breath, supposes that audience demand leads publishers to alter their material. Certainly no one would begrudge the right of a company to make a profit. However, there is a definite paradox between the profit-motive leading the culture industry to pander to audience demands and the hope that open competition would force the worst offenders to improve their product or risk bankruptcy. Moreover, there may have been some recognition on the part of the commentators that the *laissez faire* market they championed was largely nonexistent in postwar America. Bureaucratized management structures, scientific marketing and corporate conglomeration came to define economic realities during the 1940s and 1950s.

Corporations in America during the 1950s reacted to the opportunities presented in the rapidly growing economy by diversifying their holdings and expanding their productivity. Since a 1950 act co-sponsored by Senator Estes Kefauver made illegal any horizontal mergers if they threatened to limit competition, many firms organized conglomerates. Horizontal mergers are those in which businesses purchase or join with corporations in substantially similar areas. Corporations found conglomerates to be an attractive alternative because it would be hard for anti-trust litigation to prove that companies, no matter how large, were restricting competition by owning firms in totally unrelated industries.[43]

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[43] Michael French, *US Economic History Since 1945* (Manchester, Great Britain: Manchester University Press, 1997), 136-137.

During World War Two and the years following it, corporations began working more closely with government agencies to manage the American economy. Robert Collins calls this a return to a "conscious corporate impulse." Though similar to Herbert Hoover's voluntarism of the early 20th century, this vision differed from Hoover's ideal by giving the state a larger role in ensuring prosperity. Collins goes on to argue that such a managed economy was attractive to many liberals because they often saw themselves as "technocratic managers" of the postwar social order. One offshoot of such a belief was the creation of the Committee for Economic Development (CED) in 1942 as a quasi-public group to influence federal policy through the Commerce Department as well as to influence businessmen through ties to Chambers of Commerce and other local groups.[44] By 1955 the membership list of the CED even included such mavens of middlebrow culture as the head of the Book of the Month Club, the editor of *Look* magazine and the presidents of Time-Life and CBS.

Robert Griffith describes Eisenhower's vision of a corporate commonwealth as another attempt to join government and business interests for the good of public welfare. As Ike saw it, self-interest motivated both politics and business. Unlike the prevailing view of consensus historians at the time, Eisenhower was convinced that competition and class conflict drove much of history. Rather than relying on voluntarist impulses and hoping for cooperation amongst selfish groups, the government must "'prevent or correct abuses springing from the unregulated practice of a private economy' and must provide

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[44] Robert M. Collins, "American Corporatism: the Committee for Economic Development, 1942-1964," *Government – Business Cooperation 1945-1964: Corporatism in the Post-War Era*, ed. Robert F. Himmelberg (New York: Garland Publishing, Inc., 1994), 21-22.

laws" to ensure order.[45] This would mediate business excesses and greed while protecting consumers from both lawmakers and corporate executives. It was up to the government to foster a cooperative rather than competitive atmosphere in business as well as to improve relations between divergent interests in other arenas.[46] Together, the growing role of the government and the consolidation of ever-larger and more diverse corporations indicated to many that there rarely existed the "free markets" so often pointed to as a potential guarantor of cultural quality. Add to this the push for industry self-regulation and clearly the American marketplace was not as unfettered as witnesses and legislators portrayed during the hearings.

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[45] Robert Griffith, "Dwight D. Eisenhower and the Corporate Commonwealth," *The American Historical Review*, vol. 87 issue 1, supplement (Feb., 1982), 92.

[46] Much of this political philosophy was similar to one of the GOP's favorite sons, Theodore Roosevelt. Both men worried that increasingly complex modern economies would lead to monopoly capitalism and could cause the disadvantaged lower classes to rise up in rebellion.[1] Eisenhower's reaction to these worries congealed into a policy he called the "middle way." Legislatively, the middle way referred to a belief in moderate politics in the midst of New Deal liberalism and the Republican right's surge under leaders like senator Robert Taft. Ike worried that the major obstacle to his corporate commonwealth was from the partisanship of politics. The best way to avoid political wrangling and interest-based politics was to rely on "the leadership of public-spirited and professionally skilled managers."[2] In many ways, Eisenhower's approach was also reminiscent of Herbert Hoover's voluntarism and the business professionalization that characterized the postwar economy. Each president hoped to achieve a balance between competing interests. Whereas Hoover hoped for voluntary cooperation between labor and capital and between the government and the private sector, Ike envisioned a "positive, if limited, role for the state in the nation's political economy."[3]

[1]Steven Wagner, *Eisenhower Republicanism: Pursuing the Middle Way* (DeKalb, IL: Northern Illinois University Press, 2006), 5

[2]Griffith, "Dwight D. Eisenhower and the Corporate Commonwealth," 93.

[3] Richard V. Damms, *The Eisenhower Presidency, 1953-1961* (New York: Pearson Education, 2002), 8.

Bundling and questionable distribution

One of the most contentious issues discussed during the subcommittee's hearings was the accusation made by some that the comic book industry forced small distributors to carry specific titles or made it extremely difficult for those same sellers to return unsold or unwanted titles. The issue was broached with Henry Schultz of the Comic Book Publishers Association. Though the resulting testimony occurred early in the subcommittee's investigation, the matter resurfaced several times by its end. Chief counsel Herbert Beaser questioned the industry representative whether dealers at the local level were ever *required* "by either the wholesaler, the distributor, or the publisher…to carry crime and horror comic books." Schultz responded that any retailer who chose not to sell a specific magazine could simply hold the comic in reserve until he shipped it back to the publisher for full refund credit. While he admitted that eager wholesalers or roadmen might pressure a street vendor to sell a magazine he didn't wish to, Schultz brushed aside such concerns, and ignored the power of financial motivations, by saying there was no "compulsion legally" for retailers to sell those titles. In fact, Schultz said, the situation with comic books was not so different from that in the automobile industry where a retailer was expected to sell a company's full line and "not…only the convertibles." As such, the local retailer might face pressure to carry a complete selection.[47]

[47] Comic book hearings, 73.

If a retailer continually failed in his obligation to a wholesaler, distributor or publisher it was certainly possible that that vendor might lose his franchise to sell a certain publisher's line. Schultz argued that such a circumstance would most likely affect the wholesaler at the regional level rather than the vendor on the streets. A more reasonable danger came from the compulsion of tie-in sales or bundling, according to the industry man. It was this activity that probably compelled the passage of statutes in various states regulating the sales practices of publishers, wholesalers, etc. In the end, however, Schultz believed that even these statutes were passed more because of a "great deal of excitement and hysteria" over the dangers posed by comic books. Most lawmakers, he said, also seemed to proceed under the false assumption that tie-in sales were part of the "legal mechanism of the distribution business" when it was not. This compelled them to pass unnecessary legislation to regulate behavior that was already illegal.[48] Most of Schultz's statement lacked the deterministic tone of later testimony into bundling, tie-in sales and forced distribution.

In the midst of Frederic Wertham's somewhat overzealous testimony, he too told of his conversations with retailers dealing with industry pressure. Wertham recounted his experiences in "candy stores" where he bought comics (presumably to stay current on just how terrible the situation was.) The psychiatrist related an exchange with an unnamed retailer who described his problems trying to choose what titles he sold. When the man tried to refuse certain comic books he was told by "the newsdealer, whoever it is … 'You have to do it.'" As the newsdealer persisted, the middleman told him that the

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[48] *Ibid*., 74.

distributor would pull other titles if he refused to sell the magazine in question. Apparently as punishment for the retailer's intransigence, the distributor then sent all his magazines late. Because of this the salesman was behind his competitors in selling popular titles.[49] Like much of Wertham's testimony, the story suffered from a lack of detail and had little evidence to support its authenticity. However apocryphal his story may have been, however, Wertham's description meshed well with the statements of other witnesses before the subcommittee who described questionable business practices by the comic book industry.

One of the most reputable witnesses on the matter was the counsel for the News Dealers Association of Greater New York, William Richter. Richter stated categorically that there were "definitely tie-in sales to the newsdealers" of New York. These retailers had no choice but to sell the magazines that were "foisted and thrust upon" them. To make matters worse, they were usually packaged with other, "everyday reputable" titles like *Collier's*, *Life* and *The Saturday Evening Post* in such a way that the seller could not determine what titles were in a bundle. Oftentimes the retailer had not even paid for the magazines that were given him. Instead, a bill was thrown at him for the magazines he was given. Richter complained that newsdealers could not "sit down as any ordinary merchant and pick his merchandise." He had to take what was given to him on a "take-it-or-leave-it basis." This was the situation throughout New York, and, according to Richter and Senator Hendrickson, likely existed in other major American cities. Richter

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[49] *Ibid*., 96.

went so far as to suggest that his contacts in other cities led him to believe that such bundling and tie-in sales were "prevalent throughout the country."[50]

Since all the titles were bundled together in the same package, returns were nearly impossible. The retailer could expect to sell many of the regular weekly or monthly magazines like *Collier's* or *Life*. Because of this he could not return the entire bundle for a refund without large parts of the total order. In addition, he would face a choice of storing the horror and crime comics or selling them. Like all retailers, newsdealers work in a capitalist system that encourages profit-making. Titles not on the shelves cannot make money. Thus, regardless of a seller's personal feeling about the quality of certain magazines, he is more likely to display them. Finally, distributors could very easily reduce shipments to a retailer whose sales figures decline. Certainly a decision not to sell specific titles would hurt sales numbers and could potentially lead to a reaction from wholesalers and distributors. In the end, a vicious circle emerged forcing small sellers to put crime and horror comics on shelves because of the lack of options they faced.

Perhaps worse than the unfair limits on the free market system that such business practices created, Richter pointed to the system's restriction on the censorship abilities of local retailers. Since sellers were unable to choose what items they wanted to sell, they had no chance to operate as arbiters. Even in admittedly limited circumstances, Richter said, retailers with free choice could be censors of the good and bad magazines. Richter supposed that many sellers would refuse to sell certain titles because "they wouldn't want

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[50] *Ibid*., 184.

to deal with" comics they considered "trash and junk."[51] In the face of the restrictions they faced, though, retailers could not make free decisions about which magazines they wanted to sell.

In this case, the argument that free market competition would help regulate content and quality took a new direction. Most often commentators were focused on the overall effects of audience demand and the culture industry's reaction in its effort to maintain popularity and profits.[52] Seldom was the argument made that small businessmen themselves would be instrumental in regulating quality. Richter's description placed a great deal of power in the hands of a largely overlooked segment of the culture industry. Although almost certainly unintentional, Richter made a very subtle argument that few observers would have made then or now. It seemed to champion, however indirectly, the middleman's role as adjudicator. Clearly Richter viewed newsdealers, with their ties to family and their common sense approach, as a legitimate force for regulation even in the midst of ongoing calls for social scientific and legislative measures to deal with juvenile delinquency and mass culture quality. Such a belief also limits the reliance on industry-wide regulation through the use of codes. Because self-regulation was only feasible through a top-down organizational approach and could easily be sidestepped, Richter's idea seemed to carry some weight.[53]

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[51] *Ibid*., 185.

[52] This is an admittedly condensed treatment of the question of audience demand versus cultural production, omitting the chicken-or-the-egg issue of whether the culture industry manufactures demand or simply reacts to public tastes.

[53] Richter's idea for more involvement by local distributors was very similar to lawmakers' belief in the mid-1960s that a decentralized public broadcasting system organized around local stations would be more responsive to audience tastes and demands. Such a system would also preclude any need for a generalized regulatory code that would have to be applied over an entire industry.

On the other hand, it could place a strain on publishers and distributors who could be forced to adjust their delivery and warehousing schedules based on a multitude of individual sellers' preferences. It is entirely possible that the distribution and bundling described by Richter and others was simply a question of efficiency. Wholesalers and distributors need to ship their product to retailers easily and quickly by moving large numbers of magazines as well as a variety of titles. Perhaps it was this consideration that led them to bundle magazines together. In addition, it is likely that the small, street-corner vendors in question had little need for entire packages of any one title. With vendors on every block in New York, each selling substantially the same titles, no one vendor would need a whole bundle of *Collier's*. As such, it is possible that distributors saved money in packaging and shipping by combining titles together so the retailer could put up many magazines at once with less need for overstock or surplus. Certainly this interpretation seems less a stratagem than a reasonable business practice that happens to have negative consequences for certain retailers and is exacerbated by social concerns over the content of some of the titles involved.

The experiences of William Gaines, the most infamous of the publishers of horror and terror comics, seemed to support Richter's interpretation of the power for wholesalers and distributors to affect content. Just days before the industry joined together to form the Comics Magazine Association of America in September 1954, Gaines announced that he was discontinuing his horror and suspense comics. Although he said in a public statement that he was reacting to "'what American parents'" wanted, the reality was that Gaines and his company, EC Comics, faced heavy pressure from

wholesalers who refused to handle their titles. What had begun in localities had spread by the middle of the decade to be a regional and even national problem for the company.[54] Such a development seemed to bear out the efficacy of one of Ruth Inglis' suggestions in *The American Mercury*. One way to deal with objectionable comics, especially if dealers blamed tie-in sales, was to discuss the problem with the local wholesaler. Many wholesalers, she said, had "gone on record as being willing to co-operate with responsible groups."[55]

New York state assemblyman James Fitzpatrick also backed-up much of Richter's statement. Fitzpatrick was chairman of the New York State Joint Legislative Committee to Study the Publication of Comics and described his own investigations into the same sorts of questionable business practices related by Richter and Wertham. "Without any question at all," Fitzpatrick said, newsdealers throughout the state had been convinced that they would likely stop receiving "legitimate" publications if they refused to sell those titles that were more criticized. Even worse was the fact that many of these retailers were under the impression they would lose their franchise entirely. Obviously this sort of influence could greatly limit sellers' freedom of choice in determining which magazines they wished to display.[56]

Fitzpatrick expressed his hope that some sort of legislation could be developed on a federal level to help limit the threat of tie-in sales and bundling. The assemblyman wanted to protect a retailer's "constitutional right" to refuse any item he found "obscene,

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[54] Frank Jacobs, *The Mad World of William M. Gaines* (Secaucus, NJ: Lyle Stuart, Inc., 1972), 103-113.
[55] Inglis, "The Comic Book Problem," 121.
[56] Comic book hearings, 210.

indecent, or lewd."[57] He even went so far as to suggest that the comic book industry be given "limited, and closely scrutinized, immunity from antitrust regulation for any group or groups of publishers or distributors, working together for the sole purpose of enforcing industry supervision over the sale of obscene and objectionable literature."

The history of the bill Fitzpatrick sponsored in the New York assembly shows a man apparently hoping to develop such expensive and cumbersome rules that the comic book industry would no longer be able to afford to sell their product in New York state. A complex system of governmental review, permits and title page notification would ensure that parents and distributors would know what comics were reputable. Many critics of Fitzpatrick's bill pointed to two possible dangers hidden within it. First, the bill seemed to set a "dangerously repressive precedent" in the direction of government censorship of newspapers and threatened constitutional guarantees of the freedoms of speech and the press. Second, many commentators argued that the bill's establishment of an agency within the state Dept. of Education was unwieldy. A more effective, albeit slower, method of oversight would be to rely on public opinion to bring about change.[58] In the face of organized resistance from the press and other concerned critics the bill failed in 1949.

Subsequently, Fitzpatrick organized the creation of the Joint Legislative Committee to Study the Publication of Comics in order to survey judges, district attorneys and others in an effort to establish a link between comics and juvenile delinquency. These surveys were inconclusive, forcing the committee to open hearings

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[57] *Ibid*., 211.
[58] Nyberg, *Seal of Approval*, 43.

with expert testimony. After a number of on-again off-again hearings and investigations the committee pressed the publishers to strengthen their self-regulation or face government action. When the industry failed to act, a new bill was presented for the New York legislature to review. Despite its passage, governor Thomas Dewey vetoed it on constitutional grounds, leaving the industry to continue operation free of government interference in New York.[59]

Fitzpatrick had little faith in the industry's ability or motivation to self-regulate, though, because he described to the senate the New York assembly's year-long wait for comic book publishers to address these concerns. The assembly, he said, expressed to the industry the legislators' preference for self-regulation. In a sort of veiled threat, the assembly's admonition went on to say that, if the industry cleaned itself up it would have "no trouble from [the] legislative committee." Clearly, this was meant to impress upon comic book publishers the very real possibility that government lawmakers would develop punitive measures to ensure compliance. Despite the failure of self-regulation to answer the concerns raised by commentators, Fitzpatrick, like nearly all witnesses before the various hearings reasserted his faith that it was "unquestionably…the best of all regulations."[60] The assemblyman's comments were almost identical to Sen. Thomas Dodd's criticism of the television industry during his hearings in the 1960s.

According to Fitzpatrick, the majority of the comic industry was willing to try self-regulation but was unable to compel "renegade" publishers to "play ball" largely because the good publishers join while those who prefer to release materials deemed by

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[59] *Ibid*., 42-47.
[60] Comic book hearings, 213.

legislators to be questionable remain outside the associations. In addition, many publishers expressed their reluctance to organize because they assumed that "any kind of coercion within the industry" would open it up to "prosecution under the antitrust laws."[61]

Regardless how the antitrust exemption was developed, Fitzpatrick reminded the subcommittee that legislators would "have to have at least the stick in hand." He also echoed the comments of men like commission chairmen John Doerfer and Earl Kintner who argued that corporations needed to recognize their responsibilities in a democratic and capitalist society by providing morally decent products regardless of the profits to be made. "In other words," he concluded,

> while voluntary control is the answer if it will honestly be placed in operation by the industry, I do not think we are going to get it because people who publish this kind of thing, in my humble opinion, have no morals, and if they have no morals in distributing filth and breaking down the whole moral attitude of our youth, I don't think they care whether or not they have any standing.[62]

Once again the paradox of compelling membership in a voluntary association reared its head. Even Fitzpatrick recognized that the organization already in existence was a step in the right direction but was largely obviated because of the defection of those publishers who refused to abide by its precepts. Forced compliance with voluntary self-regulation is in many ways essentially a form of censorship. However, without the acquiescence of an entire industry there is less chance for a code to carry enough weight to be practical. With no power to force compliance or require membership, voluntary organizations must rely on the likemindedness of the industry.

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[61] *Ibid*., 212.
[62] *Ibid*., 214.

Several witnesses testified on behalf of the distributors and publishers and took exception to Fitzpatrick and Freedman's characterizations of coercion by wholesalers. The circulation director of Independent News Company, Harold Chamberlain, rejected the idea that retailers were ever forced to sell things they did not order. It simply was not possible to require sellers to handle specific titles. Chamberlain explained that many street corner vendors had such limited space and were open such a short time that they could only display a dozen titles. The implication was that these men could not be forced to sell certain titles because they simply could not have shown them. As such, the wholesaler's cost of shipping and returns would become prohibitive. When the chief counsel wondered why several state legislatures would pass laws dealing with tie-in sales and bundling if there was no real danger of such behavior, Chamberlain replied that they had been convinced of the need by inaccurate testimony. Like Henry Schultz had suggested earlier, there may be cases of an "overzealous routeman" demanding a seller handle certain titles. But a serious investigation would yield no "factual evidence to prove that there [were] tie-in sales."[63]

An executive with the Springfield, Massachusetts based Atlantic Coast Independent Distributors Association, Samuel Black disagreed with Freedman's portrayal of the bundles that are delivered to the dealers on the streets. Freedman had outlined how dealers received unmarked bundles with no way of knowing their contents. Black explained that each bundle was clearly labeled as to its contents. This limited the necessity for returning entire packages. When multiple titles were bound together, a

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[63] *Ibid*., 232.

vendor could decide whether he wished to display any or all of them without opening the bundle and reducing his options for returning them.

He also argued that the onus for sorting good from bad should be placed on the publishers and the sixteen major national distributors used by the industry. Because of the demands on the local vendors, it was unreasonable to expect them to burden themselves with deciding what material was good enough for sale and what was not. Although chief counsel Herbert Beaser implied that the burden for such decisions should "fall all up and down the line rather than just a particular set of individuals," Black stuck to his earlier interpretation. Wouldn't it be easier, he countered, "to have 16 national distributors police this situation than … to ask 950 wholesalers or 100,000 retailers" to take on the problem? While the local seller could "contribute to some degree in the scheme of things," Black felt that the primary responsibility rested with the publishers and national distributors. These groups could affect quality either at the source (in the case of the publishers) or at the first level of sale (the national distributors).[64]

It would be impossible for local dealers to decide what they wanted to be sent, Black declared. Instead they had the right to reject titles they had received and inform their distributors that future shipments of those titles would also be rejected. The difference was slight. In order for a dealer to pre-select the magazines he wished to get, he would have to travel to the distribution center and choose the titles each month. Logistically impossible, this method was altered to allow the vendor the opportunity to

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[64] *Ibid*., 270, 272.

fill out lists of restricted titles. According to Black these titles would not be sent to the vendor in the future.[65]

Black's description of the power of distributors to influence the output of major comic book publishers is similar to the concept of countervailing power described by John Kenneth Galbraith in his book *American Capitalism: The Concept of Countervailing Power*. Originally published in 1952, Galbraith posited that the post war American market was less driven by market competition than in the past. As buyers and middle-men gained influence, they operated as a counterweight to traditional sources of free market competition. Both, then, could affect the business choices of highly concentrated corporate enterprises. In fact, Galbraith reasoned that one begat the other. "The tendency of power to be organized in response to a given position of power," was the "vital characteristic" of Galbraith's interpretation. More concentrated corporations were paradoxically less powerful than they once were because buyers and sellers (in this case distributors of the corporate output) gained in importance. Countervailing power is self-generating largely because as corporate power increases, a like power emerges to oppose it. "Power on one side of the market," he argues, "creates both the need for, and the prospect of reward to, the exercise of countervailing power from the other side."[66] For instance, Galbraith describes the emergence of organized labor as largely a result of outsized growth in industry. As an industry expands in size and power, opposition forces (Galbraith's countervailing powers) such as organized labor or chambers of commerce

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[65] *Ibid*., 273.
[66] John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (Boston: Houghton Mifflin, Co., 1962), 113.

naturally emerge in order to offset and counteract it. Although, like the newsdealers described earlier, they may be smaller in size, these countervailing forces often successfully limited the ability for industries to exert their will without restraint.[67] No matter how large the comic book publishers were, they were still beholden to the middlemen and local sellers to distribute their product.

Although he had earlier stated that national distributors and the publishing houses were best equipped to mediate the quality of comic books, the arrangement Black described certainly allowed vendors at the local level a great deal of say in the material put on display for sale. This process allowed for local censorship very similar to that championed earlier by Benjamin Freedman. Despite the opportunities for local regulation presented by such a situation, Black argued that publishers and national distributors of such "worthless and degrading material" had to "take organized, united and effective action on their own initiative … and not simply pay lip service to the problem." Unfortunately, though, "the greed for profit from the sale of something 'hot'" was not easy for some to overcome.[68]

It is surprising that Black admitted the power of profit to overcome moral judgment but still hoped that those parts of the industry that had the most to gain were in the best position to address the problem. Along with the power to affect an industry nationally, publishers and distributors could reap much larger profits from selling popular magazines irrespective of their content. Unfettered by even the negligible restrictions of the Comic Book Publishers Association code, crime and horror comics operated purely

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[67] *Ibid*., 114-117
[68] Comic book hearings, 272-273.

for profit. Since these profits could be substantial compared to the smaller sums local vendors dealt with, publishers were less likely to limit their production. Only two factors existed that one could expect might sway publishers from pursuing the path of greatest profits: government censorship or legislation and widespread shifts in audience tastes.

On the other hand, local distributors had much less to lose when choosing not to sell certain titles. Not only was the number of their sales much smaller, they could rely on increased sales of other titles to cover their losses. While lesser vendors certainly relied on their sales to support themselves and their families, they were often less beholden to national audience tastes to determine the nature of their market. They could react to local tastes and could stock their stands with materials that would meet the moral and social standards of the area.

Conclusion

The lack of direct legislation resulting from the senate subcommittee's hearings does nothing to obviate their importance. Due in large part to the spotlight the subcommittee's investigation shone on the comic book industry, publishers moved rapidly toward the development of a new, more powerful code and mechanism for self-regulation. It was this code that altered the comic book industry by limiting the plots and content permissible for publication.

The Comics Magazine Association of America (CMAA) was formed in September 1954 under the new "comics czar" Charles F. Murphy. Murphy was a former

New York City magistrate charged with cleaning up the industry and restoring public faith in comics.[69] The CMAA moved rapidly to develop a new comics code to formalize the group's approach to self-regulation, publishing the new code in late October 1954. Like the motion picture code upon which it was largely based, the comics code was prepared with extensive input from religious leaders but also from civic organizations.[70] Presumably in an attempt to preempt any potential federal legislation, the CMAA code was actually released four months before the senate subcommittee reported its findings to congress.

The code itself was much more restrictive than its 1948 predecessor and included precise allowances for content and presentation. It contained prohibitions on crime, sex, violence and even restrictions on acceptable wording. Under the code there was to be no hint of sex or lust. Like the motion picture code upon which it was based, law and order in the comics code was to be championed with no sympathy shown for criminals. Comics could no longer even use the words "horror" and "terror" in their titles.[71] Comic publishers adhering to the code were expected to develop romantic stories that "emphasize[d] the value of the home and the sanctity of marriage."[72]

Here is an interesting parallel to the domestic ideal championed by prominent magazines during the 1950s. Elaine Tyler May describes the belief, pervasive during the

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[69] Wright, *Comic Book Nation*, 172.
[70] Benton, *Crime Comics*, 85.
[71] "Horror Comics (Cont'd)," *Time*, 16 May 1955, 50. Apparently the code's prohibition of such language did not sufficiently compel publishers. *Time* magazine on May 16, 1955 described how New York governor Averell Harriman had signed into law a bill making it a crime to sell comics with "crime, sex, horror, terror" in the titles. This was nearly six months after the creation of the CMAA and its stronger code and seemed to indicate that self-regulation was not meeting the expectations of at least one group of lawmakers.
[72] Wright, *Comic Book Nation*, 172-173.

1950s, that American society was built upon the primacy of family and marriage. May sees this as a type of Cold War containment. She argues that a social attitude was presented throughout magazines and government publications in an attempt to convince women to remain in the home and be happy with their role as consumers and domestic dynamos. May suggests that the domestic ideal was portrayed during the decade as a way for women to fight the Cold War from the home by maintaining the power of American capitalism versus Soviet communism.[73]

By inserting such an admonition in the comics code, the CMAA certainly seemed to reflect the arguments about the power of the culture industry to influence young minds about the preference of certain social beliefs. In her book about the history of the comic book industry's code systems, Amy Nyberg argues that, though rarely made so explicit, the wording of the comic code left no doubt that comic books were expected to put their weight behind the domestic ideal. It is also significant that nearly all of the members of the review board were women. Some were trained in college to be social workers or educators, others were librarians or publicists. Nyberg also suggests that the choice of five women to fill the reviewer positions was due to their role as mothers responsible for raising morally grounded children and because, as the weaker sex, they were more sensitive to objectionable content. In the end, they could be relied upon to "feminize and domesticate the unruly world populated by comic book characters."[74]

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[73] Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era* (New York: Basic Books, 1988).

[74] Nyberg, *Seal of Approval*, 115. Mort Weisinger in his article for *Better Homes & Gardens* provided a biography for the five women hired to review the comics presumably to show his readers the pains to which Murphy had gone to make sure that qualified and sensitive reviewers were at the helm.

Recognizing the problems that plagued the earlier incarnation of the industry's self-regulation, the CMAA made sure to achieve nearly total membership. Only three publishers refused to join. Two of those were reluctant to join because they distributed titles largely above criticism and did not want to be associated with the lesser members. Of those publishers who did not agree to the code, only EC Comics remained independent because of its owner William Gaines's outright rejection of the code and the seemingly arbitrary way it was created.[75] In an attempt to make the industry's house-cleaning as public and newsworthy as possible, Charles Murphy made sure to release regular press notices describing the diligent work of his staff. The CMAA recognized the importance of public relations as a way to silence popular criticism and employed the public relations firm of Ruder and Finn not only to help publicize the code but to assist in its composition.[76] The tactic seemed to work. In November 1954, *Time* magazine listed the major components of the code and outlined its limits on content. Apparently in an attempt to assuage concerned citizens, *Time* described the code's prohibitions on salacious depictions, criminal behavior or violent, gory or antisocial scenes. In an even more extensive story, Mort Weisinger of *Better Homes & Gardens* presented Murphy as a family man working valiantly to bring the industry out of criticism. Across from before-and-after depictions of comic book panels corrected to meet code requirements

[75] Wright, *Comic Book Nation*, 174.
[76] Nyberg, *Seal of Approval*, 111.

was a photo of Murphy surrounded by his wife and children as he received notice of his appointment as the comics czar.[77]

Ironically, the American public appeared almost totally disinterested in the problem of comic books once the CMAA code was produced. Seemingly satisfied that the industry was working on a solution from within, most commentators saw the code as a rather cut and dried mechanism of self-control. The senate subcommittee released its findings to congress in February 1955 but did not pursue legislation to remedy comics being largely satisfied with the industry's quick movement to develop a self-regulatory code. Under Charles Murphy the code was stringently enforced, thereby removing much of the most worrisome material and assuaging the wrath of civic organizations, parents and many legislators. From this perspective, the CMAA code from 1955 to 1970 stands as perhaps the most successful example of self-regulation amongst the various media of the culture industry.

The comics code seemed to fit nicely within the format of self-regulatory codes in other areas of popular culture. This did not pass unnoticed by commentators at the time. Given the relative success of the motion picture and radio-television codes in existence in 1954, it is not surprising that writers were quick to link them all. Both Ruth Inglis of *The American Mercury* and Mort Weisinger of *Better Homes & Gardens* pointed out the connections between the comics code and its predecessors. However, they both recognized that self-regulation had failed in its first incarnation. Inglis emphasized the need for continued public pressure to force recalcitrant publishers to subscribe to and

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[77] "Code for Comics," *Time*, 8 November 1954, 60. Mort Weisinger, "How They're Cleaning Up the Comic Books," *Better Homes & Gardens*, March 1955, 58-59, 254-263.

abide by the code's precepts. Weisinger, agreed that "conscientious parents should inspect the seal-approved books" their children brought home "and judge contents in respect to their own instinctive standards of good taste." On the other hand, Weisinger also made sure to detail the support given the code by reputable civic organizations and to describe the "immediate casualties" of thirty-three comics which "simply ceased to exist" as a result of the "Murphy massacre." Each approach likely served to reassure the public that the industry was serious about correcting its ills through the enhanced code and seal of approval. Weisinger also explained that Murphy saw "a healthy trend of cooperation" from publishers who came to "realize that undiluted respect" for the code would "mean good business for them."[78]

One of the creators of the comics code, Elliott Caplin, was heavily influenced by the Hays code that was implemented in the motion picture industry during the 1920s. In fact, the comics code was "lifted mostly from the Motion Picture Production code" that oversaw Hollywood from the 1930s through the mid-1960s.[79] Although the code was intended to remove the most pernicious horror and terror comics, however, it also seemed to defang the crime comics that managed to insert a certain amount of social commentary in their pages. After the code was implemented in 1954, the number of crime comics declined sharply and all but a few of the horror and terror titles that made men like

[78] Inglis, "The Comic Book Problem," 121. Weisinger, "How They're Cleaning Up the Comic Books," 255, 263.
[79] Nyberg, *Seal of Approval*, 112. Rogers, *Beyond Pow! Bang! Zap!*, 16

Willaim Gaines a whipping boy for concerned civic groups and social critics had disappeared.[80]

In an interesting development, though, many publishers turned to the emerging medium of television as a source for profit and storylines. In the late 1950s and into the 1960s comics often adapted popular television series into printed form. Dell Publishing started the trend with comic books of shows like *I Love Lucy* and *Gunsmoke* but it was the emergence of titles adapting popular detective and crime shows like *77 Sunset Strip* and *The Untouchables* in the early 1960s that marked an ironic evolution within comics. At the same time that television programs, including the above shows, were coming under increasing criticism (including by members of Kefauver's own Senate subcommittee) for being too violent and salacious, comics, the earlier poster-child for mass culture run amok, absorbed programming and repackaged it in another form.

The ultimate irony in this development was the respective levels of violence in the two media. Because of the strict enforcement of the comics code, titles like *The Untouchables* were far less violent in print than the series was on air. Moreover, Dell Publishing, publisher of many of these television adaptations, inserted scenes in their titles that likely would never have passed the scrutiny of the comics code censors. Dell, the largest and most influential comic book publisher, had refused to join the CMAA because it argued it already had in place a far stricter editorial policy than the CMAA's

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[80] Rogers in *Beyond Bang! Pow! Zap!* goes into some detail about the impact the code had on crime comics' ability to insert social commentary. He argues that, prior to the code's emergence, crime comics often included verbal and illustrated jabs at the ubiquitous American Dream that seemed to drive much of post-war America. Once they were neutered by the restrictions of the Comics Code of America, these titles either died off completely or were relegated to being little more than melodramatic escapism.

code. In addition, since Dell did not publish any of the more questionable titles the code was meant to regulate, executives said that joining the group could damage the company's image more than remaining independent. Even with Dell's more violent content, though, the level of violence in its publications was "still considerably toned down from that in the television shows."[81] Clearly, then, concerned citizens would have to turn their attention elsewhere to address popular culture's effects on juvenile delinquency.

Television was one obvious choice and would soon come under the scrutiny of the Senate subcommittee. TV began to draw many adolescents away from comics in the late 1950s and the process accelerated during the early part of the 1960s.[82] Network programming was free, it was easily accessible and, perhaps most importantly, it presented in a realistic way the very things that seemed to attract young people to comics. Adventure stories, detective yarns and westerns took the place of horror comics as the code removed those aspects of comic book plots. Before they began their hearings into the small screen, however, lawmakers turned their attention to Tinseltown.

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[81] Benton, *Crime Comics*, 89-90.
[82] Goulart, *Great History*, 274.

CHAPTER 2

TINSELTOWN TAKES IT ON THE CHIN: MOTION PICTURE ADVERTISING AND THE THREAT OF TELEVISION

In 1955 the former president of the Screen Actor's Guild and future conservative standard-bearer Ronald Reagan testified before the Senate Subcommittee to Investigate Juvenile Delinquency. Reagan protested the censorship of motion pictures, especially his own movie *Prisoner of War*. After working hard to portray the experiences of "American kids" during the Korean War, Reagan complained that the state of Ohio chose to censor much of the violence shown in the film. As such, the audience was left with holes in its understanding of the action on the screen and, more importantly, was given a false impression of the war itself. It would be best if Hollywood's critics would just allow the industry's self-regulatory Motion Picture Production Code to operate as it was designed to. After all, Reagan said, the code was a "program of self-restraint … unequaled in any other form of communications in our land or in the world." "In the last analysis" it was "the American citizen, with his money at the box office" who was the best judge of what he wanted to see and what he rejected as too violent or salacious or immoral.[1] Viewers who refused to purchase tickets for films they found objectionable would in essence vote with their pocketbooks, telling studios through lower revenues that such films would not be successful in the future.

"I am very much worried," Reagan opined,

> about my children and all the other children their age, an entire generation

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[1] Senate Committee on the Judiciary, *Motion Pictures: Hearings before the Subcommittee to Investigate Juvenile Delinquency*, 84th Cong., 1st sess., 1955, 94. [hereafter motion picture hearings]

> that is going to grow up taking for granted it is all right for someone to tell them what they can see and hear from a motion-picture screen, because when they grow up and take our places as adults I am afraid they will be mentally conditioned to where then somebody can tell them it is all right to tell them what they can read and what they can hear from a speaking platform, and what they can say and what they can think. If that day comes, of course, we have lost the cold war.[2]

Reagan's statement clearly indicates the actor's belief that free choice served as a bastion of democracy in the face of communism's emphasis on economic controls. While this might start with well-meaning people controlling media content, Reagan worried that it would extend into other areas of public life. The protections of the free market, then, would help assure the preservation of American ideals during the chief ideological struggle of the post-war years. Moreover, the actor's perception was solidly in line with Hollywood's traditional repugnance with censorship. Finally, the culture industry, including the movie studios, believed that self-regulation combined with a reliance on market forces was "the American way" to address concerns over cultural production.[3]

This stood in sharp contrast with those who argued that censorship would be generally beneficial. Some commentators believed that communism threatened social cohesion and that these dangers could be ameliorated somewhat through careful censorship. During the 1950s McCarthyism and the general fear of communism as an ideology legitimated the push to control all aspects of culture. Stehphen Whitfield notes that, while the Soviet government directed its nation's culture through censorship or

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[2] *Ibid*., 95-96.
[3] Garth Jowett, "'A Significant Medium for the Communication of Ideas:' the *Miracle* Decision and the Decline of Motion Picture Censorship, 1952-1968," in *Movie Censorship and American Culture*, ed. Francis G. Couvares (Washington, D.C.: Smithsonian Institution Press, 1996), 271.

propaganda, the pressures of HUAC and McCarthy's witch hunts threatened, indirectly and probably unintentionally, to accomplish the same thing in America. Since the communist threat was elusive and indistinct Americans could not retaliate in any satisfactory or permanent way. Thus, culture became politicized, forming a battleground between totalitarian communism and American liberalism. "The struggle against domestic Communism encouraged an interpenetration of the two enterprises of politics and culture, resulting in a philistine inspection of artistic works not for their content but for the *politique des auteurs*." Ultimately, the "political standards" placed upon American culture during the decade resulted in "the suffocation of liberty and the debasement of culture itself." This was achieved by "super-patriots" who often adopted the techniques of "their Communist enemies" if not their goals.[4]

Others feared that inferior cultural life would damage American prestige globally and threaten our position as the preeminent power on the world stage. The hearings investigating the connections between culture and juvenile delinquency included statements by senators and representatives describing America's negative portrayal in the press of communist countries. What the Soviets saw as our decadent lifestyle and soft touch toward discipline appeared to be contributing to the moral decay of the United States. How could we hope to serve as a bastion for freedom and moral authority if our young people were running amok throughout the country? Possibly worse still, newspapers in the communist bloc used America as an example of the corrupt nature of

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[4] Stephen Whitfield, *The Culture of the Cold War* (Baltimore: Johns Hopkins University Press, 1991), 10-14.

capitalism. It was this ideological battle with communism that convinced many that censorship and cultural control was warranted.

In fact, it was the Motion Picture Alliance for the Preservation of American Ideals that invited the House Committee on Un-American Activities to Hollywood to open their investigation into communist sympathies in the motion picture industry. A staunch anti-communist group of some 1400 representatives of the film community, the Alliance counted amongst its membership Hollywood luminaries like John Wayne, Cecil B. DeMille and Gary Cooper.[5] Beyond this, the socially disintegrative nature of mass culture caused adults to try to reassert their authority over youth by controlling youth culture. Since the private sphere seemed to be failing in its duty to address these problems, civic groups turned to censorship as a way to exert pressure and bring the culture industry back in line.[6]

When Hollywood faced the most severe criticism by anti-communists during the HUAC hearings of the late 1940s, lawmakers had two conceptions of the industry. On the one hand, and perhaps most famously, films were seen as a "potent ideological medium" that could be – and apparently often was – used as a tool in the propaganda war with communism. Others, however, saw films as nothing more than an entertainment medium with the opportunity to create vast sums of money. Thus there was something of an inherent tension within the industry and its critics over just what films represented in

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[5] *Ibid*., 127.
[6] Ronald Cohen, "The Delinquents: Censorship and Youth Culture in Recent U.S. History," *History of Education Quarterly* vol. 37, no. 3 (Autumn, 1997): 253-257.

the socio-economic sphere.[7] As the HUAC investigations went on, studios often reacted more to appease the public than out of fear of congress. Essentially, Hollywood understood that the audience, its only source of income, was more important to satisfy than were lawmakers in Washington.[8]

Though he made his political career as a staunch conservative and avowed anti-Communist, Reagan's testimony as head of the Screen Actor's Guild during the HUAC hearings reveal a savvy and relatively moderate personality. Reagan was critical of Communism but worried that excessive regulation would result in a dangerous precedent. It should come as no surprise, then, that the actor hoped that capitalism and free choice, both bastions of American economic and political life, would serve audiences – and the industry – well during an era of heightened Cold War concerns. Unstated in this was the idea that such an approach would demonstrate the superiority of America's economic and political system as opposed to the regimented Soviet regime.[9]

Moreover, it seems likely that industry leaders and legislators alike, remembering the excesses of HUAC and McCarthyism, worried about the potential damage that could be done by overzealous regulators. The heyday of HUAC and the spasm of McCarthy's Red Scare both occurred a few short years before Kefauver began his investigation into

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[7] Lary May, "Movie Star Politics: The Screen Actors' Guild, Cultural Conversion, and the Hollywood Red Scare," in *Recasting America: Culture and Politics in the Age of Cold War*, ed. Lary May (Chicago: The University of Chicago Press, 1988), 127. May argues that anti-communism in Hollywood was in many ways a conscious attempt by the industry's leaders to redirect the national dialogue during the Red Scare. Recognizing the power of motion pictures to influence public perception, the Screen Actors Guild and studio executives tried to use their films to emphasize consensus, class harmony and abundance as definitive aspects of American society.

[8] Stephen Vaughn, "Political Censorship During the Cold War," in *Movie Censorship and American Culture*, ed Francis G. Couvares (Washington, D.C.: Smithsonian Institution Press, 1996).

[9] Stephen Vaughn, *Ronald Reagan in Hollywood: Movies and Politics* (New York: Cambridge University Press, 1994).

juvenile delinquency. Because of the sensitive nature of the economic and regulatory issues broached in the hearings discussed here, and because of the upheaval the anit-Communist crusade caused, the events of the previous decade could not help but influence the way lawmakers and witnesses viewed the debate surrounding regulation. Industry self-regulation was certainly an attractive way to limit the chances of a similar agency or individual from influencing cultural product or, perhaps more importantly, the competitive marketplace.

Frank Freeman, vice president of Paramount Pictures shared Reagan's belief in the value of the motion picture code and described it as "a safeguard to the public." Should the time come when censorship controlled the thinking of the masses, the "value, the effect of the motion picture cease[d] to exist, because the motion picture [was] a medium of entertainment." In addition, the masses were not interested in propaganda, seeing it for what it was and any country that had attempted to institute such state-controlled cultural product had not succeeded. Errors had been made in the code's implementation, Freeman admitted. However, the mistakes of a few producers who overstepped the lines established by the production code were favorable to a regimented, censored industry.[10]

Reagan, Freeman and others' emphasis on market forces and self-regulation to operate for the benefit of the viewing audience would be a central theme of the subcommittee's investigation into motion pictures. Senators did express concern over the behavior of young people with regards to how films might affect antisocial activities but

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[10] Motion picture hearings, 120.

these worries were not as powerful as the economic issues broached. Overlooked in many treatments of the hearings has been the importance of commercial matters and how best to regulate the industry. Billboards promoting motion pictures and the economic relationship between the studios and the growing television industry occupied much of the subcommittee's attention. These issues were as important to legislators as juvenile delinquency. One of the first debates to emerge was over the nature of motion picture advertising and the regulatory code intended to oversee it.

Advertising concerns

In what amounted to his opening statement, chairman Estes Kefauver described the "supercharged sex" and "purple prose" used by many movie advertisements to lure audiences. After receiving many complaints about the quality and content of such ads, Kefauver worried that they had "reached a point close to the obscene in some few cases." And, although these ads represented but a portion of the overall market, their appearance in "even the most respectful family newspapers" seemed to indicate a growing menace to young and old, alike. Although the subcommittee publicly stated that they had no preconceived notions about the impact of such advertising or film content, Kefauver indicated the contrary when he stated that the "total impact" of such advertisements could only be described as "provocative."[11]

[11] *Ibid*., 72-73.

Beyond the Motion Picture Association of America's content code described earlier there was also a code developed to manage the advertising wing of movie making. The subcommittee, in keeping with its emphasis on the desirability of self-regulation for cultural production, focused much of its attention on the code's success. According to Gordon White, the director in charge of administering it, the advertising code of the MPAA was "an integral part of the motion-picture industry's voluntary adopted system of self-regulation." Each producer and distributor of a picture could decide whether or not to abide by the production code and the advertising code independently of one another. Once agreed to, however, the MPAA expected that the film's advertising would be kept in line with the requirements outlined in the code.[12]

An understandable problem arises with voluntary self-regulation when it comes time to enforce punishment against those who do not subscribe or who violate the precepts of the code. Self-regulation is not the same as government censorship, which would doubtless include some sort of specific punitive measures to encourage industry compliance or to punish violators. As such self-regulation becomes a much more thorny issue. A studio that achieves financial or critical success with a film that is produced and advertised outside of code limitations would likely feel little compulsion to abide by and support the code. This success could result in a studio being more willing to sacrifice long-term popular support in exchange for the more immediate benefits of profit or critical acclaim. However, in these instances the profits or acclaim reaped by the film would seem to indicate that studios would not lose widespread public support. In these

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[12] *Ibid*., 157.

cases, those most likely to criticize would be the vocal civic groups which generally agitate for reform.

In addition, with very little ability to discipline non-compliance, self-regulatory codes can lack the teeth necessary for complete success. In fact, White did describe the one instance when a code violation resulted in a fine being levied against the offending advertising manager. Because the matter was almost entirely the result of a single individual refusing to adhere to the administration's decision, however, the fine was largely paid for with money taken from the man's salary.[13]

White also described the process by which ad copy passed through the code agency. Studios would submit material to the staff in either New York or Hollywood, both of which were run by only a handful of reviewers and one person with final decision-making power. Should the copy be deemed acceptable the studio would be given the green light and the ads could be printed. This occurred most often. It could also be the case that material needed slight revision. Having been suggested, these revisions would be incorporated into the copy by the studio's ad agency and resubmitted to the code officials. In a small percentage of cases, a "minute fraction of 1 percent," the material was "irrevocably unacceptable" and the MPAA refused to award the seal of approval.[14]

Out of the approximately 130,000 ad pieces to pass through both offices in a given year, only a small number required any sort of revision.[15] As with any code, a gray

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[13] *Ibid*., 163.
[14] *Ibid*., 161.
[15] *Ibid*., 159.

zone of interpretation fell on the "line between acceptable and nonacceptable" and caused White and his staff the most difficulty. With nothing to go on but the code and his own judgment, White interpreted the rules and issued his decisions. Even in the face of such a daunting responsibility, he believed Hollywood's self-regulation through both the production and advertising codes fulfilled "ethical and moral principles and aspirations that reasonable men everywhere welcome[d] and support[ed]." Together this helped the American film industry to reach the high state White saw in the decade. White often seemed to rely on what he called the "test of general acceptability" to guide his decisions.[16] This centrist approach was certainly practical but could leave open the door to complaints by conservatives who criticized the prurient or suggestive material that made it through the code offices.

Clearly the most difficult aspect of motion picture advertising was the need to convey enough of the storyline to an audience to entice viewership without the ability to reveal the content of a two-hour movie. As with any ad, time and space are finite quantities and advertisers would have to focus on specific aspects of a film that might encourage ticket sales. "In these days of competition, motion-picture advertising must be especially striking and effective and appealing," White noted. "It must convince in a line, in a word, in an illustration, and it must convince quickly." Only by doing so would it "induce the potential patrons to got [*sic*.] out of the house and down the street to the theater." Beyond which, even if an ad could include the bulk of a film's plot within it, such copy would be a mistake since this would "take half the fun out of seeing a picture."

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[16] *Ibid*., 158-159.

Such an ad would obviously be self-defeating. Instead, ad copy should "convey the spirit, the atmosphere, the feeling, the general impression of the photoplay."[17]

White's comments demonstrate the problems Hollywood faced during the 1950s. Not only was television a major threat to motion pictures' central position in visual entertainment, studios had recently been stripped of their monopoly control over theaters. The Supreme Court in 1948 had ruled in *United States v. Paramount Pictures, Inc.* that studios could no longer operate wholly-owned or exclusively controlled movie theaters wherein they would show only their films. In the future, movie houses would show any films they chose. This meant that studios needed to draw audiences into theaters using ever-more elaborate and enticing advertisements since they could not rely on their local monopolies to secure attendance.

As White said, misdirection and suggestion were commonplace in advertising throughout a capitalist society. For instance, a billboard might show a woman touching her ear with a particular brand of perfume, with the intention of enticing her date to a marriage proposal. "We all know," White admitted, "that this doesn't assure that the girl, by buying the perfume, will get the good-looking man in the ad." These were "elemental factors of advertising," White said and before criticizing them, commentators ought to understand their fundamental importance to the industry.[18]

Since the dawn of massive advertising campaigns in the 1920s and 1930s, Americans had long been presented with snappy catchphrases or enticing images to attract attention and hopefully to induce them to purchase a product or avail themselves

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[17] *Ibid*., 158.
[18] *Ibid*.

of a service. During this period, admen in many ways set the template for American advertising by choosing to emphasize an ideal in ads rather than reflecting reality. Ads were built around escapism and used traditional artistic methods thereby inherently reinforcing existing social values.[19] The power of advertising and the growing postwar economy shifted American capitalism towards what Walt Rostow termed an "age of high mass consumption."[20] Suddenly, Americans began purchasing items out of want rather than simply out of necessity. A process that started with the Industrial Revolution gained momentum as American manufacturing created and then filled buyers' demands for transient luxury items and items of convenience.

In addition, several recent studies argue that this consumer impulse was also tied to Cold War concerns. Consumers who spent liberally were helping to support America's fight against communism. At times capitalism was championed as the best way for average citizens to project America's superiority globally. In the face of godless communism's rejection of personal luxury, the increasing emphasis on standard of living throughout the United States seemed a perfect, non-military way to demonstrate to the world the attractiveness of capitalism and democracy.[21]

As advertisers grew more savvy and as prosperity spread throughout age, racial and gender demographics, radio and television spots became more differentiated. Where advertising had for decades been relatively gender-focused, seeing women as the primary

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[19] Roland Marchand, *Advertising the American Dream: Making Way for Modernity 1920-1940* (Berkeley: University of California Press, 1985).
[20] Michael French, *US Economic History Since 1945* (Manchester, Great Britain: Manchester University Press, 1997), 182.
[21] Lizabeth Cohen, *A Consumers' Republic: The Politics of Mass Consumption in Postwar America* (New York: Alfred A. Knopf, 2003).

consumers in households, during the 1950's advertisers recognized the economic power of adolescents and began specifically to address them. During the late 1940s and especially into the 1950s and 1960s teens were exposed to larger numbers of products and more advertising directed specifically to them than at any other time in history to that point. As the country recovered from wartime shortages and rationing, disposable income also increased and much of it found its way into the hands of young people.[22] It comes as no surprise, then, that lawmakers worried about the impact this growing segment of advertising would have on increasingly prosperous adolescents.

Yale historian David Potter speculated in 1954 that Americans tended to view equality as "parity in competition" whether it be for political office or in the business world. The growing abundance in post-war America thus caused a shift in how the public viewed its traditional institutions. With the increased relevance of advertising in driving consumer demand, ad men shaped attitudes about other aspects of society in much the same way as schools or churches had in generations before, becoming "one of the very limited group of institutions which exercise social control."[23] It was no surprise, then, that congressmen were concerned with the content of such ads and attributed to them a great deal of importance.

Subcommittee chairman Estes Kefauver had two major concerns with the advertising that passed through the MPAA code offices on both coasts. First, Kefauver worried about how the advertising copy related to the motion pictures it represented.

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[22] Juliann Sivulka, *Soap, Sex, and Cigarettes: A Cultural History of American Advertising* (Belmont, CA: Wadsworth Publishing Co., 1998), 261.
[23] David M. Potter, *People of Plenty: Economic Abundance and the American Character* (Chicago: The University of Chicago Press, 1954), 92, 167-168.

Second, the senator pressed the code administrator about just how ads managed to convey the abstract nature of movies' morals and messages. During his testimony, Gordon White had described how ad copy often included still images taken directly from the production of the film. These images were then selected to indicate specific scenes from the overall work and were enlarged, put on posters and billboards and combined with copy and taglines to attract audiences. Kefauver worried that such photos might provide a mistaken impression of the film and could draw viewers with salacious or titillating images that did not represent the content of the movie as a whole.

White had described how the delay between production and release could result in a studio beginning the advertising process before a film was actually complete and "in the can." In these situations, press books, posters and even billboards could have been purchased before the advertising code had signed off on the content. Kefauver recognized the problem with such a disconnect between code and content. Might it not be the case, he asked, that ad campaigns, including "large billboards" had already been prepared at the time studios "presented their pictures or their ad sheets for final approval?" When this occurred "the economic force for approval would be pretty great" both for those working on the advertising code and for studios. Each would recognize the financial stake involved and may be tempted to pass on material that otherwise might be deemed inappropriate. White reassured the subcommittee that, while a situation might exist where the advertising code office got the material for review after the ad campaign had largely begun, this was a "rarity."[24]

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[24] Motion picture hearings, 172-173.

Kefauver then went on to his next major concern with the ways in which advertising failed to accurately represent the films in question. During the hearings both Kefauver and the chief counsel James Bobo pointed out that motion picture advertisements often seemed to emphasize specific scenes from films that were not necessarily representative of the film as a whole. More often than not, they argued, not only were these scenes taken out of context, they exaggerated the sexual or violent rather than the romantic or dramatic aspects of a film in an effort to attract audiences.

White had described the point of advertising as an attempt to capture the intangibles of a film, its spirit, atmosphere and general impression. If accomplished successfully, this approach was "neither misleading nor misrepresentative." Kefauver agreed. Such a definition was "a fine statement of a principle that advertising ought to follow." Unfortunately, though, it rarely seemed to work out this way. Producers of horror, crime and sex pictures all argued that they had "some moral" they wished to demonstrate, Kefauver said. If that was indeed the case, the senator wondered how well the ads shown in the room put across those morals. Taking the producers at their word required that the ads attracted audiences by indicating the moral lesson they would learn from the film depicted. White debated with the congressman about whether ads could really convey a film's moral content.[25]

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[25] *Ibid*., 173.

Pointing to an ad for the oft-maligned film *Kiss Me Deadly*, Kefauver read the poster's tag line: "Kiss Me Deadly. White Hot Thrills. Blood Red Kisses."

Figure 1: Kiss Me Deadly.

What, he wondered, was the moral displayed in such an ad? A cliché-ridden Mike Hammer detective film, *Kiss Me Deadly* was released in 1955 and generally lacked any legitimate moral comment. Apparently neither Kefauver nor White had seen the film because the advertisement in fact accurately represented Mike Hammer's violence and carousing. In this case, at least, portraying anything other than fistfights and lovemaking actually would have been a misrepresentation of the film.

Moving on to another movie that bore a good deal of criticism by the subcommittee, Kefauver asked what the moral might be for *The Prodigal*. White responded that sometimes a film is nothing more than entertainment. As such, ads were designed to sell the picture to the audience. Ironically, the movie was a 1955 retelling of the Biblical story of the prodigal son. Certainly, the story as it appears in the Book of Luke is very much a morality tale; the MGM production, on the other hand, chose to emphasize the sensual aspects of the prodigal son's experience. "Making the picture and telling a story of a picture" was only one part of the equation, White declared. That was the artistic portion. The second part, the business consideration, was writing an ad to sell the picture. The problem as the subcommittee saw it was that these advertisements failed to include anything but the most suggestive poses and copy.[26]

The normally taciturn Kefauver pressed the matter. He went around the room, pointing at each ad and heatedly asking whether it conveyed the "spirit" of the films. Since the pictures advertised were primarily violent movies, White said, ads that did not present them as such "would not be honest advertising." Advertisements, then, that did not "go overboard in their gruesomeness" but showed whether a picture was one of "crime and violence" were the "fairest possible representation." In this way, parents who did not want their children seeing such films were "given … fair and honest warning."[27]

One wonders just how the concerned citizens who attended the hearings in Los Angeles would have reacted to White's assessment of the benefits of advertising. Several mothers spoke up during the investigation worrying that advertising and the motion

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[26] *Ibid*.
[27] *Ibid*., 173-174.

pictures themselves seemed to damage young people emotionally. A Mrs. George pointed to the "large suggestive poses" on a billboard for *The Prodigal* that was

Figure 2: The Prodigal.

positioned near John Marshall High School. Such ads had all the suggestiveness "you would find in pornography." Though she reassured the members of the subcommittee that she was not "a blue nose" nor old-fashioned, she reasoned that high school students, after seeing such images, suddenly would have things on their minds other than the day's coursework. As though high school students needed a reason or catalyst to cause them to think about sex, Mrs. George feared that "those kids are not thinking of algebra when they go to school" near billboards like the one she saw.[28] Mrs. George was representative of a waning movement during the 1950s that tended to critique culture on the basis of taste. John Springhall has argued that the emergence of postmodernism during the 1960s ended the abstract notion of taste to define cultural quality.[29]

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[28] *Ibid*., 143.
[29] John Springhall, *Youth, Popular Culture and Moral Panics: Penny Gaffs to Gangsta Rap, 1830-1996* (New York: St. Martin's Press, 1998), 121, 126.

Though not called to testify, as such, the participation of concerned community members seemed to indicate a certain populist tinge to Kefauver's hearings. Given the timing of the hearings it is possible that the down home senator was playing to the cameras in preparation for another run at the Democratic nomination for president in 1956. Even before Kennedy discovered the benefits of developing an attractive television persona, Senator Estes Kefauver of Tennessee parlayed his TV appearances during his investigations into organized crime and into juvenile delinquency into national prominence. From there, he managed two unsuccessful campaigns to be the Democratic presidential nominee as well as a place on the 1956 ticket as Adlai Stevenson's running mate. It seems clear that Kefauver saw committee chairmanship as a stepping stone to his presidential aspirations. His earlier work with the organized crime committee had sharpened his ability to turn committee work into a national platform. In fact, one of Kefauver's colleagues on the juvenile delinquency committee noted that the Tennessee Democrat grew noticeably more engaged in the hearings when the wife of the owner of the *Washington Post* came before the lawmakers.[30]

However, committee work rarely reaches a national audience. It is also uncommon for a recognizable figure to emerge from even the most publicized committee. Utilizing public opinion and his keen grasp on popular politics, then, Kefauver made sure that his committees kept issues before the voters. At times, he appealed to public sentiment by timing the release of key aspects of his various committee hearings so that they might be picked up by national media outlets. He then gauged public reaction and

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[30] Charles L. Fontenay, *Kefauver: A Political Biography* (Knoxville, TN: University of Tennessee Press, 1980), 318.

guided future sessions along these lines.[31] While this was admittedly self-serving in Kefauver's case, it fit nicely with his belief that the duty of any congressional investigation was as much to mobilize public action as it was to develop specific punitive or regulatory legislation.

In its coverage, *Time* magazine seemed to support the idea that the Tennessee senator used his leadership of the investigation as a way to curry favor with potential voters. It quoted the *Hollywood Reporter*'s take on Kefauver's appearance in Hollywood. Kefauver's hearings into motion pictures coming back-to-back with hearings into pornographic films seemed to the trade paper to be "'nothing more than a pre-presidential publicity campaign'" conducted at the expense of the studios.[32] Given that none of Kefauver's other hearings into popular culture included vocal outbursts from audience members, it is difficult to say with certainty just what was the intended role for attendees of the motion picture hearings. One must not underestimate the possibility, though, that Kefauver wanted to give the public a chance to voice their concerns in an open forum. Long an advocate for popular participation in the investigative process, Kefauver wanted the hearings to expose questionable behavior on the part of the industry as well as to mobilize an engaged public to agitate for reform.

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[31] *Ibid*., 367.

[32] "Kefauver v. Hollywood," *Time*, 27 June 1955, 88. Gregory Wawro, *Legislative Entrepeneurship in the U.S. House of Representatives* (Ann Arbor, MI: The University of Michigan Press, 2000). Wawro suggests that committee chairmanships are appealing for congressmen largely because of their role in enhancing legislators' power within their respective houses. Actions taken by chairmen are done less to ensure reelection than to maximize an individual's party influence. Thus, Kefauver may not have seen his leadership of the juvenile delinquency subcommittee as quite the stepping-stone to the White House that outsiders assumed.

It was this sort of advertising that Kefauver worried about. Apparently unable to distinguish between a film that sought to present a moral point of view and an advertisement that had little chance to do so, the senator time and again pushed Gordon White to make the distinction for him. Pointing to the collected ad material in the room, Kefauver repeatedly and angrily asked "What is the moral in that ad?" To which White repeatedly stated that the ads themselves were not meant to include any specific morals, even if the film did include a moral. He reminded the subcommittee that his decisions were based on the advertising code and whether the copy and images were "fair representation[s]" of the motion picture in question.[33] Though White did not argue as such, it would certainly be difficult for any code to define a moral compass so thoroughly as to allow for artistic license and dramatic freedom while simultaneously prohibiting things deemed inappropriate. And since social norms often change over time, most often growing more open in their interpretation of what constitutes excessive sexuality and violence, any code could easily become obsolete.

Kefauver was not satisfied. According to the producers who had testified or responded to subcommittee inquiries, he said, "all these pictures have morals." Even though he was willing to admit that "a great many" movies did have morals – in some cases "good morals and very helpful" – Kefauver could not find those morals depicted in any of the posters displayed in the room. How did this square with White's assertion about the responsibility for advertising to convey the spirit and atmosphere of a film? Despite White's contention that a film of ninety minutes to two hours could not hope to

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[33] Motion picture hearings, 174.

be condensed into a moral-laden piece of inert advertising, Kefauver was insistent. In his defense, White mentioned that a piece of advertising that got people into the theater to see a film with a moral would seem to have done its job.[34]

Agreeing to disagree, the two men settled the debate when Kefauver seemed to recognize the difference between an ad's ability to "represent the theme and general impression" of a movie even if it did not succeed in presenting a moral. Interestingly, the majority of complaints received by the committee were directed at the advertising of films and not at the films themselves. Because of this, Kefauver offered to provide White and the code officials copies of the letters in an effort to help them in their "battles with the advertising agencies." In the end, the subcommittee hoped to aid the industry's self-regulation in any way they could.[35] This also fit nicely with Kefauver's hope that action on the part of an informed and motivated citizenry was crucial to solving the problems debated in congress.

Industry self-regulation

In every congressional hearing into mass media and mass culture, one thing remained constant. Differences in opinion arose over the verifiable impact media had on audience behavior, the power of advertising to influence an open market and even about the ability for the free market to affect the overall quality of cultural production. Despite these concerns, legislators on the various congressional committees never wavered in

[34] *Ibid*., 174-175.
[35] *Ibid*., 175.

their belief that voluntary self-regulation by the industries in question would be the best form of cultural control. Self-regulation fit nicely within traditional American values by allowing relatively free operation of the industry in question and heading-off the potential for government intervention. In many ways, it was this view that led Hollywood to create their code in the first place.[36]

Geoffrey Shurlock, the director of the Motion Picture Association of America's Production Code Administration admitted the occasional failures of the code, but argued that such lapses were a result of faulty judgment and not a failure of the code itself. He described the code as a tool to "assure good moral standards and decency" within the motion picture industry. As such, it represented the film community's acceptance of the moral responsibility it had to its audience. Not only did it function within Hollywood via the producers who had signed the document, many non-members also abided by the code's precepts. According to Shurlock, nearly all the films released through American distributors voluntarily submitted their films for review even without any mandate. Taken together, such evidence put the lie to early assumptions that such a code would "be observed more in the breach than the performance."[37]

Shurlock also pointedly suggested that many critics were unfamiliar with the code or had taken objectionable scenes out of context. This often resulted in criticisms that were based on the commentators' own likes and dislikes rather than by the "only fair criteria" – the standards of the code itself. Although not impervious to public attitudes, adherence to "the code's honesty and forthrightness and integrity" helped maintain a high

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[36] Whitfield, *The Culture of the Cold War*, 62.
[37] Motion picture hearings, 186-187.

level of quality. Indeed, Shurlock said, a code administration that bent to "every breeze of criticism" that came from an agitated public would serve "neither the audience nor the industry well." Objectivity and serious consideration on the part of code officials helped Hollywood films reach "the universal distinction of being the most popular form of family entertainment." Moreover, the system guaranteed that future films would match the same standards of excellence as "moral and decent entertainment" while ensuring that American motion pictures retain their worldwide appeal.[38] Implicit in this statement was the belief that the quality-regulating aspect of the code would ultimately improve studios' profits by ensuring that audiences would be satisfied. Since studios would not be sacrificing profits in exchange for code approval, they would be much more supportive of the code authority.

Paradoxically, Shurlock then proceeded to outline various instances when the code administrators seemed to knuckle under to public pressures. During the 1930s the industry agreed to limit the amount of gangster films released and to stagger the release of those already in production. Similar steps were taken during the spate of horror films in the 1940s. "When the industry found out that [such films] were no longer being liked," Shurlock said, "they stopped making them." Motion pictures, after all, lived "by pleasing the public." A mere four years before the start of the subcommittee's investigation public concerns over what seemed to many the excessive portrayal of drinking on screen caused producers to remove such scenes from taking place in homes and confining them to bars and nightclubs. Such statements seemed to contradict

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[38] *Ibid*., 188.

Shurlock's earlier emphasis on the desirability of a detached and judicial code.[39] They do, however, indicate the industry's reliance on the forces of the audience market to guide their production decisions. Shurlock was arguing that competition had succeeded in directing the type of films to come out of Hollywood. As certain films lost money, studios changed their approach. Beyond which, competition had improved movies' quality. Shurlock's example would seem to bear out the theory that market forces could work to improve cultural quality without the need for government intervention.

Hollywood vs. Television

The growth of television during the 1950s seemed to present a unique challenge to motion pictures' longstanding dominance in the field of visual entertainment. Although Hollywood studios would quickly enter the world of television by producing many programs to fill network schedules, there was a good deal of tension between the two media when they first came into direct competition. The motion picture industry's need to maintain a solid audience would certainly impact the choice of scripts for future films. In addition, an increasingly clever television industry could cater to audience tastes much more quickly than could Hollywood, where films took six months or more to go from pre-production to the screen. Finally, television represented the first major threat to movies' dominance as *the* source for filmed media. Because of this, movie producers

[39] *Ibid*., 188-189.

and scriptwriters were suddenly faced with the need to work in a much more competitive arena.

Before the arrival of television, filmmakers needed only to meet the competitive demands of the motion picture industry and rival studios. This insular world was broken as television grew to be an appealing (and inexpensive) alternative for the American public. Exacerbating the situation during the decade was the growing number of high-quality programs on television that were produced specifically for the new medium. Weekly programming like *Studio One* (1948-1958) and *Playhouse 90* (1956-1961) included dramatic scripts by well-respected screenwriters such as Paddy Chayefsky (*Marty*) and Rod Serling (*Requiem for a Heavyweight*, *Judgment at Nuremburg*). These presented a legitimate alternative to Hollywood's monopoly on dramatic media. The rapidly expanding television landscape of westerns, comedies and variety shows also put filmmakers in a difficult position. Suddenly, they were forced to develop movies that were more likely to draw audiences away from television as well as movies that maintained a studio's position relative to its competition within the industry.

One of the charges leveled against the television industry by those testifying on behalf of Hollywood was that the code many television programs subscribed to was less stringent than was Hollywood's motion picture code. Ironically, a similar situation had developed surrounding the comics code and its television counterpart as described earlier. Beyond this, the implication was that many TV producers failed to abide by their code even with the more porous requirements. This attitude on the part of the motion picture

industry seems to have been introduced to the committee by William Mooring in his testimony.

During his statement, Mooring described the motion picture industry's feeling that "television [was] getting away" with increased violence, often in violation of the production code. Mooring and the chairman of the subcommittee, Estes Kefauver had some interesting notions when it came to debating the power of the code in regulating the growing competition between television and motion pictures. While Mooring disagreed with some of the decisions that came out of the office of the code administrator, Geoffrey Shurlock, he praised the "uprightness … good judgment … and … fine experience" of the man and his office. In contrast, television's production code could often be seen "near the bottom of the pile" on most producers' desks and was "not too frequently consulted" as far as Mooring could tell.

Chairman Kefauver, long a champion of consumer rights in the senate, seemed rather naïve in his interpretation of the role of self-regulatory codes with regards to competition when he suggested that there needed to be "substantially the same code" in both film and TV. Then, with the "same strict enforcement or compliance with the code in both industries," both could eliminate "competition in the extent of crime and violence between motion pictures and television."[40] This would help end the spiral of violence that seemed to cause each medium to ramp up its own violent content in an effort to reap higher profits. Due to the subcommittee's overarching concern with media's influence on youth behavior, Kefauver's statements were couched in the terms of how such an

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[40] *Ibid*., 86.

arrangement could potentially benefit impressionable youth and limit the damaging effects of violence on screen. Lost in this understanding is precisely how such an iron law of self-regulation through codes as suggested by Kefauver would be appropriate. Moreover, Kefauver's suggestion seems anathema to his belief that competition would regulate content more rapidly and with less threat of excess than would government interference.

Certainly, one can see how the application of the same code for all filmic media would result in substantially the same content. As such, there would be little or no competition between one medium which showed violent acts and the other which did not, although this almost certainly pushes the boundary of censorship as prior restraint. Since self-regulatory codes basically define what is and is not acceptable for inclusion in programming before the production gets under way, they certainly seem to come extremely close to censorship. Perhaps the only thing saving self-regulation from this interpretation is the fact that it is voluntary (at least ostensibly) and that codes are developed by the industry and not imposed by the government. However, the fact that this suggestion came from a government officer does even more to blur the line between state censorship and self-regulation.

Beyond this, Kefauver's suggestion seems somewhat inimical to the belief expressed by other hearings into mass culture undertaken by congress. In these investigations, competition was often pointed to as a potentially mediating factor, one that could serve to bring the level of cultural quality up from the prurient, violent or unethical impulses that seemed to lawmakers to pervade American culture during the

1950s and 1960s. While this certainly follows a tradition in American history that emphasizes internal, voluntary control, it is interesting to note the variation found in congress's approach to the thorny issue of cultural modulation.

The testimony of freelance actor Ronald Reagan, a regular witness for congressional hearings into motion pictures, opened another productive matter for the subcommittee to consider. Reagan speculated that television producers actually experienced somewhat more censorship or control than did filmmakers in the motion picture industry because of the role of sponsors and advertisers in influencing program content. Free of such demands, Hollywood was limited only by budget, imagination, a feeling for audience tastes and the MPAA code. Reagan agreed with the suggestion of General Counsel James Bobo who wondered if there was "more restraint put upon the subject matter" chosen for a television program than there would be for a motion picture. "Yes," Reagan answered, "there very definitely [was]." Television, he offered, included a "different kind of censorship. You have to get your script past the sponsor, so you very quickly learn what sort of thing the sponsor wants and doesn't want…."[41] This would be one of the pivotal arguments to come out of the House hearings into the quiz show scandals a scant three years later. In this case, Reagan was critical of the sponsor and advertiser serving as a force for informal prior restraint.

Having been hired in 1954 as the host for the long-running *General Electric Theater* on CBS, Reagan had first-hand knowledge of how sponsors influenced the operation of prize television franchises. *General Electric Theater* was designed as a sort

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[41] *Ibid*., 95.

of anthology program presenting condensed or excerpted plays, novels, short stories or motion pictures. The half-hour long show needed a host to connect the disparate performances and so Reagan served as emcee as well as a corporate spokesman for GE products. Working on behalf of the company, Reagan embarked on a regular series of tours to GE corporate locations throughout the country promoting the corporate slogan of "outstanding entertainment." Within months of Reagan's first appearance, *General Electric Theater* broke into the Nielsen top ten and regularly ranked as one of the most popular weekly variety shows until its end in 1962.[42]

Reagan's brief comment on the relative limits on film and television production raises two worthwhile points. First, one is struck by the rather free use of the term "censorship" to describe any limitation on cultural production in visual media. Certainly Reagan was likely not well-versed in the legal specifics of what does and does not constitute censorship; however, his choice of the word suggests that it was a significant worry for those within the industry as well as one faced by lawmakers. Although he probably never meant to do so, the use of the word censorship in any case enhances the perceived dangers of a limited media. Equated as it was with the behavior of the Soviet Union and other communist bloc nations, the term was loaded with a certain amount of sinister power.

It was left to the final witness of the hearings to defend television's honor both with regard to its record of self-regulation as well as its position in the competitive

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[42] William L Bird, Jr., "General Electric Theater," *Museum of Broadcast Communications*, http://www.museum.tv/archives/etv/G/htmlG/generalelect/generalelect.htm (accessed May 7, 2008).

landscape. The general counsel for the National Society of Television Producers, Max Gilford, conceded that television's code had no agency of enforcement but argued that "between the producers, the advertising agency, the directors, and those connected with the technical phases" the code did have an effect. With all these responsible groups in the process, "television motion pictures [kept] up a high moral standard." Again, it is important to note the inclusion of the advertisers in the list of those who affected a program's production.

Gilford wondered whether the complaints leveled against television programs were directed mainly at westerns "wherein and whereby in the pictures there [were] some shootings and the heavy … [was] done away with." He dismissed this as likely having no effect on juvenile delinquency, though, "because that can be shown by the merchandisers." Ignoring completely the question of media's influence on youth behavior, Gilford declared that "the merchandisers will tell you that children buy the suits or replicas or assemblies of the hero, and that is true from the days of Hopalong Cassidy to Davy Crockett. They don't try to emulate the heavy or the evil men."[43] Clearly, since children only bought the outfits of heroic characters, they were not behaving in an antisocial manner. As though the clothing and appurtenances of a hero contained within themselves a prohibition of evil-doing and indicated a decision by youngsters to live morally upright lives.[44]

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[43] *Ibid*., 240.

[44] In many ways, this fear was similar to the "superman conceit" described by Frederic Wertham in his earlier testimony during the subcommittee's hearings into juvenile delinquency and comic books. Wertham worried that all too often children exposed to the daring deeds of superheroes would attempt to imitate them. In some cases this could result in physical injury from trying impossible stunts like flying.

Hollywood and even television executives achieved substantial success with merchandising tied to movies and popular TV programs. *Hopalong Casidy*, for instance, raked in nearly $80 million in sales of lunchboxes, clothing and toys during 1950 alone. Nearly 75 different companies had licensing agreements with the show's producers to manufacture and sell items connected to the show. Perhaps the most successful studio at such merchandising was Walt Disney, which achieved great success with its connections to ABC. *Davy Crockett* became a cultural phenomenon, spawning legions of coonskin cap-wearing kids even though the show itself was only on air for three episodes in 1954-55. During the show's heyday, there were over 3000 *Davy Crockett*-related items. Disney's weekly advertisement-cum-documentary detailing the construction of Disneyland also blurred the line between advertising and information. Moreover, the growing reach of television into the daily lives of American families meant that motion picture advertisements could attract many more people than billboards or pre-film shorts ever could. And once filmgoers were drawn to the theater, they might be presented with advertisements for even more products. In the first half of the 1950s it seemed to many that commercial sponsorship of television programs had conditioned movie-watchers to accept ads before their films.[45]

Gilford also bemoaned the competition between Hollywood and television, but from a wholly different perspective than that of film industry representatives. Since the

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More dangerous, though, was the likelihood that kids would begin to solve all their problems through violent means since their heroes often did so and suffered no negative consequences.

[45] Kerry Segrave, *Product Placement in Hollywood Films: A History* (Jefferson, NC: McFarland & Co., 2004), 100-105. Richard A. Schwartz, *The 1950s: An Eyewitness History* (New York: Facts on File, Inc., 2003), 251. J.P. Telotte, *Disney TV* (Detroit: Wayne State University Press, 2004).

motion picture industry needed to look after its own interests first and foremost, it was understandable that it would make efforts to retain its quality product for as long as possible. Gilford described the way the motion picture industry exploited television's lack of development. In an era when TV was unable to develop enough programming internally to fill an average broadcast day, many "exhibitors, distributors, networks, and independent stations" chose to purchase theatrical films for release over television. Since these were all developed originally for widescreen release, their content was never expected to be shown to the huge audiences television could command. "Consequently, in those films probably they have violence and things of that nature, which when shown over television – and the impact is therefore much greater than in motion pictures – much complaint has arisen …."[46]

Much of this was the result of the fact that studios were reluctant to let first-run movies loose "for distribution on television." Because of this, the only films available to television producers were "old films that were made by independents and were not tied up in the vaults of the major producing companies."[47] Although not explicit in this criticism was the idea that these films often were of inferior quality, including violent and sexually suggestive images that yielded complaints. As such, it was unfair to criticize television too severely for problems brought on by its immaturity as a medium and Hollywood's understandable reluctance to share its best product with its most significant competition.

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[46] Motion picture hearings, 240.
[47] *Ibid*., 241.

Within a year, however, Hollywood studios began selling their catalogues to television entrepreneurs. RKO Radio Pictures was the first studio to sell its library (a total of 740 films) in the winter of 1955. The buyer, C&C Super Corp., then began selling rights to the films or the films themselves to local stations to be used to fill time not taken up by network programming. In a curious twist, Hollywood occasionally competed with itself as older films appearing on television sometimes drew huge ratings, indicating a audiences were watching movies at home rather than in theaters.[48] Such a use of motion picture material by networks may also have come perilously close to a monopoly.

Of potentially greater impact on the operation of both Tinseltown and the networks was the emergence of studio-controlled companies organized to produce television programs. Curiously, though, nothing was mentioned during these hearings about this development. Several authors have described how many Hollywood studios quickly saw a chance for diversification by establishing subsidiary companies to produce films directly for television. Robert Sklar suggests that for decades studio moguls had avoided or ignored the potential threat to its audience share and profits posed by television. The silver screen, it seemed, would never lack for an eager and rapacious public.[49] The somewhat hit-and-miss quality of programming on early network broadcasts seemed to bear out this assumption.

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[48] "TV Pays $2-million for RKO Film Library," *Business Week*, 31 December 31, 1955, 46. "Here Comes Hollywood," *Time*, 12 November 1956, 106-108.
[49] Robert Sklar, *Movie Made America: A Cultural History of American Movies* (New York: Random House, 1975), 270-271.

The historian Timothy White takes exception to this interpretation, however. Hollywood, he argues, had attempted to enter television broadcasting in the 1940s but was prevented from doing so by outside forces. Federal Communication Commission policy became openly hostile towards Paramount Pictures which commissioners believed was only attempting to enter the world of television for "crass commercial gains" as opposed to the public interest which supposedly characterized radio broadcasting. When the Supreme Court found studios guilty of violating antitrust laws with regards to booking and owning theaters in 1949, the FCC and broadcast networks saw a tool with which to limit Hollywood's attempts at entering television. The FCC refused or ignored station applications put forth by motion picture studios.[50]

Stymied in their attempts to become station owners or networks in their own right, Hollywood studios chose to produce programming for inclusion on the existing networks. Perhaps the most famous was Walt Disney's production *Disneyland*. *Disneyland* viewers were treated to a regular look behind the scenes of Walt's growing wonderland in southern California. Disney's foray into television was rapidly followed by other studios and by the late 1950s Hollywood studios "became the predominant suppliers of the networks' prime time programming."[51] In the case of ABC, once the struggling third-place network, the broadcaster was bought in 1953 by motion picture theater chain United Paramount Theaters (UPT). UPT, then, motivated movie studios to provide

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[50] Timothy R. White, "Hollywood's Attempt at Appropriating Television: The Case of Paramount Pictures," in *Hollywood in the Age of Television*, ed. Tino Balio (Boston: Unwin Hyman, 1990), 146-147. Christopher Anderson, *HollywoodTV: The Studio System in the Fifties* (Austin: The University of Texas Press, 1994), 2.
[51] Anderson, *HollywoodTV*, 4.

programming for ABC and by the end of the decade nearly every network was showing programs developed or produced by branches of major motion picture studios.[52]

Magazines like *Business Week* described the impact Hollywood's entrance onto the television scene would have. Its ties with Disney helped ABC emerge as a legitimate national network. Rising costs linked to an increasingly competitive television market led to better quality across the broadcast landscape as producers improved their product in an effort to attract sponsors looking for high-quality programs.[53]

The Juvenile Delinquency Films

William Mooring, the editor of the motion picture and television section of *Catholic Tidings*, a weekly newspaper published by the Catholic diocese of southern California, admitted that Hollywood could be proud of its record of "reflecting the better aspects of our national experience, our culture, our character and ideals" to other parts of the world. This helped to present a favorable view of "the American way of life." Yet "programs glorifying crimes and criminals, condoning loose morals or revealing low forms of living" must necessarily have "a correspondingly damaging effect." Obviously this would have a negative effect on our standing as a moral leader in the world. Historian Kevin Mattson contradicts Mooring's idealistic view of motion pictures. The

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[52] James L. Baughman, "The Weakest Chain and the Strongest Link: The American Broadcasting Company and the Motion Picture Industry, 1952-1960" in *Hollywood in the Age of Television*, ed. Tino Balio (Boston: Unwin Hyman, 1990), 91.
[53] "TV and Film: Marriage of Necessity," *Business Week*, 15 August 1953, 108-110. "The Movie Makers Look for Gold on the TV Screen," *Business Week*, 23 April 1955, 154-156.

best of American culture, he argues, needs to include self-scrutiny and must be willing to represent our weaknesses to the world as well as our strengths.[54]

One crack in the wall, Mooring seemed to indicate, was the way youths who attended *The Wild One* dressed up like Brando's motorcycle-riding tough and clearly seemed to identify themselves with the "arrogant character" he portrayed in the film. As if it wasn't enough that they "put on his swagger," some of the teens shook Mooring's faith in America's future by going "off recklessly on their motorcycles, just like the gang in the picture." Such dangerous behavior could not help but suggest the impending threat of social disintegration.[55] Indeed, some have argued that films directed to young people – especially those like *I Was a Teen Age Werewolf* which portrayed adolescents as monsters – were appealing because they gave teenagers a way to lash out vicariously at a repressive and restrictive adult society. At the same time, though, they helped to impart and inculcate social norms in youngsters by usually ending with the restoration of traditional mechanisms of social order and reinforcing the dominant moral worldview.[56]

Similar teenage rambunctious behavior was reported at showings of another delinquency whipping boy, *The Blackboard Jungle*. Mooring speculated that the "noisy, belligerent behavior" reported by theater management was likely aroused by the film's "dramatic intensity." At the very least, he assumed, it must "set loose inherent tendencies

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[54] Kevin Mattson, *When America Was Great: The Fighting Faith of Postwar Liberalism* (New York: Routledge, 2004), 85.
[55] Motion picture hearings, 76.
[56] Don G. Smith, "Teenage Monsters and Their Meaning," in *Images of Youth: Popular Culture as Educational Identity*, eds. Michael A. Oliker & Walter P. Krolikowski (New York: Peter Lang Publishing, Inc., 2001), 100. Thomas Doherty, *Teenagers and Teenpics: The Juvenilization of American Movies in the 1950s* (Philadelphia: Temple University Press, 2002).

to violence."[57] However, if these tendencies to violence were inherent in the viewer, one wonders why it required the stimulation of motion pictures to be released. Mooring seemingly punctured his own argument. Was it not conceivable that inherently violent individuals, both old and young, could be set off by virtually any triggering event?

The Senate's inquiry into juvenile delinquency was certainly not the first time motion pictures were attacked as negatively affecting young people. Groups like the Catholic church's Legion of Decency worked hard for nearly forty years to influence studios to excise scenes and dialogue that didn't meet their standards of propriety.[58] As we have seen, religious morality was also the basis for the production codes put into effect by the motion picture industry during the 1920s and 1930s and which served as the prototype for similar codes developed by comic book publishers and television broadcasters by the 1950s. The subject was also on the minds of intellectuals who, like Frederic Wertham and comic books, hoped to expose parents to the damaging influence of mass culture. Perhaps the most significant of these attempts came in 1935 when, with the support of the Payne Fund, a private philanthropic foundation, the Motion Picture Research Council conducted a series of studies culminating in *Our Movie Made Children* by Henry James Forman. Forman's conclusions seem eerily similar to those applied to mass culture during the hearings discussed here. The scope of motion pictures included both vast potential for instruction and enlightenment as well as for prurience and

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[57] Motion picture hearings, 76-77.
[58] Gregory D. Black, *Hollywood Censored: Morality Codes, Catholics, and the Movies* (New York: Cambridge University Press, 1994).

violence. All too often, Forman complained, films tended toward the baser aspects of the human condition in an effort to maximize profits.[59]

Ultimately, this all revolved around the matter of how media culture should balance social responsibility and the need to make a profit. Whether mass culture reflected audience demand or created demand for more of the same has been at the center of cultural studies for decades. The subcommittee was no different in its attempts to parse out the delicate relationship between the two tensions. The chief counsel for the senators, James Bobo, asked Mooring very bluntly whether "the American public demand[ed] this type of picture," or was it true that "the motion-picture industry sets the demand for the American public?" Here was the crux of the matter. To this, Mooring replied that box-office results of some of the pictures indicated "an element of public demand." To his mind, though, the question should not be profit and audience demand but rather should be focused on the media's responsibility. "They [were] not to consider themselves free to sell any kind of motion picture," Mooring declared.[60] Again, there was the underlying belief that capitalism in a democracy carried with it a responsibility to meet certain social expectations.

Much of the problem as he saw it was the cyclical nature of Hollywood's production trends. Although he never located the ultimate source of the demand, Mooring, comparing the system to a coal mine with veins of valuable material, proffered that Hollywood found something it could profit from and produced as many similar films

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[59] Henry James Forman, *Our Movie Made Children* (New York: The Macmillan Company, 1935). Garth S. Jowett, Ian C. Jarvie, and Kathryn H. Fuller, *Children and the Movies: Media Influence and the Payne Fund Controversy* (New York: Cambridge University Press, 1996).
[60] Motion picture hearings, 83.

in that vein as the market would bear. This, then, resulted in a spate of films with excessive violence and sexual impropriety until such time as the public's demand was satisfied and they stopped paying for tickets. Hollywood would then move on to the next genre or style of film and extract the maximum amount of profit from that vein. Certainly, though, "the aptitudes of the motion-picture people themselves" and "the appearances of public demand" also influenced what comes out of Tinseltown. The culture industry's tendency to saturate audiences with programming that was apparently the most profitable was a concern for lawmakers throughout the hearings discussed here.

MGM executive Dore Schary defended the choice of motion picture producers when he suggested that it was in Hollywood's best interest to spark a little debate in their films. Without the occasional controversy, Schary feared, films would "wither and die." Of course, this sort of approach must be done with a moral conviction that the material was worthy of such treatment. He went on to say that production of *Blackboard Jungle* started after MGM had gathered files of news stories and statistics showing the increase in juvenile delinquency. The studio then decided to make "a report to the Nation" through the use of timely cinema. Regardless of the negative coverage of such a film, Schary expected that *Blackboard Jungle* and the studio itself would be vindicated once it was revealed the "awful lot of good" the picture had done by bringing the subject "into the public view."[61]

Like Kefauver's vision of congress's role in public information, Schary seemed to hold that Hollywood had a responsibility to produce films that enlightened the public to a

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[61] *Ibid*., 110.

problem or that presented an existing public issue in such a way that audiences could gain a greater understanding of it. He seemed to worry that, even when it tried to present mature films about legitimate social issues, Tinseltown would face carping from critics unable to look past the content to the message of the film.

The historian James Gilbert agreed with the MGM executive when he argued that Hollywood's self-regulatory system and elaborate public relations apparatus managed to deflect the most serious criticism and allow studios to pursue a profitable amount of controversy. During the 1950s, studios eliminated the most blatantly offensive material from their juvenile delinquency films but they nonetheless worked hard at exploiting the topic from a number of perspectives. Although *The Wild One*, *Blackboard Jungle* and *Rebel Without a Cause* were the most famous examples, there were numerous other motion pictures that showed the juvenile delinquency problem in genres ranging from comedy (*Delicate Delinquent*), to science fiction (*Teenagers from Outer Space*), to horror (*I Was a Teenage Werewolf*). These films demonstrate the love-hate relationship America had with its delinquent youth as well as Hollywood's ability to profit off of this paradoxical situation. As such, delinquents in motion pictures "were punished for their transgressions, and wrong-doing was criticized by the ever-present voice of morality. Yet delinquents themselves were pictured with enormous sympathy."[62]

In fact, the social message of the movie was considered by several contemporary reviewers. *Time* magazine's review of the film, for instance, was generally middling. However, it did praise the film's social conscience and its decision to seize a "burning

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[62] James Gilbert, *A Cycle of Outrage: America's Reaction to the Juvenile Delinquent in the 1950s* (New York: Oxford University Press, 1986), 162-3, 170-6.

issue." Writing for the *New Republic*, poet and New York intellectual Delmore Schwartz criticized the film precisely because of its purpose. "As an effort to deal with a social issue," Schwartz said, *Blackboard Jungle* was a "film in search of a thesis which it never discover[ed]." It thus tended to oversimplify the problem and failed to truly enlighten audiences to any correctible realities of the juvenile delinquency problem.[63]

Schary went on to describe the role of motion pictures in reflecting public attitudes toward domestic matters as well as international concerns. Among the films he outlined were those that seemed to demonstrate how the industry reacted to public perceptions. In 1916 Hollywood alerted "American citizens to the dangers of Kaiserism." During the 1930s filmmakers avoided the subject of Nazism until public opinion had congealed on one side or the other. It was not until 1939 when national polls revealed that the American public was decidedly anti-Nazi that films first began to approach the subject directly. Although Schary recognized that some films may have "accelerate[d] public opinion" he reminded the subcommittee that they also reflected "the public attitude toward" the menace. Films describing communism were but the latest evidence of Hollywood's reluctance to shape public attitudes, preferring rather to react to them.[64]

Estes Kefauver recognized the unspoken danger in such a powerful media mechanism, though, when he pressed Schary on Hollywood's ability to manufacture public opinion. The ability to accelerate "the antagonism toward Nazism and fascism"

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[63] *Time*, 21 March 1955, 98.
Delmore Schwartz, *New Republic*, 11 April 1955, 29-30.
[64] Motion picture hearings, 111-112.

was a significant concern. In light of the events of World War II, few would deny the evils of such ideologies. As such, guiding public opinion away from them was not dangerous; the danger arose from the power films could have to decide "whether something is good or bad." Though "a very little minority position" could easily be "the correct position," "chances are … movies would reflect" the "predominant public opinion." Here was a direct comment on the tyranny of the majority lamented by many of the intellectuals who critiqued mass culture throughout the first half of the 20th century.[65]

Whether or not Kefauver intended his statement to be taken as a defense of democracy's ability to promise moral righteousness, Schary interpreted it as such. "We can only hope," Schary said, "there will be enough people in the motion picture industry constantly who will reflect the better and best and big majority point of view that exists in our democracy, which usually reflects, I believe honestly, those things for the best." The role of the minority in filmmaking, Schary proposed, was shown by the pictures that were made "that some people don't want made."[66] Apparently minority concerns were important mainly for their position as contrarians who criticized public attitudes shown on the big screen.

Schary also debated Kefauver's suggestion that films can shape public attitudes, saying that, since movies require five or six months to produce, films that incorrectly guess opinion would suffer at the box office. If the public was uninterested in seeing motion pictures dealing with "communism or fascism or lynching or anything else" they

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[65] *Ibid*., 116.
[66] *Ibid*., 116-117.

simply would not go to theaters. The delay between the start of production and when a film actually opened in theaters meant that public opinion, often a fickle thing, could easily have shifted against the movie. Almost in contradiction of his earlier comments, Schary indicated that sometimes the filmmakers may not be "out of line" in their messages but public opinion (even the majority that is usually right about such things) could drive such messages out of films.[67]

By the end of the week of hearings "Hollywood seemed little changed by the probe."[68] The motion picture Production Code had weathered another storm and self-regulation once again emerged as the oversight of choice for lawmakers and culture brokers alike. Like other congressional hearings into mass culture, the subcommittee's investigation into motion pictures approached many aspects of cultural production and self-regulation. The efficacy of self-regulation as the best way to influence cultural quality, though, was possibly put to its greatest test during the hearings into television.

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[67] *Ibid*., 117.
[68] "Kefauver v. Hollywood," *Time*, 27 June 1955, 88.

CHAPTER 3

THE EMERGING DYNAMO: THE SENATE WORRIES ABOUT TELEVISION

Congress has looked into problems surrounding television more than perhaps any other mass medium. From the quiz show scandals to monopoly concerns with network operation, lawmakers in the 1950s and 1960s recognized the power of the expanding medium as well as the very real challenges the industry faced. In this light and under the chairmanship of several different senators, the Subcommittee to Investigate Juvenile Delinquency held a number of hearings into TV's role in juvenile delinquency. Some have argued that the hearings of the 1950s were fundamentally about violence on television and read the debates as nothing more than a group of legislators dancing with the broadcasting industry around the issue of violent programming. This interpretation seems to be borne out by the contemporary reports on the hearings which appeared in national magazines at the time. *U.S. News and World Report* outlined the subcommittee's report to congress and focused on the question of violence on television. *The Nation* echoed *U.S. News*'s emphasis on violence. This analysis was more nuanced, however, pointing out the problem with an industry arguing on the one hand that negative content had no ill-effects on children and on the other convincing sponsors that the audiences available to television would be easily persuaded to buy products that were advertised. The author also saw an ironic similarity – likely overdrawn somewhat – in

the way subcommittee chairman Estes Kefauver and comic book critic Frederic Wertham were attacked by the respective industries they sought to investigate.[1]

As with nearly all the congressional investigations discussed here, however, these inquiries delved into issues surrounding the market economy and self-regulation that were often much deeper than just whether or not televised images of violent or anti-social acts were tied to similar behavior among teens. Congressmen and witnesses alike worried about how to regulate cultural content while maintaining traditional American attitudes about censorship, self-regulation and the competitive market.[2]

The Dodd hearings in the 1960s were more contentious and introduced perhaps the most legitimate chance for direct government intervention in the medium. However, the hearings under the chairmanship of Sens. Robert Hendrickson and Estes Kefauver in the mid-1950s were in many ways the culmination of the juvenile delinquency subcommittee hearings into culture. They encapsulated many of the fundamental questions about network operation and the economics of television that would resurface many times in subsequent investigations.

When the hearings opened in June 1954, television was a medium largely in its infancy. Indeed, the first national television network was organized and put into operation by NBC in 1948. At the outset, nearly all programming was shown live and

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[1] "TV Has 'Greater Impact' on Children Than Movies, Radio," *U.S. News & World Report*, 2 September 1955, 75-76.
Al Toffler, "Crime in Your Parlor," *The Nation*, 15 October 1955, 323-324.
[2] Keisha L. Hoerrner, "The Forgotten Battles: Congressional Hearings on Television Violence in the 1950s," *Web Journal of Mass Communication Research*, June 3, 1999.
http://www.scripps.ohiou.edu/wjmcr/vol02/2-3a-B.htm. (accessed July 20, 2007).

many shows were nothing more than visual adaptations of radio broadcasts.[3] Talent was scarce and the networks were working in uncharted territory. As such, these programs relied on established names like Sid Caesar and other well-known stars who ran variety shows filled with comedy sketches, musical numbers and all the blunders and gaffs common with live television. Usually privately produced by independent production companies, networks were primarily responsible for providing a broadcast conduit for shows. Rarely did NBC or later CBS become directly involved in creating or maintaining programs.[4]

Some have argued that the government was reluctant to regulate the television in part because of its relative immaturity. Interestingly, the popularity of the performers who dominated many of the most successful early programs may have caused audiences and executives to be reluctant to change things. James von Schilling suggests that Sid Caesar, Lucille Ball and Jackie Gleason were so popular that they – and the networks for which they worked – were almost immune to criticism. In many instances, early complaints about obscene or indecent programming yielded government or public criticism but virtually no direct intervention. Rather than punishment, the government chose to warn or pressure the industry to improve itself or risk more overt legislative action. Broadcasters, on the other hand, tended to fret over the possibility that they would bring congressional or FCC oversight upon themselves should they fail to maintain

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[3] J. Fred MacDonald, *One Nation Under Television: The Rise and Decline of Network TV* (New York: Pantheon Books, 1990), 49-50.
[4] *Ibid*., 65-86.

order in their own industry. As such, they hoped for a self-regulatory code that would satisfy both lawmakers and industry leaders.[5]

Perhaps more important, most shows were sponsored by national brands. In February 1940, the Federal Communications Commission had established the right for networks to charge sponsors for the costs of production, contractual obligations and the expenses of running the broadcasting apparatus. Commercial television began apace with WNBT, an NBC-owned station in New York, on July 1, 1941.[6] The *Colgate Comedy Hour*, *Texaco Star Theatre* and other programs guaranteed their sponsors an advertising monopoly during their airtime and firmly entrenched corporations and their attendant advertising agencies in the process of network programming. Like many of the congressional hearings discussed here, both the Hendrickson and Kefauver-led committees thoroughly discussed the effectiveness of the television broadcasters' code as well as the power of commercial interests in affecting how networks decided what programs to air.

Networks vs. stations

One of the first people to address the matter of how networks use their affiliated stations was Merle Jones, a vice president at CBS television. Early in his statement, Jones took the time to describe how CBS programs were distributed through its

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[5] James von Schilling, *The Magic Window: American Television 1939-1953* (New York: The Haworth Press, 2003), 208-9. Elmer Smead, *Freedom of Speech by Radio and Television* (Washington, D.C.: Public Affairs Press, 1959), 8, 33.
[6] MacDonald, *One Nation Under Television*, 18-19.

corporate-owned stations as well as through those stations that were affiliated with the network. Almost immediately, Jones introduced the role of the advertiser in the process, a matter that would engage lawmakers in nearly every hearing during the period discussed here. Programs not produced by CBS television, so-called "outside programs," were produced "for an advertising agency on behalf of the agency's client, for broadcast under such client's sponsorship over CBS television."[7]

Very quickly, congressional investigators saw a potential rub in the importance of financial considerations when making programming choices. Citing one example, chief counsel Herbert Beaser pointed to a locally developed show that tended to earn good revenue from showing westerns. Would there not be a powerful financial incentive, he wondered, for that station to continue showing those westerns even if CBS developed programs that were deemed to be better for children? Jones responded that such a circumstance was certainly possible. When operating a network, he argued, it was crucial that national advertisers would be guaranteed a sizeable return on their sponsorship and so their programs were usually scheduled simultaneously in many local markets. Shows such as the one Beaser described were local. As such, they were sponsored by local advertisers and yielded "no broad nationwide pattern for the network advertiser."[8] This meant national sponsors were reluctant to pay for time in those schedule openings, limiting the money available for developing quality children's shows.

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[7] Senate Committee on the Judiciary, *Television Programs: Hearings before the Subcommittee to Investigate Juvenile Delinquency*, 83rd Cong., 2nd sess., 1954, 84. [hereafter Hendrickson hearings]
[8] *Ibid*., 102.

One of the largest CBS affiliates was WTOP in Washington, D.C. The president of WTOP, John Hayes testified before the subcommittee on his station's policy regarding program selection. As an affiliate that did not produce its own shows WTOP had little control over the content of specific programs. Their response was limited to the right to reject any show they felt was "contrary to the public interest" or which the station's review board found to be "unsatisfactory or unsuitable."[9] Hayes went on to describe how, if they chose to develop their own programming, WTOP would contract with local producers to create a show within a "rough area." Once the show was approved, then, WTOP required that every subsequent episode be sent to the station at least two weeks in advance of broadcast to allow reviewers to preview it and edit any potentially objectionable passages.[10] Thus, affiliated stations could run locally produced shows with substantial control over their content but were severely limited in their options when dealing with programs originating with the network.

Just a few years later the *Saturday Review* contradicted Hayes' characterization of affiliates' impotence in the face of network pressures. The magazine's communications editor, Richard Tobin, offered a scathing attack on the "local Caesars" who chose what to air on their stations. Describing a process that was very much the opposite of the one Hayes recounted, Tobin believed that the poor quality of television in many markets was because they were not served by more than one or two networks and those affiliates that did operate there often chose not to air high quality programming. Unfortunately, Tobin never explained why local station managers might decide not to broadcast these shows.

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[9] *Ibid*., 109.
[10] *Ibid*., 116.

His argument would again be germane to congressional hearings later in the decade over the apparently monopolistic practices of the television broadcasting industry.[11]

Before long, NBC vice president Joseph Heffernan offered one of the most detailed and precise descriptions for how networks operated. Echoing statements by witnesses at nearly every hearing into mass culture, Heffernan emphasized the commercial, market-driven nature of the culture industry. At its heart, broadcasting in the United States was based "on the American system of competitive enterprise." "Free to the public," it received its support "in advertising revenue." Those revenues allowed NBC to purchase privately developed and produced shows which were then shown during network time on both affiliated and network-owned stations. If advertisers believed that a certain program best fit its requirements for reaching a national audience, that advertiser could purchase said program.[12] Eventually this would shift to the policy of selling commercial time during programming developed and produced by the networks, themselves. During the 1950s, however, many shows were paid for by single sponsors.

Despite the vast – and growing – audience television could command, Heffernan stated that newspapers in 1953 received the "biggest slice of the advertisers' dollar." Since networks needed to maintain their audience share, they were required to develop programs of both high quality and great audience appeal. The industry must have learned their lessons well. In April 1955, *Business Week* traced the breakdown of advertising expenditures and announced without equivocation that television was "hurting" radio and

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[11] Richard Tobin, "The Tyranny of the Local TV Station," *Saturday Review*, 9 September 1961, 41-42.
[12] Hendrickson hearings, 161.

print media, taking its increased share of advertising revenues "out of the hides of these media." Of the three major networks in 1954 NBC was the laggard with more than a thirty percent jump in sponsor dollars over its 1953 levels. And, though it had much smaller totals, ABC out-gained its older competitors with a one-year growth of over sixty-four percent. Weekly magazines still outstripped television with ad profits of nearly two-to-one but the speed of TV's growth clearly indicated that print would not retain its position for long. Radio on the other hand suffered drops in some cases of nearly one-quarter.[13]

In order to see that this trend continued, television needed to ensure advertisers would get the largest audiences possible. This meant they aired shows that could draw huge numbers of viewers and avoided alienating audiences with questionable or controversial content. "Thus the public service objectives and the commercial objectives of television as a medium [were] interlocking." Evidence of television's ability to meet both objectives could be found in the tremendous growth the medium experienced since its inception a few years earlier.[14] In fact, this rapid growth has led at least one commentator to speculate that congressional reluctance to enact significant legislation regarding television was due to the expansive nature of the medium during the 1940s and 1950s.[15] This hands-off approach meant that subsequent debates over broadcast regulation foundered on the precedent of non-intervention set during these early years. Tellingly, Heffernan's conception of public service was rooted in the belief that the

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[13] "Television's Gain is Other Media's Loss," *Business Week*, 9 April 1955, 62-63.
[14] Hendrickson hearings, 161-162.
[15] von Schilling, *The Magic Window*, 208-209.

networks' responsibility to provide shows in the public interest was satisfied with the production of entertainment that was of a high quality. No mention was made of television's ability to provide educational, cultural or informative programming.

Eventually, Heffernan did acknowledge the role of more cultural fare but again based his statement around the role of popular shows in ensuring audience interest. Networks garnered audiences by giving them things that appealed to their "common interests." The executive assured lawmakers that this did not mean that NBC pandered to the basest impulses of audiences, however. He quoted NBC president Sylvester L. Weaver, Jr. that "'It [was] not the lowest common denominator, but the highest general interest that create[d] audiences. The good shows, not the bad, [won] the ratings.'" Once NBC acquired its audience and had successfully established its habit to tune to NBC for programming, Heffernan believed viewers would likely remain tuned in for cultural programs that followed their favorite hits.[16]

Somewhat later in his testimony, and in light of his litany of the cultural broadcasts NBC ran, Heffernan was confronted with a probing question from chairman Hendrickson. If it was possible to broadcast so many wonderful programs, Hendrickson wondered, why was there still room for the shows that were "in bad taste?"[17] By and large, the subcommittee tended to focus on Westerns and detective programs as being the worst offenders when it came to violent images. The subcommittee's executive director, Richard Clendenen, regularly quoted his staff's research into the frequency of violence in programs such as *Hopalong Cassidy*, *Roy Rogers* and *Dragnet*. When Estes Kefauver

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[16] Hendrickson hearings, 162.
[17] *Ibid*., 186.

ran the hearings in 1955, he poked fun at his own political persona when he referenced the shooting and violence on *Davy Crockett*.[18] Joking aside, however, the subcommittee under both Hendrickson and Kefauver pointed to specific instances of violence in shows as evidence that networks failed in their responsibility to provide programming that was appropriate for children. Barroom brawls, high-noon shootouts and kidnappings all seemed to congressmen just the sort of things that might lead impressionable youngsters toward delinquent behavior.

It should be noted the unspoken distinction between senators' acceptance of Westerns as a genre useful and appropriate for adults versus their criticism of Westerns directed at children. William F. Rickenbacker of the *National Review* seemed to have no problem with television's emphasis on Westerns, since he enjoyed the genre's clean distinction between right and wrong and appreciated the direct action of heroes like Wyatt Earp and Bat Masterson. Most Americans, he speculated, would like to have treated Soviet premier Khrushchev the way a Western lawman might treat an unwanted gunslinger.[19] Even Kefauver himself recognized the usefulness of connecting himself to the persona of an American hero, and Tennessee native son, like Davy Crockett. Moreover, his use of the coonskin cap was evidence of his recognition of the image-making power of media. Though a short-lived series – running over three episodes in 1954 and 1955 – Walt Disney Studio's *Davy Crockett* programs were a cultural

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[18] Senate Committee on the Judiciary, *Television Programs: Hearings before the Subcommittee to Investigate Juvenile Delinquency*, 84th Cong., 1st sess., 1955, 19. [hereafter Kefauver hearings] Kefauver had famously worn a coonskin cap during several of his appearances while campaigning to win the Democratic nomination for president in 1954.

[19] William F. Rickenbacker, "60,000,000 Westerners Can't Be Wrong," *National Review*, 23 October 1962.

phenomenon and the two-time presidential candidate was savvy enough to know a good gimmick when he saw one. The concern, then, was not with Westerns per se, but rather with their impact on young people.

The Westerns that were so popular with kids (and so problematic for lawmakers) rarely ranked very high when compared to the decade's ratings dynamos. Television at the time was dominated by a handful of popular styles. Comedy series like *The Honeymooners* and *I Love Lucy*, which dominated ratings for almost its entire run from 1951 and 1957, were offshoots of the variety shows which filled airtime at television's emergence. Family-oriented programs like *Father Knows Best* and *Ozzie and Harriet* had very successful careers as well. Interestingly, the meteoric run of the quiz shows in the middle of the 1950s made them among the most profitable genres on television; however, their success was obviously short-lived.

It was the emergence of adult-oriented action programs and Westerns in the mid-1950s that would lead to the biggest headaches for network executives facing public and congressional criticism, though. NBC led the way with a contract for three weekly Westerns in 1955 and, after the network's success with *Cheyenne*, the competition quickly followed suit. Eighteen Westerns debuted in 1958 alone and nearly half of Nielsen's top 25 shows were Westerns including seven of the top ten. By the end of the decade the genre was in command of the airwaves. Viewers could settle in for more than

twenty hours of Westerns during prime time of any given week in 1959 when a total of 32 different shows were available.[20]

Given that television was in some ways a one-way media, the networks could, if they so chose, combine to show only programs that were decent and culturally superior. Instead, they seemed to join forces behind programs that were less enlightening, at least as far as congress was concerned. Since the viewing audience in 1954 had only three or at most four networks to choose from, a concerted effort on the part of all the networks could ensure that no viewer was presented with sub-par programming. If the only choice given to audiences was culturally excellent shows, there would be no need to worry about violence or sexual suggestiveness on television.

Heffernan's response to Hendrickson's query was vague and rambling in many ways. Again, he pointed to the many quality programs NBC produced and repeatedly emphasized that the business of television was extremely competitive. NBC, he felt, had the best programming.[21] Unstated in his remarks, though, was the implicit recognition that, when audiences were presented with a choice between cultural productions like theatrical or musical performances and variety shows or comedies, they very often chose the latter. In order for NBC to remain profitable, then, it was in their best interest to devote much of their schedule to those programs that attracted larger audiences and therefore drew larger sponsorship revenues. The exchange between Heffernan and Hendrickson was almost identical to the concerns during the PBS hearings more than a

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[20] Dunar, *America In the Fifties*, 236-237. Gary A. Yoggy, *Riding the Video Range: The Rise and Fall of the Western on Television* (Jefferson, NC: McFarland & Company, Inc., 1995), 1.
[21] Hendrickson hearings, 19.

decade later when lawmakers expressed their desire that PBS would serve as an alternative to the lower quality shows networks aired.

Commercialization and competition in American broadcasting

When brought back before the subcommittee in 1955, Heffernan was again grilled on NBC's operations. This time, under the chairmanship of Sen. Estes Kefauver, the lawmakers' attention turned more toward the business operations of the network (interesting considering the subcommittee was mandated with finding whether a link existed between media such as television and juvenile crime, not investigating industry operation). The Republican senator from Wisconsin, Alexander Wiley, saw the spectre of a monopoly in the network's practice of selling its programs only to its own affiliated stations. Based on the terms of their contract, those stations' purchase of network shows essentially excluded their being shown on any other stations. As a "licensee of the Government," what authority did NBC have, Wiley asked, to sell its goods to only one station? Heffernan again emphasized that broadcasting was a "competitive-enterprise business" and NBC needed to maintain its market interest and secure its market position within the various localities it served.

The government license, Wiley said, was established primarily to guard against electrical and spectrum interference should too many stations try to broadcast in a particular locality. "In doing that," Heffernan argued, the government "recognized the value of competitive enterprise as such, and expressly provided by statute that the

business of broadcasting should continue to be a free-enterprise competitive business, and would not be a common-carrier business."[22] In essence, it would be ludicrous for a network to offer its programming to all the stations in a given market and allow CBS or ABC affiliates to sell advertising time on programs owned by NBC. Moreover, such a circumstance would replace the vertical integration demonstrated by the existing process with horizontal integration and another form of monopoly.

Heffernan went on to clarify the network's operation, again placing special emphasis on the highly competitive nature of the entire media industry. At one point, the executive seemed almost desperate in his characterization of the struggles NBC and the other national networks faced in winning advertising revenue. "I wish we could claim that network broadcasting outsells other media in this competitive race," he lamented. Based on figures from the 1954 fiscal year, though, print media such as newspapers and magazines earned the largest advertising revenues with direct mail campaigns taking "a big slice" as well. For NBC to be a viable alternative to national advertisers wishing to reach the maximum possible audience, the network needed to offer "a service which [met] public need and interests."[23] Much of this echoed his earlier testimony to the subcommittee, but Heffernan soon moved on to more specific statements about the problems with selling advertisers on the attractiveness of cultural fare.

Senator Thomas Hennings of Missouri was surprised by the network's difficulties in getting sponsorship for many of the cultural programs NBC aired. "I happen to have seen a great many of these things …," Hennings commented, "and I am surprised to hear

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[22] Kefauver hearings, 122-123.
[23] *Ibid*., 125.

that [NBC] cannot find a sponsor for some of these excellent programs. What is the problem?" Advertising was a "cold-blooded, business proposition," Heffernan replied. Large corporations based many of their decisions on the advice of advertising agencies and relied on specific cost-benefit ratios to determine whether or not to spend vast sums of money sponsoring or advertising on cultural programming. Since the unit cost of advertising expenditures on programs with large audiences was relatively low, corporations sought out programs with sizeable viewership. The ratings services that were so closely scrutinized during later hearings had not yet become dominant within the industry. In fact, it was the need to quantify the above business considerations that led networks and advertisers to emphasize Nielsen, Trendex and other audience measuring systems. The crux of the problem was that cultural programs like opera did not attract "an audience large enough that advertisers [were] willing to pay the cost per thousand involved."[24]

Throughout the hearings, one is struck by the primacy of economic and market considerations in the statements of both the legislators and the witnesses. Heffernan's comment is perhaps the most significant to come out of the entire subcommittee investigation into juvenile delinquency. He encapsulated the paradox of lawmakers hoping for high quality cultural programming on commercial broadcasting and presaged many of the arguments that emerged during the PBS hearings more than a decade later. Not only did audiences seem most often to choose the action and adventure stories offered them, this choice resulted in a self-perpetuating cycle whereby advertisers poured

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[24] *Ibid*., 129.

money into programs that garnered the most viewers. Simple economics, then, dictated that networks would produce more of those programs that earned them the most money. Since many of these shows were in similar genres, audiences often did not have the freedom of choice that many lawmakers optimistically championed as a protector of cultural quality.

Self-regulation

Because market forces might not be the panacea that some lawmakers and many witnesses hoped, the question then became: what method could most reasonably be expected to solve the problems with program content and quality without resorting to government censorship? The industry had already developed a series of individual network regulatory codes as well as a general code run by the National Association of Radio and Television Broadcasters (NARTB). The effectiveness of this code became the central debate during the subcommittee's hearings under both Hendrickson and Kefauver.

One of the first witnesses to testify regarding the code was the vice president in charge of government relations for the NARTB, Ralph Hardy. The fact that the NARTB – later to become the National Association of Broadcasters (NAB) – had a vice president solely responsible for dealing with governmental matters indicates the peculiar nature of the relationship between the broadcasting industry and the lawmakers and bureaucratic agencies charged with regulating it. Hardy's opening statement was peppered with assurances that the industry felt very keenly its responsibility to work with the

government to ensure broadcasters met the public interest and helped curb the apparent juvenile delinquency problem. Though he countered the assertion that television led directly to antisocial behavior, Hardy did acknowledge that there was evidence of a correlation between the two. In an effort to meet the demands those correlations presented as well as in order to protect the industry's right to operate as free of government oversight as possible, the NARTB created a self-regulatory code for television in March 1952. Of the 373 operating television stations in 1954, the time of Hendrickson's subcommittee hearings, 220 subscribed to the code. Perhaps more importantly, all the networks subscribed to the code. This meant that their affiliated stations received programming from the network source that was reviewed for its compliance with the code.[25]

While Hardy outlined that the code included portions dealing with advertising and "decency and good taste in production," he said that the "most difficult problem with which the drafting committee had to deal" was the nature of self-regulation. As was the case in other industries adopting voluntary self-regulation, the NARTB recognized that codes were only useful if "some method was devised for assuring reasonable observance of the code provisions." Like other industry oversight groups, however, the NARTB had little muscle to enforce code compliance. Although Hardy described in detail the manner in which the organization reviewed programming, his conclusion was evidence of the serious limitations faced by any voluntary code. The most severe punishment the NARTB could mete out was the removal of the Seal of Good Practice. Any station or

[25] Hendrickson hearings, 44.

network which met the NARTB's standards was allowed to display the Seal before its programs to assure the viewing audience of the appropriateness of its shows. Should the review board conclude that a station failed to meet the requirements of the code, they could prohibit the Seal's use. In Hardy's description it was the station that received the Seal and not individual programs. The industry was policing itself along much the same lines as the FCC's system of license review rather than overseeing program content. Hardy noted that, in the nearly three years since the code took effect, no station had suffered the humiliation of being stripped of the right to display the Seal of Good Practice. This, he said, was proof that the system worked.[26]

A "dynamic and complicated" industry like television broadcasting had challenges that were difficult to address, Hardy worried. But broadcasters always operated under the recognition that "their service relationship with their viewers [would] inevitably be enhanced by achieving program standards that [were] pleasing to the greatest number and offensive to the smallest number possible." Failing in this regard meant that broadcasters faced a potential loss of public support on the one hand and the spectre of "governmentally imposed regulations" which would oversee program content on the other. These combined to make successful self-regulation a "prize" worth the "best efforts" of the public, the government and the broadcast industry.[27]

Implicit in Hardy's concluding statement was the connection between a large, satisfied audience and the profits it ensured. Although the executive never came right out and said so, he clearly understood that networks hoped for large audiences as much for

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[26] *Ibid*., 44, 53.
[27] *Ibid*., 54.

the revenues they would generate as for the "enhanced service relationship" that resulted. There was a rather intimate relationship between self-regulation and capitalism that would reemerge during many of the hearings discussed here. Many, like Hardy, who hoped for self-regulation to win through danced around the fact that such an approach promised to protect a relatively free and unfettered market, allowing networks and affiliates to compete on an ostensibly level playing field. In other words, these self-policing codes and regulatory organizations were created as a way for industries to guarantee their access to competitive markets as much as to avoid government censorship.[28]

During later testimony the subcommittee's executive director, Richard Clendenen, was more blunt in his criticism of the power of the NARTB's television code to yield real results. Dependent upon the "voluntary cooperation or observance of the document by the individual outlets involved," the code had virtually no power to enforce compliance. Chairman Hendrickson called such reliance on industry goodwill "merely a prayerful hope." He went on to wonder whether broadcasters and the NARTB had any sort of enforcement official similar to baseball "and other industries of a like nature" which were overseen by a czar. Clendenen agreed that they did not. There were no sanctions like those in existence in the motion picture industry where studios releasing pictures without

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[28] Mary Ann Watson, *The Expanding Vista: American Television in the Kennedy Years* (Durham, NC: Duke University Press, 1990), 52. Watson describes how industry leaders openly championed self-regulation as a way to deflect popular criticism and defend against the possibility of government involvement.
Though in this case the regulatory mechanisms were voluntary and internal, they were developed for the same reasons government agencies like the FTC were created. Historians like Gabriel Kolko (*The Triumph of Conservatism*) and Robert Wiebe (*The Search for Order, Businessmen and Reform*) describe how businessmen during the Progressive Era pushed the government to establish oversight commissions to guarantee fair competition in the American market.

the seal of approval from the Motion Picture Association of America were subject to a $25,000 fine. The NARTB, Clendenen argued, had "no sanctions … which might provide any kind of bite in terms of efforts to enforce the code."[29]

Whereas Clendenen and Hendrickson saw the threat of fines as almost necessary to force stations to abide by the television production code, the NARTB believed that the potential audience backlash against unapproved shows would be damaging enough. Unstated in this counterargument was the assumption that stations without the seal of approval would suffer a decline in viewership leading to a decline in ratings and subsequently less advertising revenue. This could result in a larger financial impact than the $25,000 fine held over the motion picture industry.

Unfortunately, the capitalist motivation for improved programming seemed to contradict the reality of one instance in 1947. Reacting to public concerns over the possibility that television programming was connected to the rising rates of juvenile delinquency, NBC had limited its crime shows. The network quickly reversed course, however, when sponsors abandoned the new, less popular shows. Faced with sharply declining revenues, NBC resumed broadcasting the problematic shows.[30] Moreover, given the relative size of the television market in 1947 versus the mid-1950s, the financial incentives to protect audience size and sponsorship revenues had only increased. As networks reached more and more homes the vast sums of money to be made meant that voluntarily limiting contentious programming in 1955 would be much harder than it would have been in 1947. The case of NBC's turnaround in programming crime shows

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[29] Hendrickson hearings, 71.
[30] von Schilling, *The Magic Window*, 121.

also seems to point out that, though the industry was sensitive to viewer demands, financial considerations were still the primary motivation behind many network decisions.[31]

Despite the economic realities limiting self-regulation, lawmakers hoped the industry could correct its own mistakes and prevent the need for any potential government intervention. Beyond which, Hendrickson speculated, if the industry followed the NARTB code precisely, "the effect of telecasts on children could only be good." The witness at the time, a CBS executive named Merle S. Jones, agreed. The problem was the lack of widespread observance on the part of affiliated stations. Jones admitted that there was really no way to compel stations to go along with the code and that, at the time of the hearings, there was only slightly over fifty percent compliance. In light of this Hendrickson again broached the possibility of having a single individual or czar, oversee the industry with broad regulatory powers. Jones believed such an approach would be less effective in broadcasting than it seemed in other areas and was in many ways counter to the established system of license review mandated by congress, though he never mustered any real support for this contention. In television, unlike in motion pictures, the industry was a combination of networks and affiliated stations. Those stations were charged with exercising their own choice in what to broadcast over

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[31] Thomas Doherty, *Cold War, Cool Medium: Television, McCarthyism and American Culture* (New York: Columbia University Press, 2003). Doherty argues that the industry in its early stages was over-sensitive to external pressures from the public and the critical community. However, it seems apparent from the example cited here and from the networks' reluctance to alter programming even in the face of ongoing government hearings that they were not quite as concerned as Doherty posits.

their frequencies. The executive concluded by reasserting his preference that the industry retain its "self-regulation and self-discipline" through the NARTB.[32]

When the vice-president of NBC, Joseph Heffernan, testified before the subcommittee, he took a different approach to the question of government involvement in program content. Like most witnesses, Heffernan supported industry self-regulation. Apart from the obvious constitutional worries government intervention would raise, Heffernan worried that an active government would tend to erode the broadcasters' sense of responsibility to improve their content on their own. Government control over televised media would also run counter to a tradition in America of allowing its citizens freedom of choice in cultural matters. As lawmakers pointed out over and over again in later hearings, however, the nature of American broadcasting meant that audiences rarely had much choice over what to watch at any given time. We shall see how networks often showed identical programs (like Westerns) opposite each other once ratings showed audiences seemed to tune in in large numbers. Heffernan pressed his case. "The literate people" of America had the power of program control simply by tuning some stations in and tuning others out. The government did not "tell them what to read." Therefore, it should not presume to "tell them what to see or what to hear." As long as the public was "informed and discriminating," their control over programming would be effective and appropriate. Somewhat surprisingly, this was one of the relatively few times that the industry relied on First Amendment arguments to protest government involvement in

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[32] von Schilling, *The Magic Window*, 104-5.

programming. Making his argument as patriotic as possible, Heffernan announced his conviction that

> Our country was founded on the faith that the people themselves are capable of making the decisions which will determine their future. To make this faith effective, Americans have placed special values on education, on the broadest access to information, on the wide dissemination of the arts. In securing these values our media of communication play a major role. And among these media, television has a foremost part. Its influence for good is beyond calculation, and its freedom to serve the public must be preserved.[33]

One alternative that subcommittee chairman Hendrickson saw was the possibility of government legislation similar to the laws regulating the content of foods and drugs. Though the government did not make laws affecting what people might and might not eat, they did establish guidelines on the content of those foods. Was it not reasonable, he asked, to have government laws regarding the content of programs? Heffernan disliked the analogy, suggesting that the comparison with food and medicine was not appropriate. It would be more accurate, he argued, to compare the broadcast industry with the press. Few would suggest that the government should regulate the content of newspaper or magazine articles despite complaints against journalists. Just because there are problems, he concluded, should not be enough of a reason to pass a law allowing the government to "take over and control an industry."[34]

Towards the end of executive director Richard Clendenen's testimony the subcommittee had introduced the question of whether the Federal Communications Commission (FCC) took an active part in enforcing the NARTB's code. Similar discussion would emerge later when the House of Representatives and the Senate both

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[33] Hendrickson hearings, 184-5.
[34] *Ibid*., 194.

investigated whether broadcast networks constituted a monopoly. In those hearings, congressmen proposed direct federal oversight as a way to limit anti-competitive business practices. During the juvenile delinquency hearings, though, much of the focus was over program content. Clendenen explained that the FCC tended to review station licenses without much concern for programming unless there were "fairly substantial" numbers of complaints about the shows an affiliate chose to air. In this case, then, the FCC could raise the question the next time the station's license came up for renewal. The problem, as chairman Hendrickson seemed to imply, was that the FCC never conducted any public hearings specifically to look into the "tone and character" of the shows the legislators found most objectionable.[35]

Hendrickson then asked if the FCC should not become more directly involved with policing the whole broadcasting industry. Wasn't that, he argued, the "appropriate agency of Government" to eliminate doubts about content and industry responsibility that seemed to plague the subcommittee? Clendenen replied that he saw no reason why the FCC should not "be able to do something concretely relative to the content of television programming." This would stem from their mandate to oversee broadcasting as a legally-defined public utility. On the other hand, Clendenen refused to speculate whether the commission had the "manpower or authorization" to police the entire industry.[36] Though he was never explicit in the distinction between the two parts of his statement, it would appear that Clendenen believed the FCC could become involved in program content through their review of individual station licenses even if they did not expand their role to

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[35] *Ibid*., 79.
[36] *Ibid*.

overseeing the networks themselves. Before long, though, lawmakers would begin to wonder whether or not the FCC should be given the power to regulate the networks, as well.

It was not until the final stages of Hendrickson's chairmanship that the FCC was represented at the hearings. In his prepared opening statement, FCC chairman Rosel Hyde declared that neither the FCC nor any other government agency should be set up as a "censorship board to which all stations must submit their programs for prior approval." Moreover, the Communications Act of 1934 included specific provisions prohibiting the FCC from exercising any censorship powers and it would not only be "dangerous" but "contrary to our democratic concepts" for the federal government to get involved in such control over programming. Hyde tried to explain how the question of program review might enter into the regular license renewal hearings before the FCC. "Such a review," he said, "[was] necessarily concerned with whether the record of a station demonstrate[d] its continuing ability to serve the public interest, rather than whether it was correct or incorrect in its handling of particular programs." In addition, since no station could possibly please all its viewers at all times and because standards of taste vary with the individual, and the area the station services, the commission would never succeed in mandating program content that would satisfy the concerns of every person.[37]

The commission's limited resources meant that, even if it interpreted its mandate to extend to program review, it did not have the manpower to watch every network or affiliate to be sure it met minimum standards of taste. Thus, the commission would have

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[37] *Ibid*., 279.

to base its reviews on letters from the public. As commissioner Frieda Hennock would explain later, only an active public could galvanize the FCC into action. Field investigations were similarly hampered. Only very rarely, then, had the FCC determined that a station's programming standards had slipped so low that it could say that the station's continued operation "would not serve the public interest."[38]

Even though Hyde did support the existence of the NARTB's Television Code, calling it "a definite step in the right direction," he suggested that the individual viewer had one of the most important roles to play in the debate over programming. It was up to the public to make its "likes and dislikes and interests known to the broadcasters who are licensed to serve them." He admitted that there was a fine line in a station's responsiveness to public interests and a station being held hostage to the whims of a demanding audience. But there was no doubt that the public could, by way of letters to the station and to the FCC, help both groups better guide the industry towards its public service responsibility.[39] Indeed, at least one commentator has argued that congressmen, too, relied on constituent letters to introduce them to public concerns over television programming. James L. Baughman argues that congressmen likely were not avid television viewers and so may have been spurred to action as much by angry letters from the public as by any personal reaction to broadcast content.[40] While this may have been true in the broadest sense, there were statements throughout the record of hearings discussed here that indicated some senators and representatives were fairly regular

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[38] *Ibid*., 280.
[39] *Ibid*.
[40] James L. Baughman, *Television's Guardians: The FCC and the Politics of Programming, 1958-1967* (Knoxville, TN: University of Tennessee Press, 1985), 48.

television watchers. In addition, this interpretation raises an interesting paradox. Since viewers would probably write their congressman only to protest the nature of television programming, it is possible that lawmakers were initially presented with a rather one-sided view of TV's content. This likelihood would only be magnified if congressmen were only basing their interpretations of programming on these letters and not on any personal experience.

Chairman Hendrickson agreed with the FCC chairman that any attempts by the government to censor programming would soon face a test in the Supreme Court. Though the government had successfully mandated limits on program content with respect to obscenity and profanity, censoring materials outside those exceptions would be contrary to the constitutional protection of free speech. No one questioned the legality or appropriateness of existing legislation. But the subcommittee's real mission was to deal with programming that was not in violation of existing laws but which might have "some untoward effect." Despite his assertion moments earlier that government censorship of that programming would quickly appear before the high court, Sen. Hendrickson suggested that the FCC might extend its reach into such matters with additional legislation.[41] This seems to contradict James L. Baughman's belief that the government was not overly willing to invest the FCC with substantial powers during the 1950s and 1960s.[42]

Hyde went on in his testimony to champion the free enterprise nature of the broadcasting industry and to encourage the subcommittee not to interfere with market

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[41] Hendrickson hearings, 281.
[42] Baughman, *Television's Guardians*, 73.

operations any more than absolutely necessary. "The vitality of the broadcast industry," he said, as well as "its very great contributions to information and to culture, [was] due to the fact that it operate[d] as a private, free-enterprise service in a field of free competition with a minimum of Government regulations." He hoped that the problems of juvenile delinquency and its possible connection with television programs could be solved without the use of anything that might "restrict the opportunities or the duties of" broadcasters to live up to standards of public service.[43]

Refusing to let go of the issue of censorship in broadcasting, chairman Hendrickson pressed the FCC officer whether the motion picture industry's form of censorship overseen by the production code was different from anything that might be applied to radio and television. Hyde responded that the problems confronting the two industries were different. The motion picture industry consisted of individual studios whose productions were regulated by the MPAA's production code. Even though there were only a handful of major networks in the United States, the television code was intended to apply to all affiliates and independent stations. Hyde believed that the television code was good in that it helped to set up guides and help the individual stations make the decisions that are ultimately their responsibility. In the very next breath, however, Hyde worried that "anything that tended to standardize this problem would tend to take away some of the dynamics, some of the vitality" of a diversified industry like broadcasting. Perhaps he was here referring to the dangers of a "group of Federal officers" defining what is in the public interest, particularly in a field that dealt with

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[43] Hendrickson hearings, 281.

"ideas, political thought." Admitting that the government could deal with programming issues through the mechanism of license reviews, Hyde concluded that even that must be done in a way that avoided "censoring programs."[44]

Even relying on license review hearings to influence programming could become problematic, however. Though the FCC could not reasonably prevent a station from showing the programs it wanted, Hyde indicated that the commission might question the "fitness" of a station that "persistently broadcast a program tending to" promote antisocial behavior. If this continued and "showed a lack of community responsibility, social consciousness," the licensee would come under close scrutiny. The subcommittee's chief counsel Herbert Beaser wondered if that was not basically the same as his belief that the FCC could refuse to renew the license of a station that showed a preponderance of violent shows during hours when children were most likely to watch. As the FCC chairman saw things, the important consideration was not the quantity of violent programs nor the content of the programs themselves but was rather a question of the overall operation of the station. The extent to which a licensee "allow[ed] the station to become the advocate of an antisocial life, reflect[ed] upon the character of the applicant." Hyde was not able to make clear the distinction between Beaser's worry about too much violent programming and so much violent programming that it would "disclose the operator as being one of no social responsibility." In fact, regulating the amount of violence on television would hamper stations which wanted to show certain

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[44] *Ibid.*, 282-283.

classic works as well as affecting newsreels and news programs which "very frequently present[ed] some pretty horrendous scenes."[45]

Though she did not appear before the subcommittee in 1954, FCC commissioner Frieda Hennock did submit a written statement for the subcommittee's use. Ms. Hennock was one of the most outspoken advocates of public involvement in the FCC's license review process and was often critical of programming content. She had been appointed to the FCC in 1948 (one of the first women appointed to serve in an executive agency) and regularly voiced her belief that broadcasting tended to neglect its public service responsibilities in favor of maximum profits. This role as champion for the public has led to her being called a "minority voice" and one of the few "dissident voices" that came to serve on the FCC.[46]

Hennock declared in her statement that the public, the broadcasting industry and the FCC all had the responsibility to improve the programming children saw on a daily basis. By making their concerns known to the networks, affiliated stations and the FCC, the public could push for change and the FCC should commence hearings to give the public a forum in which to voice their grievances. Though she agreed that the commission ought not extend its reach into censorial acts, she was convinced that the commission should consider a station's programming when deciding upon license renewal. Even with the active involvement of the public and government regulators, the

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[45] *Ibid*. 284-286.
[46] Susan L. Brinson, *Personal and Public Interests: Frieda B. Hennock and the Federal Communications Commission* (Westport, CT: Praegar, 2002), 152. Robert McChesney, *Telecommunications, Mass Media, & Democracy: The Battle for the Control of U.S. Broadcasting, 1928-1935* (New York: Oxford University Press, 1993), 250.

"primary responsibility" lay with the broadcasters. The industry's codes were admirable but were not being utilized or followed as they should have been, according to Hennock. "The lofty expressions and examplary [*sic*.] standards formulated in the industry codes," she said, "[had] little actual relationship to the programming offered on television." Hennock hoped that the codes could serve their purpose but, "to the extent that it falls down, the regulatory body responsible under the law to insure that broadcasters operate in the public interest, must act." In essence, the FCC was obligated to step in and guarantee minimum standards in content because the broadcasters had fallen short of their duty to do so.[47]

Once the Democratic led Eighty-fourth congress was seated in 1955, the chairmanship of the juvenile delinquency subcommittee passed to Tennessee Senator Estes Kefauver. One of the first witnesses to appear before the newly empanelled body was the outspoken FCC commissioner Frieda Hennock. In the course of her testimony, Hennock detailed her views on the role of the FCC in network program regulation as well as the power of the viewing public to influence and affect programming change. At the beginning of her testimony, Hennock was asked if she minded the hearings being televised. "Not at all," she replied, "the public should get in on the act here … that is one of the missing links, the most important missing link."[48] Indeed, one of the main steps she urged to improve the monitoring of network programs was for concerned civic groups to "press the stations, the networks, the program sponsors and the FCC itself" to change shows for the better. Though couched in terms relating to television's role in

[47] Hendrickson hearings, 289-290.
[48] Kefauver hearings, 24.

juvenile delinquency, Hennock clearly hoped that a general practice of program review would be enacted by the FCC and by an engaged citizenry. She went on to bemoan that the public had to date been deaf and blind to the problems of TV programming. Viewers, she said, "should no longer take [their] radio and TV programming for granted, or continue to accept passively anything the networks and broadcasters choose to offer."[49]

It is interesting to note the statistics that Ralph Hardy, the NARTB's executive in charge of government relations presented to Senator Hendrickson. He listed how complaints his organization received in 1951 versus 1953 broke down into various categories. The leading area of concern was advertisements for alcoholic beverages with 255 letters in 1951 and only 13 by 1953 while letters regarding violence settled near the bottom of the list (1951: 73; 1953: 12). Every category Hardy described saw a precipitous decline in the number of complaints between 1951 and 1953, apparently indicating that self-regulation on the part of the broadcasting industry was successfully addressing public concerns.[50]

As far as Hennock was concerned, one of the most powerful tools available to viewers was their impact on a program's sponsors. Though audiences often simply turned the channel when confronted with programs that upset them, "the airwaves belong to them." It was their responsibility to make their concerns known and what better way than to direct their complaints to the money-men behind the offending shows? "Just imagine," she said, "what a sponsor would do if he were to hear from others as to the revolting nature of these programs when he is trying to build up good will with the

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[49] *Ibid*., 26.
[50] Hendrickson hearings, 57.

public." There would be immediate change. Sponsors certainly would not want such a negative public reaction. And they would respond by pressing the networks to change or risk losing valuable advertising revenue. In line with Kefauver's hope that congressional hearings would create an informed and active public, Hennock believed that the juvenile delinquency hearings were "beneficial" for their ability to spur the public into action.[51]

Evidence of the role of the public in the hearings can be seen in the appearance of representatives of the National Association for Better Radio and Television (NAFBRAT). Though it counted among its 43 national directors men like cultural critic Gilbert Seldes, NAFBRAT operated under the conviction that "informed, organized community listener-viewer groups [could] assist materially in the economic and cultural development of radio and television." NAFBRAT's president, Clara Logan, appeared before chairman Hendrickson in October 1954 and described a litany of violent images in four "so-called westerns." Given the number and severity of the scenes, Mrs. Logan had no doubt that the programs in question – shows like *The Roy Rogers Show* and *The Lone Ranger* – were more properly crime programs. "The solution to this critical problem [violent programming's role in juvenile delinquency]," she declared, was found "in public enlightenment and individual responsibility."[52]

Hennock also criticized the amount of "commercialism" on broadcast television. There was a time, according to the commissioner, when she pushed not to renew the licenses of stations that ran "back-to-back commercials" and that succumbed to the daily mounting commercialism of early television. Ideally, the commission had hoped to

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[51] *Ibid*., 28.
[52] *Ibid*., 198-203.

organize a conference with broadcasters to encourage them to limit their advertising; however, the conference never materialized as other commissioners were seemingly reluctant to push for it. In spite of her criticism of the commercial nature of broadcasting, though, Hennock did not wish to dismantle the network system. She merely hoped to allow audiences greater choice in programming. If a station could get any size audience to watch a production of a Shakespeare play, even as few as 100,000, so much the better. Cultural or educational programs admittedly may not always get a large viewership but "even the smallest audiences" were worthwhile. Somewhat tellingly, Hennock argued that cultural shows were not intended to "compete" with commercially successful programs like the Milton Berle show or *I Love Lucy*. Rather she hoped that the FCC could encourage networks to "get on the air and spread culture and education free of charge to as many people as possible."[53]

Commissioner Hennock regularly supported the voluntary code set up under the auspices of the National Association of Radio and Television Broadcasters (NARTB) but just as often she criticized its failure to yield measurable results. As a purely voluntary code, she worried, it had little to no ability to enforce standards even when those standards were well thought-out and reasonable. Hennock even admitted that the code's standards were "excellent." But since the NARTB could not enforce the code with any punitive measures she seemed to imply that it was largely irrelevant. Both the networks and their affiliated stations bore a large responsibility to improve programming. The outspoken commissioner repeated her written statement saying that industry self-

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[53] Kefauver hearings, 30.

regulation could be counted on to "fall down" in its obligations, though, leaving "the regulatory body responsible under the law to insure that broadcasters operate in the public interest, must act."[54]

Unlike many witnesses who appeared before the various committees discussed here, FCC commissioner Hennock seemed much more amenable to the idea of direct government review of programming. Though she did not advocate the government telling stations to present certain shows and not others, she leaned towards a much greater level of government involvement through the FCC. If the hearings succeeded at nothing more than getting "a concerted effort by the FCC and the public, to get after the licensees and the sponsors," they would have "accomplished a great deal."[55]

Late in Hennock's testimony, chairman Kefauver asked whether the FCC should be more active in pressuring affiliates to abide by the NARTB programming code. Shouldn't there be some kind of report made to the FCC detailing the level of code compliance on behalf of local stations? In this way, the FCC could use the NARTB code as a measure of how well stations met their public service responsibilities and approve or deny license renewals accordingly. Kefauver seemed to be looking for a way to connect the voluntary codes favored by industry representatives – and certainly many lawmakers – with a more vigorous government role. Like the idea he had during the motion picture hearings to fuse the television and motion picture codes, or Sen. Dodd's later suggestion that the government pass a law mandating industry compliance with its regulatory code,

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[54] *Ibid*., 25, 27.
[55] *Ibid*., 30.

Kefauver apparently wanted an ironclad way to force an ironic system of obligatory, voluntary self-policing.

Hennock disliked the idea, however. One of the great things about the existing system, she argued, was that individual licensees were directly responsible to the FCC. The NARTB was not a licensee and placing it in a position between the Federal Communications Commission and the network affiliates it licensed would be bad for both sides. Put in these terms, Kefauver seemed to come around. The direct control the FCC exercised was indeed preferable. Still, he wondered if, simply as a matter of information, it might be useful for the FCC to get a record of a station's compliance with the NARTB's code. Backing away from his suggestion of moments earlier that such information could be of assistance during license hearings before the commission, Kefauver toned down his belief that the government and the industry's regulatory code should be more closely tied.[56]

By the time Connecticut senator Thomas Dodd assumed the chairmanship of the juvenile delinquency subcommittee the focus of the hearings shifted to direct criticism of the networks. Dodd and his compatriots would repeatedly blast network executives for their failure to address the concerns raised by the subcommittee and civic organizations even occasionally threatening to pass laws allowing the government to intercede and enforce mandatory programming standards. In a way it was the revelations of the next major series of hearings, those into the quiz show scandals of the late 1950s, that would provide the foundation upon which Dodd's criticisms gained their fullest traction. As

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[56] *Ibid*., 33.

will be seen, the revelations of the controls and rigging of the extremely popular quiz shows reflected the complex nature of network program operations. The scandals also pointed to the problems with self-regulation in an industry dominated by sponsorship and the need to ensure the largest possible audience.

PART TWO

SCANDAL!: CORPORATE AND CAPITALIST INFLUENCE IN CULTURAL PRODUCTION

The hearings described in Part 1 centered on mass culture's relation to juvenile delinquency. It was this concern – the idea that mass culture could influence the rates or the severity of youth crime – that led congressmen to investigate comic books, television and motion pictures. Very quickly, though, these discussions moved beyond questions of causality or possible solutions for juvenile delinquency and into the economic aspects of how the culture industry operated and assured itself of maximum audiences and revenues. Between 1955 and 1961 congress opened a series of hearings that tackled these concerns head on.

The first of these were hearings into the operation of television networks. Both senators and representatives opened investigations into whether the major networks were monopolies and whether they functioned in such a way as to limit competition or opportunities for their affiliates. The practice of "bundling" lamented by comic book distributors and vendors seemed similar to the "must buy" and "option time" policies mandated by ABC, CBS and NBC. Led by Emmanuel Celler and John Bricker, congressmen grilled executives about their networks' control over how their affiliates operated. Was it possible, they wondered, that these sorts of activities limited the affiliates' freedom to sell ad time to local sponsors or to program shows of local interest? Each of these possibilities was of equal concern.

On the one hand, competition was stifled at the local level because larger ad firms received access to the huge audiences delivered by networks during prime time. This left smaller, local advertisers without the chance to buy time during the most popular network programs. On the other hand this level of network control could reduce the ability for local stations to include the sorts of local programs which would meet the requirement for broadcasting in the public interest as outlined in the Communications Act of 1934.

They also debated the power and influence of the ratings systems. It seemed to many congressmen that network executives all-too-often used ratings numbers as *the* arbiters of success or failure. This led to cycles of similar programming in an effort to capitalize on apparently popular shows. Such a vicious circle could almost totally destroy any possibility for legitimate competition. As we shall see, "competition" became more a matter of choosing between different Westerns or different comedies at a given time rather than choice between news on one network, comedy on another and a Western on the third.

Ultimately, these hearings into network monopolies pivoted on the question of whether the government should directly regulate networks through licensing their operations rather than simply licensing the local affiliates. All of these considerations would resurface during the hearings into the creation of public broadcasting in the mid-1960s. During the PBS debates, congressmen considered the paucity of public service programming as well as the need to set up a broadcasting system that could offer cultural or informational fare that was bypassed by networks hungry for ratings and audience share.

At the end of the decade congressmen were faced with two significant scandals within the cultural arena that seemed to encapsulate the very serious problems with American mass culture. Between them, the quiz show scandal and the payola scandal included nearly every fundamental problem with the culture industry. Both of these congressional hearings were outgrowths of the House of Representative's self-declared mandate to oversee the operation of executive agencies like the Federal Communications Commission, the Federal Trade Commission and others. Representative Oren Harris of Arkansas opened the subcommittee's investigation into inappropriate practices on the wildly popular quiz shows in 1958. During these hearings congressmen aired the dirty laundry of an industry that seemed completely beholden to ratings and sponsorship at the expense of corporate responsibility or moral propriety.

Harris and others exposed the power of advertisers in the creation of programming and speculated that the money flowing through the television industry was enough to overwhelm even the best men. In the face of such pressures, commercial television seemed to contain the seeds of its own problems. Since advertisers were always looking for the biggest return on their sponsorship, ratings became even more important as measuring tools. If a network could promise millions of viewers during a certain time, ad agencies would be more likely to sponsor that program. In addition, sponsors seemed perfectly willing to become involved in the creative process in an effort to guarantee maximum entertainment value and thus maximum audience share. Network executives repeatedly denied any prior knowledge of the controls and manipulation engaged in by the shows' producers. And yet, they still assured lawmakers that self-

regulation was viable and was preferable to government intervention. This understandably led lawmakers to question whether self-regulation was feasible in light of the networks' failure to recognize such deception. Beyond which, network profits were always based on sponsorship which was based on audience share which was measured by ratings figures. This relationship meant that networks were almost certainly going to choose in favor of ratings and audiences rather than self-regulatory measures that might limit profits but satisfy critics.

Growing out of the quiz show hearings in the late 1950s, the subcommittee moved immediately into an investigation of the practice known as "payola." During these hearings Harris and his fellow lawmakers suggested that payola and similar deceptive practices were largely responsible for the popularity of rock and roll music. Much scholarship goes so far as to declare that congress only held the hearings as a way to attack rock and roll without resorting to outright censorship. This ignores the fact that many congressmen raised much more complex questions. For instance, they speculated that relentless airplay was able to create a synthetic demand for music that was of inferior quality. In addition, there was clearly a fine line between legitimate advertising or sponsorship and the type of pay-for-play that the subcommittee was investigating.

In light of these hearings there was a growing sense among many congressmen that some sort of direct government involvement was needed to ensure that the culture industry behaved responsibly. Although they continued to champion self-regulation as the best alternative, this increasing push for government intervention would emerge as a regular feature of later hearings into television's effect on juvenile delinquency run by

Thomas Dodd in the early 1960s. In addition, questions about the commercial nature of American broadcasting also stood at the heart of debates over the creation of the Corporation for Public Broadcasting and the public television system it outlined.

CHAPTER 4

DOES SIZE MATTER?: THE MONOPOLY HEARINGS, RATINGS AND ADVERTISING

Between 1956 and 1958 the Senate Committee on Interstate and Foreign Commerce and the House Committee on the Judiciary undertook a series of hearings into the problem of monopoly in industries regulated by federal agencies. In addition to the airline industry and steel and automobiles, network control of broadcasting came before the committees as an area where the specter of monopoly lurked. It is surprising that so little has been written regarding these hearings given the potentially serious repercussions they had for the structure of American commercial broadcasting. Since the start of a commercial network system in the United States, advertising and other capitalist revenue streams have given Americans a radio and television system that, until recent developments in cable television and satellite radio, was largely free. Whether this has been beneficial or not has been the subject of debate from the earliest days of American broadcasting and has been covered extensively in a number of other works.[1]

In essence, the hearings discussed here raised the crucial question of whether private broadcasting dominated by the networks and operating in a competitive market

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[1] Douglas B. Craig, *Fireside Politics: Radio and Political Culture in the United States, 1920-1940* (Baltimore, MD: Johns Hopkins University Press, 2000). Craig argues that broadcasting's growth during the 1920s and 1930s coincided with a peak of the free-enterprise, anti-statist sensibility in America as well as a corporate ideology de-emphasizing regulation. As such, there was little chance that American broadcasting would develop as anything but a commercial venture.
James von Schilling, *The Magic Window: American Television, 1939-1953* (New York: The Haworth Press, 2003), 52. Schilling takes this view one step further by suggesting that RCA and others pressed for commercial television at the medium's inception as a way to help the post-war economy shift to peacetime spending more easily. National advertising over the airwaves could convince citizens to part with the nearly $100 billion in savings they had compiled during WWII.

was the best that could be devised. Both the senate and house discussed network policies like "option time" and the "must buy" as being potentially monopolistic. But these investigations centered on three important considerations. First, the lawmakers discussed economic centralization and the links between advertising firms and the networks that relied on them for revenues. Second, they debated the efficacy of the government directly regulating the networks as opposed to overseeing the industry via licensing local stations. Finally, senators confronted statistician A. C. Nielsen regarding the power his ratings systems had to influence the decision making processes of advertisers and network executives. As such, these hearings continued the congress's clear interest in the economic aspects of the culture industry that began in Kefauver's juvenile delinquency hearings. Moreover, they began expanding those concerns into areas that would be essential to later hearings into the quiz show and payola scandals as well as issues that would reemerge during debates over the creation of public broadcasting.

Monopolistic business practices and competition

The prime motivating factor behind the hearings covered in this chapter was the question of whether network requirements regarding their subsidiary stations were violations of antitrust legislation. Though both senators and representatives moved rapidly into other areas of debate, it seems reasonable to start with the initial concerns over unfair business practices in our consideration of the hearings.

During the second half of the decade, network television was undergoing a major shift in its operation. Over time programs ceased to be sponsored by one particular corporation. While this system stayed in place well into the 1960s, a new form of sponsorship known as "participating" sponsorship was beginning to come into being that was similar to magazine advertising. In this new format a corporation would purchase time during particular shows but would have no control or influence on the production of the program. Neither would they have any choice about what time during the shows their advertisements would be broadcast. These changes were an outgrowth of several factors. As we have seen, motion picture studios were heavily involved in producing television shows by the end of the decade. Networks' growing reliance on pre-packaged and syndicated programs meant that sponsors no longer paid the costs of developing and filming programs that would serve largely as vehicles for their advertisements.[2]

In 1956 Emanuel Celler of New York, chair of the powerful House Judiciary Committee, opened hearings into the nature of television network practices. Celler was one of the longest serving members on the committee, holding his district's seat from 1923 to 1973, much of that as chair of the powerful Judiciary Committee. Known for his advocacy of immigration reform in light of the quota systems created in the 1920s, he also worked to relax restrictions during the 1940s to allow Jews fleeing the Holocaust easier entry to the U.S. Celler considered his formative years growing up in Brooklyn to

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[2] William Boddy, *Fifties Television: The Industry and Its Critics* (Urbana, IL: University of Illinois Press, 1993), 120-158.

be crucial in his attitude toward immigration and judicial reform during his time in Congress.[3]

A political pragmatist, if a bit of a renegade, Celler brought his concern with the public interest to his work with the monopoly hearings. He recognized that television was still suffering growing pains but believed the medium could be improved. He explained that the investigation focused on television largely because of its having recently overtaken radio as the primary broadcast medium in America. The rapidity of the transition and the huge profits to be had left networks largely unprepared for the shift from radio to television. Because of this, the first major television networks were simply extensions of the NBC and CBS radio networks that had grown in the 1920s and 1930s to distribute programming throughout the country.[4]

At the outset of the proceedings, Chairman Emmanuel Celler outlined the goals of his House Antitrust Subcommittee. Television broadcasting, Celler stated, had experienced "phenomenal expansion" during the 1950s and the "urgent nature of the problems generated" by such a dynamic industry compelled congressional investigation. As the "pattern of the industry" had begun to crystallize, the potential for questionable business practices emerged. The recession that settled in during the late 1950s may also have influenced lawmakers' desire to look into the possibility that business needed some sort of more stringent oversight in order to ensure the protection of consumers. Though the Democratic congress was certainly no friend to President Eisenhower, it would seem

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[3] Emanuel Celler, *You Never Leave Brooklyn: The Autobiography of Emanuel Celler* (New York: The John Day Company, 1953).
[4] James L. Baughman, *Same Time, Same Station: Creating American Television, 1948-1961* (Baltimore: Johns Hopkins University Press, 2007), 34.

they were not wholly dismissive of Ike's concept of the corporate commonwealth. In one of the most telling statements of the hearings described in this chapter, Celler declared that one of the principle purposes of the 1934 Communications Act "was to insure a nationwide competitive system of broadcasting." Whether it was during hearings into television, comic books, movies or music, Celler's clear support of using government apparatuses to secure a competitive market for the culture industry was repeated often. Even when it wasn't stated explicitly, this belief was central to many lawmakers' approach to cultural regulation. As such, he believed that there was no field where antitrust objectives assumed greater importance.[5]

Many national magazines in the middle of the 1950s took up the banner of the two congressional committees discussed here by criticizing the increasing centralization taking place in the world of commercial broadcasting. *The New Republic*, for instance, editorialized that there was little threat that the networks would be able to "undermine our democratic society" by virtue of controlling what the nation saw and heard. Instead, the main danger was that "the major *national* advertisers, who [were] out for a constantly greater volume of sales, [would] largely determine" what programs the national audience would see during "all the best broadcast hours." The magazine essentially supported Celler and others who hoped to free local stations and local advertisers from network power. As many would argue during the PBS hearings a decade later, such an

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[5] House Committee on the Judiciary, *Monopoly Problems in Regulated Industries: Hearings before the Antitrust Subcommittee (Subcommittee No. 5)*, 84th Cong., 2nd Sess., June-Sept. 1956, 3967-3968. [hereafter Celler hearings]

arrangement would allow these local entities to "direct their appeal to special – even minority – segments of the viewing audience."[6]

Anne Langman of *The Nation* took things further when she declared the networks to be "a monopoly that [was] absolute beyond the dreams of a steel magnate or motion picture czar." This monopoly was so powerful, in fact, that it, and not "a lack of courage … or shortage of imaginative creativity," was responsible for the poor quality of network programming. The only solution was opening the industry up to a more equitable relationship between networks and affiliates. Once again, competition was the solution to poor quality programs.[7]

The congressman recognized that television was a medium still in its infancy. Though networks, producers, station managers and others were to be commended for their unique and successful solutions to perplexing problems, there was still vast room for improvement. "Great responsibility" was vested in those who "determine what the Nation sees and hears." After all, a communications system that could bring Shakespeare "to more viewers on a Sunday afternoon" than had been exposed to the Bard's work in 400 years of books, plays and other media was powerful – some might argue dangerous.[8]

Because of this responsibility, it was important for Celler's subcommittee to get to the bottom of whether network control of programming imposed a "production disadvantage upon independent program sources." Like the debate that would develop

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[6] "Monopoly and Monotony," *The New Republic*, 16 Sept. 1957, 5.
[7] Anne W. Langman, *The Nation*, 20 July 1957, 39-40.
[8] Celler hearings, 3967-3968. Thomas Doherty, *Cold War, Cool Medium: Television, McCarthyism and American Culture*, (New York: Columbia University Press, 2003), 81-82. Doherty describes how television in the McCarthy period sparked a debate over whether the medium would lead to demagoguery or would foster the emergence of a genuinely politically aware public.

during the payola hearings a few years later, Celler feared that the powerful networks could impact just who could achieve success within broadcasting. American television was (and is) a commercial enterprise. This meant that congress needed to extend its inquiry into the advertising revenues which served as "the lifeblood of network telecasting." Celler promised that his subcommittee would discover whether advertising time during prime evening hours was available "on an equitable basis to all advertisers and advertising agencies or conversely [were] concentrated in the hands of a few."[9] This potential concentration of economic power between the networks and ad firms worried the chairman.

Presaging the quiz show hearings that would absorb the nation two years later, Celler focused on the power of large advertising firms to affect programming choices and by extension their power to influence American economic developments. While questioning the head of CBS, Frank Stanton, the subcommittee's chief counsel Herbert Maletz pointed out that the top fifteen advertising agencies in New York handled more than seventy percent of all ad time on the network with the top six agencies responsible for nearly half of all advertising time. Though it was admitted that there was bound to be a certain amount of concentration within larger firms in any area, Celler wondered if it was "good to have the kind of concentration" that was suggested by such figures. Was it, he asked Stanton, "something for a committee of Congress to look into?"[10]

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[9] Celler hearings, 3967-3968.
[10] Celler hearings, 5658.

Stanton felt unqualified to answer such a broad question. Instead, he said, growth was natural in many areas of the economy.[11] When an agency grew large enough it would have subdivisions responsible for handling accounts in diverse areas and would almost certainly have service features that smaller agencies simply could not afford to maintain. Moreover, Stanton cited a recent issue of *Fortune* magazine as he described the expanded services many firms included. Starting in September 1956, *Fortune* ran a series of stories detailing the pressures faced by the largest advertising agencies. Networks gained more and more control over their programming in some cases relegating advertisers and sponsors to the margins of program creation and influence. According to Daniel Seligman, the article's author, some ad firms struggled with CBS and NBC because of the networks' growing power over their programs. Because networks even cancelled shows which had sponsorship ready and waiting, agencies lost revenue and this led them to support Celler's investigation in the hope that it would yield some change in network policies. Seligman pointed to NBC's decision to cancel the *Voice of Firestone* cultural program and replace it with a show that would "get a larger audience." Rather than accept NBC's offer of a lesser spot on the schedule, Firestone chose to move the show to the upstart ABC. Seligman was not alone in his condemnation of network executives' decisions to eliminate cultural programming. During the 1960 hearings into payola, Rep. William Springer (R-IL) would again use the *Voice of Firestone* as an

[11] *Ibid*., 5660.

example of the culture industry's regular supplanting of quality cultural fare with higher rated and more profitable programming that was less enlightening.[12]

In addition to the tension with the networks, advertising companies also faced traditional market pressures as clients like Coca-Cola and Philip Morris began changing agencies. Lastly, many firms began expanding into areas that had never been part of their mandate. For instance, agencies in 1956 were being drawn into the presidential election. Taken together, these factors forced many agencies to reevaluate their *raison d'etre*. In order to secure their relationships with clients, ad firms grew into "sales strategists." They helped clients design entire advertising campaigns including areas that had "'little or nothing to do directly with advertising.'"[13] As Stanton interpreted the article, larger agencies had branched out into "public relations, and attitude and opinion research and market research, product design, advertising approach, distribution problems" and other things "that [went] beyond advertising, per se" but were still related to the field.[14]

There was a general move toward concentration throughout many areas of the economy during the post-war years. As we have seen, corporations working to avoid the antitrust dangers inherent in vertical integration would often develop conglomerates or would consolidate their holdings to maximize profits. These changes impacted the advertising world during the 1950s as well. In addition, networks had already been granted what was essentially a government-approved monopoly with the Communications Act of 1934. This combination of network power and advertising

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[12] Daniel Seligman, "The Amazing Advertising Business," *Fortune*, Sept. 1956, 107-234.
[13] *Ibid*.
[14] Celler hearings, 5658-5659.

consolidation meant that in 1956 more than half of NBC's advertising revenue was handled by only nine ad firms. Within two years thirty-seven percent of firms were responsible for more than ninety percent of NBC's revenues.[15] Although television advertising started the 1950s as a very small part of many ad agencies' accounts, totaling $12.3 million in billing during 1948, by 1952 that number had spiked to $128 million. One firm alone saw a nearly $200 million increase in television accounts from 1945-1960. Thus there was a good deal of centralization within the broadcasting industry that worried many of the congressmen involved in the hearings discussed here.

What worried Celler most about such influence on the part of large ad firms was the power they could exert on the "market habits of the Nation." Though Stanton suggested that advertising agencies were responsible for moving merchandise and not "forcing that movement of goods in one market as against another," Celler pointed to a recent article he had read about Stanton's counterpart at NBC. In October 1956 *Collier's* magazine profiled David Sarnoff, the chairman of the board of RCA which controlled NBC. The article described RCA's interests as "almost staggering" in their breadth with subsidiaries involved in show business, news gathering, advertising, manufacturing, electronic research, radio patent-licensing and commercial communications in addition to broadcasting. The scope of RCA's economic interests was not the only thing that may have stood out to Celler. As the article said, the corporation was "founded on blank space … through which it haul[ed] not tangible things like coal or iron but the insubstantial freight of words, symbols, sounds and images. The power inherent in this

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[15] Boddy, *Fifties Television*, 157-158.

ghostly traffic [made] RCA one of the most powerful influences pervading the everyday life of Americans."[16] While CBS and ABC did not operate under the umbrella of a controlling company as gargantuan as RCA, they still had power similar to NBC's to affect economic and cultural life in the U.S. And one of the primary needs for each of the big three networks was to ensure audiences for their major sponsors, represented by large ad agencies.

Stanton relied on his view that the incredible expansion of the major advertising firms was directly tied to the growth in the consumer economy after World War Two. As economic facilities shifted to producing consumer goods in the late 1940s and 1950s, there was an increased need to market and sell the vast amount of products flooding the market. Television was "a very effective instrument" for meeting that demand. Advertisers were "simply a part" of television's role in "moving the goods and keeping [America's] production at a high level."[17]

This belief was perfectly in line – though perhaps more optimistically stated – with economist John Kenneth Galbraith's view of advertising and the American economy. Galbraith's seminal (and surprisingly successful) work *The Affluent Society* (1958) argued that advertising was in large measure responsible for the creation of false and manufactured demand. Increasingly savvy advertisers appealed to latent desires in the American population in order to convince consumers that they "needed" new

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[16] Thomas Whiteside, "David Sarnoff's Fifty Fabulous Years," *Collier's*, 12 October 1956, 39.
[17] Celler hearings, 5660. Market researcher A.C. Nielsen would restate this argument during the senate's hearings modestly placing himself and his firm squarely in the center of the nation's incredible post war economic boom.

products to fit in or to keep up with their neighbors. Thus, new models of established products gained new importance and new products were supremely attractive.

In order to guarantee a continually expanding economy American capitalism, according to Galbraith, was forced to create needs on the part of a consumerist society. Corporations in the United States used advertising to convince buyers that each new product or each new model year of an existing product was a necessity. The producer, then, had a dual role "both of making the goods and of making the desires for them." And "production, not only passively through emulation, but actively through advertising and related activities, creates the wants it seeks to satisfy."[18] Like Riesman, Galbraith described how expanded consumerism and advertising's power to instigate demand increasingly caused people to tie their self-worth to their ability to acquire the latest material possessions.

Galbraith worried that the media system in America put before the public evidence of the type of affluence people should work towards. This led consumers to spend (oftentimes beyond their means) in order to keep up with the Joneses. It also meant that the mass media was ever more responsible for instructing the public about acceptable purchasing behavior and this behavior was tied more and more to the fulfillment of psychological needs beyond the simple necessities of life. Advertisers cleverly ensured that consumer demand would never be satisfied because once the

[18] John Kenneth Galbraith, *The Affluent Society* (New York: New American Library, 1969), 142.

physical needs of a population were met psychological wants would take over, driving luxury purchases and spinning the economy upwards.[19]

Ideally, at least from the manufacturer's point of view, a self-fulfilling cycle would develop as people purchased goods partly out of the desire to emulate their neighbors and partly as a result of successful advertising. Once this cycle emerged, the economy could run almost indefinitely on such manufactured demand. "The more that is produced," Galbraith argues, "the more that must be owned in order to maintain the appropriate prestige."[20]

In order to establish a suitable demand for a new product, though, producers relied on advertising. The advertising world worked diligently at nurturing psychological wants in the American consumer in order to manufacture demand to run the post-war economy. Essentially Galbraith sees the role of advertising as bringing about wants that did not previously exist. The economist puts the relationship between manufacture, demand and advertising rather succinctly when he says:

> As a society becomes increasingly affluent, wants are increasingly created by the process by which they are satisfied. … Increases in consumption… act by suggestion or emulation to create wants. Or producers may proceed actively to create wants through advertising and salesmanship. Wants then come to depend on output. … The higher level of production has, merely, a higher level of want creation necessitating a higher level of want satisfaction.[21]

Despite Stanton's similar take on things, Celler worried about the tendency toward "bigness" that seemed to characterize much of American politics, labor and

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[19] *Ibid*., 132.
[20] *Ibid*., 141.
[21] *Ibid*., 143.

business.[22] If things should progress too far, it could lead to the nationalization found in certain industries and media outlets abroad. As he saw it, the industries most susceptible to nationalization were those which had been most concentrated. Larger advertising firms and their ties to networks, then, seemed to fit the mold of such concentration. One way to lessen such a danger was to ensure that smaller agencies had the opportunity to handle primetime advertising. Smaller, local agencies were not interested in stations beyond the region they serve and so were "relegated" to less-than-prime viewing hours. In addition, networks controlled access to primetime hours and often they limited sponsorship during these hours to larger, national ad firms and corporate sponsors.[23] This would lead to a cycle whereby smaller businesses, purchasing off-peak advertising time, would have less chance to reach sizeable audiences. Larger businesses or corporations would have much greater opportunity to enhance their stranglehold on national advertising and the expanded market-share that accompanies it.

Even worse, Celler pointed to how a small business's advertising would be shunted into off-peak hours because of its inability to pay for the more expensive prime time. Sales are reduced, he said, because "the national advertiser" took the "better hours" and placed the smaller, regional advertiser "at a very decided disadvantage." One wonders just how much influence Seligman's article in *Fortune* had on Celler's position since it also suggested that "smaller and middle-sized agencies … [were] chronically unable to place their sponsors." These firms were often "forced into the most elaborate

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[22] Though Celler was concerned with the economic and political dangers of economic concentration, his views are similar to those expressed by Estes Kefauver who saw concentration as a threat not only to consumer choice but also a potential limit on personal choice in other arenas, including politics.
[23] Celler hearings, 5660.

stratagems in order to get" their sponsors' shows on the air.[24] Stanton once again worked hard to counter Celler's argument on behalf of the advertisers. Oftentimes, he suggested, national advertisers such as General Electric or Westinghouse paid for advertising during peak hours. When such large corporations took prime time advertising slots, it was "selling for the local … dealer." Those local dealers selling radios, televisions or consumer goods benefited from the coast-to-coast advertising time large companies could afford since customers would come to their local retailers to purchase items they saw on national ads.[25] These comments are curiously similar to the worries expressed during the payola hearings that smaller, less-connected musicians and record labels may have engaged in pay-for-play because their access to radio airplay was limited by the power of the major labels. In fact, it was the revelation by Pennsylvania department store owner Max Hess during the quiz show hearings that he had paid stations not just for advertising time but to get certain spots during network primetime hours that led Rep. Oren Harris to look into similar activities in the music industry.

Stanton took things one step further by making the case for his and other networks' programming. Like arguments made in nearly every hearing described here, Stanton emphasized the importance of commercial considerations in network decision making. "Putting on strong, very popular programs" during primary time periods ensured higher advertising revenues for the networks. It also guaranteed that local advertisers, by purchasing ad time between those popular shows, would get great exposure at reasonable rates. The executive even explained that some smaller market stations took network

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[24] Seligman, "The Amazing Advertising Business," 234.
[25] Celler hearings, 5661.

programs for free because they could sell advertising time on those programs. Called "adjacencies," these ad spots would allow stations to recoup the losses incurred when networks gave free programs to stations. Typically, networks would pay local station affiliates to broadcast network-produced shows. Stanton explained that stations would often take network programs for free in the expectation that advertising time sold during those shows would outstrip the initial network payment.[26]

Republican Hugh Scott of Pennsylvania[27] called these adjacencies the "free-enterprise alternative" allowing small businesses the chance to compete and get valuable prime ad time. The only other alternative, as he saw it, was to have federal legislation requiring stations to sell primetime advertising at a lower rate. Such a policy, Scott declared, was exactly the same as that "recommended by the Socialist theories in some countries." Celler disagreed that there was no alternative besides socialism and adjacencies. Apparently comfortable giving economic advice to the executive, the congressman suggested that networks reduce the amount of time they preempted for primetime programming. Since stations were expected to broadcast network shows during peak hours, and those shows were almost exclusively paid for by national advertising revenues, affiliates were often limited in their chance to sell local ad time. Reducing the amount of network primetime could free up more space for affiliates to sell

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[26] *Ibid*., 5662.
Robert E. Summers & Harrison B. Summers, *Broadcasting and the Public* (Belmont, CA: Wadsworth Publishing, Co., 1966), 101. Though calculating figures for slightly after these hearings took place, Summers & Summers show that by 1964 2/3 of all television advertising originated from local accounts. Moreover, since networks had a great deal of power of their affiliated stations, they argue that it was in the stations' best interest to toe the line and not risk losing network programming.

[27] Hugh Scott had a sporadic career in congress, serving both in the House and Senate during his thirty-five years of service. At one time the chairman of the Republican National Committee, Scott rose to the position of minority leader in the Senate in 1969.

local advertising and raise their profits. Representative Scott once again came to the defense of the network system by arguing that the use of adjacencies was likely the only way to ensure quality while avoiding the threat of socialism suggested by government-mandated price controls.[28] Clearly the decade that had passed since the Office of Price Administration was abrogated had restored for some the appeal of the free market as a corrective tool.[29]

Adjacencies also seemed to guarantee that successful programs such as quiz shows and westerns would build large audience numbers (and the ratings that went along with them) which would then stay tuned for informational or cultural fare. As such, some network leaders used them as something of an excuse. Although popular programs may not have been the qualitative equals of news broadcasts or other cultural shows, they served a very real purpose in network scheduling. From a practical standpoint, they could bring in huge revenues and sponsorship dollars for the network. From a programming standpoint, however, they seemed to open up opportunities for inserting more cultural, educational or informational shows.

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[28] Celler hearings, 5662-5663.

[29] Meg Jacobs, "'How About Some Meat:' The Office of Price Administration, Consumption Politics, and State Building from the Bottom Up, 1941-1946," *The Journal of American History* (December 1997). The OPA was created during World War II in an attempt to regulate prices on consumer staples and commodities (especially foodstuffs) by encouraging consumers to oversee sellers and report price gouging to OPA offices across the nation. Though a direct outgrowth of rationing during the war, the OPA seemed to be a logical extension of the economic regulatory policies that were begun during the New Deal. The fact that the OPA outlasted the immediate demands of the war seems to bear out the idea that some Democrats hoped to expand price regulation into the post-war years. The Administration, however, soon faced opposition from consumers and businessmen who resisted the apparent expansion of government power into the economic arena and hoped for a restoration of a relatively free market. While never popular with the public, the OPA did receive the support of lawmakers as a way to secure a stable and equitable market during and immediately following the war.

In reality, the audiences who tuned in for westerns or to see the occasional intellectual oddities of the quiz shows were likely not terribly interested in the kinds of programming many congressmen and critics pressed for. And, as ratings soared on the backs of hit shows, the financial motivation for sticking with entertainment solidified. Due in no small part to its ability to schedule wildly successful quizzes, westerns and adventure shows, CBS captured the overall lead in ratings in 1955 and held on to it for the next twenty-one years.[30]

Writing for *National Review* in 1959 Garry Wills somewhat surprisingly admitted that television's most successful role was to provide "amusement and relaxation." More often than not, he argued, cultural programming failed to reach any high level. This was because even cultural or educational shows were shown on commercial networks hoping to attract audiences. As such, plays and symphonies were altered, lost continuity because of commercial interruptions or suffered from the "pretensions" of optimistic producers or performers. At least Westerns and soap operas were honest in their "lack of sophistication." Wills essentially argued that television ought to stick to the distractions it was most successful at and leave cultural and educational operations to traditional sources.[31] There was therefore no real problem with the potentially monopolistic organization of network or their affiliates.

Chairman Celler shed light on perhaps the most problematic aspect of network monopoly. The television broadcasting industry, he said, was already limited because the

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[30] Joseph E. Persico, *Edward R. Murrow: An American Original* (New York: McGraw-Hill Publishing Co., 1988), 408.
[31] Garry Wills, "Beethoven for the Beatniks," *National Review*, 14 February 1959, 532.

spectrum of possible broadcast frequencies was itself limited. Indeed, the federal government had initially justified the creation of the FCC and the regulation of station licenses on these grounds. "One station," then, was "insulated from competition to a degree from new entrants" simply because of the lack of frequencies available in a given locality. For that reason, Celler continued, "there should be more of a public interest" guiding network practices in television broadcasting than one could reasonably expect in other industries.[32]

Later in the hearings, NBC president Robert Sarnoff came under close scrutiny for the possibility that the network was a part of a monopoly. Owned by the Radio Corporation of America, NBC was a cog in a communications conglomerate that seemed to dominate all aspects of media production. Celler quoted at length an article from *Collier's* magazine describing RCA's interest in radio and television broadcasting as well as research and development, advertising, show business and journalism. Citing the article's figures regarding talent development and corporate diversification, Celler announced that the media giant controlled "a good part of the life of radio and television from the cradle to the grave." Celler recognized that RCA and not NBC controlled "the destinies of radio and television." In addition, the subcommittee worried that the union of the two meant that NBC affiliates bought their transmitting equipment from RCA.[33] Such a system would have been reminiscent of the sorts of integration typical of Standard Oil and the trusts of the Gilded Age.

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[32] Celler hearings, 5746.
[33] *Ibid*., 6071.

Sarnoff defended the network system of commercial broadcasting by turning the relationship between affiliate and network upside down. Though the congressmen chose to look at things from the top down, Sarnoff pointed out how valuable the stations were to the networks. It was in the networks' best interest, then, to ensure that affiliates were satisfied with the arrangement. The executive took issue with chairman Celler's comparison of network broadcasting with the automobile industry. Celler reminded Sarnoff of testimony from his subcommittee's investigation into auto retailing. Oftentimes, he said, auto manufacturers refused to renew dealer contracts, sometimes quite arbitrarily. Such behavior spurred congress to pass remedial legislation. Sarnoff, though, differed in his interpretation. It was almost impossible, he countered, for a network to change to a new station in a market. Since the FCC limited the stations based on the quality of their initial applications, the availability of broadcast frequencies and other factors, networks faced an uphill battle getting new stations in many markets. As such, they were not likely to abandon an affiliate for anything less than major disagreements. Competition between local stations was the best guarantor of quality and was the best way to limit the perception of monopoly.

A scant two years after the House of Representatives ran its investigation into broadcast monopolies, the U.S. Senate held its own hearings to determine whether it was realistic and legal to authorize the FCC to regulate networks directly. Oftentimes these debates included discussion on network monopolies that were similar to that introduced in Celler's subcommittee. By and large, however, the Senate spent most of its time discussing ways network operations might be regulated to reduce possible monopolistic

business practices.[34] Though never resolved, the possibility of the government directly regulating the networks themselves would return during Sen. Thomas Dodd's juvenile delinquency several years later. Only Sen. Dodd used it less as a carrot than as a stick to compel networks to improve their programming.

Station licenses & network regulation

One of the central debates of the senate hearing was whether networks should, or even could be regulated directly. Would such regulation be more effective than audience choice to regulate programming; or might it be detrimental to the commercial economics that drove American broadcasting? Broadcast regulation through the FCC had for decades been based in a regular review of individually licensed stations. As networks grew during the 1920s and 1930s the federal government stepped in through the aegis of the Federal Radio Commission and later the Federal Communications Commission to grant local stations specific frequencies and airspace. Since the spectrum of radio (and later television) broadcasting was limited, federal intervention was based on the need to guarantee station rights.[35] The FCC used the technological necessities engendered by this limited spectrum to review license renewals as well as applications for new stations.

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[34] "TV Networks Take the Stand," *Business Week*, 23 June 1956, 104-105. This article described the network executives' testimony before the senate as "the most detailed presentation of their operations" that had ever been revealed. This says something about the power of the broadcasting industry to control the flow of information regarding its internal operation since radio networks had been in existence since the 1920s and television networks formed in the late 1940s.

[35] Summers & Summers, *Broadcasting and the Public*, 204. Arguing in 1966, the authors suggested that broadcasting existed as essentially a legal monopoly and therefore the government which oversaw licenses and station allocation could legitimately extend its review to programming.

Over time, NBC and CBS began linking these individual stations into networks. These networks typically transferred their radio organization into television as the new medium expanded after World War Two. Beyond which, inserted in the 1934 Communications Act was language mandating that stations provide public service. This requirement would stand at the heart of many of the debates into television that took place during the 1950s.

Both the Senate and the House debated whether the FCC was already enabled to regulate networks as opposed to simply overseeing the individually licensed stations that comprised them. If the FCC could not do so with existing legislation perhaps it was necessary to expand their mandate. In addition, the lawmakers questioned whether the system as it existed was sufficient to meet the demands of an expanding television audience. In the midst of the Senate hearings, the FCC chairman John Doerfer was called to testify about the need for direct network regulation.

Doerfer described that the stations often behaved in their own best interests. Since each network also licensed their own stations to be part of their system, stations operated under two separate grants: one federal and one corporate. This meant that stations were anxious to operate in ways conducive to positive FCC review and networks would operate so they would not be punished by FCC or FTC legal action. "If networks required stations to engage in practices contrary to the Commission's rules," Doerfer said, and these practices might result in the FCC repealing station licenses, the stations would quickly "point out to the networks the consequences for the continuance" of such behavior. In other words, if networks did, in fact, force certain inappropriate business

practices on their subsidiary stations, those stations might lose their federal broadcast license, thus robbing networks of an affiliate in that market. Since the stations would have been pressured into such actions, they certainly would not readily accept their punishment. This web of responsibility encouraged both networks and stations to behave ethically. Though the special counsel Kenneth Cox worried that stations would likely operate as the networks directed, Doerfer believed that many affiliates would look to their own survival.[36] Self-interest, in some ways one of the cornerstones of the free-market system, would work both to keep stations operating as the networks expected and to keep them vigilant should those expectations interfere with the security of a stations' federal license.

Though no attempt had been made by 1958 to revoke the license of any of the few stations owned and operated by the networks (the only way a network could be directly regulated under existing law) this was largely because none of the stations in question had ever operated in a way contrary to FCC requirements. Should the network engage in any practice "deemed by the Commission to be contrary to the public interest" then direct regulation would be in order, according to Doerfer. Perhaps most important was Doefer's reminder that such direct regulation would only be appropriate if the practice could not be corrected through individual stations.[37]

Senator John Bricker of Ohio asserted that this was precisely the mechanism congress was evaluating for the FCC. That is, the commission would be given power

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[36] Senate Committee on Interstate and Foreign Commerce, *Television Inquiry*, 84th Cong., 2nd sess., 1956, 4248. [hereafter Magnuson hearings]
[37] *Ibid*., 4249.

over networks that was "substantially the same" as what they already had over the affiliated stations. Doerfer hoped to avoid such direct regulation, though. The FCC, he said, could affect networks' standards of public interest, the "maintenance of competition" and other requirements "substantially via the method" already in use. As he argued, "What particular practice [did] the networks engage in … which [couldn't] be reached" via station licenses? He saw virtually none. It was unnecessary for the government to legislate away something that may not be inappropriate. Despite Doerfer's seemingly moderate views, the special counsel and Sen. Bricker saw the proposed legislation, S. 376, as a preemptive way to strengthen the FCC's ability to react to and regulate network improprieties. If the bill simply extended the FCC's existing power over stations to include networks, it seemed reasonable.[38]

It is interesting to note Bricker's support for S. 376 and its expansion of federal regulation over the broadcast industry given his attempts to secure passage of the so-called Bricker amendment to the Constitution which would limit the president's treaty-making powers. Bricker was a well-respected Republican leader in the 1950s having served three terms as Ohio's governor and running as Thomas Dewey's vice-presidential candidate during the 1944 election. The conservative often championed a limited government, outlining in his first inaugural address as governor an emphasis on encouraging business, preserving opportunity and enhancing state and local governments to keep political authority close to home.[39]

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[38] *Ibid*., 4254-4255
[39] Richard O. Davies, *Defender of the Old Guard: John Bricker and American Politics* (Columbus, OH: Ohio State University Press, 1993), 51.

Chairman Doerfer worried about the possibility that S. 376 could be so vague as to invite dangerous interpretation. The language was so broad that "a number of other interpretations of congressional intent" might be drawn. If taken to an extreme, the requirement that networks meet the mandate of public interest could lead to censorship. Bricker and Cox brushed aside Doerfer's concerns. The new law was no different in wording than the 1934 act that created the FCC. Though there had been controversy about the spectre of censorship with that legislation, those fears had essentially been overcome. Bricker declared that broadcasting had grown largely without restriction and that growth had been "sound and progressive."[40] If the network system in America had been such a boon for the audience and had developed soundly, why was there suddenly a need to regulate those networks directly? Perhaps this was one of the unspoken arguments Doerfer had in mind when he repeatedly remarked that S. 376 would only put into writing the indirect regulation that seemed to function perfectly well at present.

Although network executives were understandably reluctant to throw their support behind any piece of legislation intended to extend federal regulation to networks themselves, they were able to couch their preferences in terms very similar to chairman Doerfer's. Vice president of CBS Richard Salant echoed many of Doerfer's concerns. Salant worried that the proposed legislation was too vague, opening the door for a commission "in some new climate of governmental regulation" and with "some new theories of what is in the public interest" to take on the role of censor.[41]

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[40] Magnusson hearings, 4257-4259.
[41] *Ibid*., 4266.

Moreover, Salant questioned the need for legislation to regulate the networks directly since the new law would basically be "a matter of … procedural artistry." The practical difference between the new law and the arrangement already in place was "exceedingly slight." As Doerfer had pointed out earlier, networks were wholly dependent on their affiliated stations to carry their programming into American homes. With the exception of network-owned stations in the largest markets, only the affiliates carried the network schedule. Salant assured the committee that his company needed to secure licensed stations – both those owned by the networks as well as by affiliates. The network would therefore do nothing to jeopardize those licenses. This arrangement meant that the FCC already had "very considerable powers" over CBS and the other networks.[42]

Salant went on to point out other areas of concern with the Senate's proposed expansion of FCC powers. Should S. 376 go through, Salant speculated, the FCC would gain the power to review networks' decisions on affiliate disbursement. In essence, the enlarged FCC mandate would place them directly into the business of network operation in a way heretofore impossible. Salant went on to worry over how an expanded role for the FCC would impact the relationship between broadcaster and advertiser. Again, concerns about government involvement in the market returned.

As Salant saw it, the proposed bill threatened to involve the government, in the form of its agents, in very basic aspects of the market. "Under the existing law," Salant declared, "the relationship between broadcaster and advertiser [was] let to the

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[42] *Ibid*., 4267.

marketplace." Once the door was opened to federal intervention in any aspect of that relationship, he cautioned, "the possibilities of Federal regulation in that area" were far too sinister to view without alarm. Doerfer had already noticed the economic nature of such direct regulation when he questioned lawmakers whether the bill under consideration intended that the FCC "forego primary reliance on competitive forces and substitute detailed supervision of network rates and services."[43]

Salant pointedly remarked that the government seemed to open its investigations into networks largely because they and certain stations were "making an excessive amount of money." The committee's chief lawyer Kenneth Cox countered that the profits simply drew attention to the possibility of "underlying problems" in the way networks ran their affairs. This motivated them to investigate but the debates that came out of the hearings often grew beyond their original intent. Salant challenged the government's conclusion that new legislation would grant the FCC "'supervisory control over the programming function'" that was "'more extensive in scope' than mere 'overall program balance.'" Such control would not be automatic. But it was more probable with expanded regulatory power. "Sooner or later," Salant opined, "the pressures may well build up to get much deeper into programming than mere program balance." His argument lost momentum, though, as he tried to further his case that networks could broadcast anything they wanted – day-long public service announcements for instance – but if affiliates refused to show them in their communities, the network schedule and the

[43] *Ibid*., 4271, 4259

corporation itself would be irrelevant. In the final analysis, stations were responsible for their own balance by choosing whether or not to air network programs.[44]

Stations had long been championed as more responsive to the market and service demands of their communities or regions. For this reason, they were considered crucial to the network revenue stream as well as most likely to meet the FCC's expectation for public service. Affiliated stations were often more "insular or conservative" and networks were anxious to gain local advertising revenue and avoid "affiliate defections." The resultant symbiotic relationship meant that networks were oftentimes quite responsive to stations' concerns over what they may see as unfair business practices or even program content.[45] This argument – albeit slightly altered – was a big reason for the decision to establish America's public broadcasting system as a collection of unlinked local stations.

Ultimately, the fear of those on the FCC as well as network officials seemed to boil down to one of regulatory excess. If the system was operating well under the present structure, it seemed dangerous to try to adjust it. Even more problematic was the fact that the indirect regulation practiced by the FCC affected network programming and business dealings through influencing affiliate stations. By regulating the networks directly, the FCC would have much greater clout to affect broadcast content nationwide.[46] Again, similar worries resurfaced during the PBS hearings a decade later when lawmakers

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[44] *Ibid*., 4281.
[45] Ed Papazian, *Medium Rare: The Evolution, Workings and Impact of Commercial Television* (New York: Media Dynamics, 1989), 107.
[46] Gilbert Seldes, *The Public Arts* (New York: Simon & Schuster, 1956), 241. Seldes worried that FCC oversight of the networks would very easily lead to prior restraint over programming and threatened to establish government censorship over commercial broadcasting.

decided to establish a quasi-independent agency (the Corporation for Public Broadcasting) in order to insulate stations from the possibility of government ppressures with regards to program content.

Certainly there could be no guarantee that an eager commission chair would use his or her power inappropriately, but Doerfer and the network executives were simpatico in their worry that expanded regulation would open the door to dangerous precedent. Not only could such a precedent smack of censorship, but, perhaps more fundamentally and certainly more in keeping with the debates in the other hearings discussed here, such precedent could affect the market economy which many saw as a powerful regulating force in its own right.

Government regulation vs. the market

This relationship between market forces and government regulation in the broadcasting world had been a thorny one. In both the Senate and House hearings lawmakers tried to determine whether federal intervention in the network system would damage commercial broadcasting. If the government were to step in with direct oversight of the networks, this could hinder the apparently free choice that television audiences enjoyed with profit-based programming. On the other hand, congressmen pointed to a disturbing trend whereby a popular program or genre was copied ad nauseum simply because it seemed to yield high revenues. Legislators echoed contemporary commentators assuming that audience "choice" for certain programs was more a result of

their having no alternatives.[47] If westerns made money for the networks, westerns were what the public got. Clearly there was something of a disconnect between lawmakers' belief in the power of the market to improve content and the repeated concerns expressed over the market's reliance on popular programming. As we shall see, the senate focused on the role of ratings systems in measuring viewers and lawmakers even hoped to discover whether networks used ratings as a significant factor in deciding what programs to air.

Again it was FCC chairman John Doerfer who broached the subject of government regulation versus market forces when he testified before the Senate Interstate and Foreign Commerce Committee. Though the FCC was admittedly responsible for overseeing and licensing stations affiliated with the major broadcast networks, Doerfer worried that extending that power to the networks themselves would be dangerous and against the original intent of the Communications Act of 1934. Unless the government wished to subsidize broadcasting directly (a position essentially validated by the Public Broadcasting Act of a decade later), Doerfer cautioned against allowing the FCC too much power. Speaking specifically about his agency, Doerfer's warning is equally applicable to government involvement in the industry as a whole. "We have no control at all over the economics of an industry which is sustained by commercial enterprises, advertising," he said. In essence, the broadcast spectrum, whether it was radio or television, was deemed a public resource to be developed and exploited by private

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[47] *Broadcasting and Government Regulation in a Free Society: An Occasional Paper on the Role of the Mass Media in a Free Society* (Santa Barbara, CA: Center for the Study of Democratic Institutions, 1959), 12.

industry. If the government should choose to deviate from that, Doerfer worried, it would be a "substantial breakthrough" and congress could wind up reaping many more "difficult situations" than it had cured.[48]

CBS vice-president Richard Salant also argued that the audience already had a great deal of influence over network programming. Whenever his network or its affiliated stations showed a program dealing with "any area of public controversy" that was not well received, Salant described the public response. The mail and telephone calls were often couched in such "violent terms" that the network was "sorely tempted" to avoid similar programming in the future. Instead, it was much more likely that they would simply "stick to entertainment." At times, then, the inflamed passions of a vocal public could do more to harm networks' airing of public service or informational programs than more mundane factors like ratings or advertising sponsorship.[49]

In addition to public outcry, Salant pointed to another external source of pressure and influence on network decisions. Even without the overt threat of direct federal regulation, networks like CBS felt a certain amount of intimidation from the government due to federal hearings into broadcast practices. Calling it a "'galloping case of Washingtonitis,'" Salant lamented the indirect power Pennsylvania Avenue had to affect network programming and business dealings. CBS did nothing "without looking over [their] shoulders at what Washington [would] do and say as a result of it." Although he would go on to say that the hearings, investigations and demands for accountability were "darn good things" for the industry, clearly Salant touched on a significant aspect of the

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[48] Magnuson hearings, 3510.
[49] *Ibid*., 4283.

hearings' power. An industry that feels besieged by government oversight like the one Salant described almost certainly operates differently than it would in a laissez faire economy. It would seem that most of the witnesses and congressmen in the hearings discussed here would agree that congressional and bureaucratic oversight added a level of de facto social responsibility to what would otherwise be a purely profit-driven enterprise. The exchange between Senator Bricker and Mr. Salant bears this out. The congressional hearings, Bricker said, were done because the public was interested in the matter and because broadcasting carried with it "such vital public importance." To which Salant responded decisively, "absolutely, and … we are going to worry the day Washington doesn't worry about us, because it will mean television has no impact any more."[50]

Even though Salant and Bricker seemed to agree on the need and usefulness of government oversight from a theoretical standpoint, the network executive worried that excessive regulation was anathema to the American market tradition. Whenever there had been a choice in industry between regulation and competition, he argued, the choice had always been made in favor of competition. Presumably speaking of both congress and the consumer public, Salant declared "if you can get what you want by letting competition run free, you have a better chance of achieving your objectives."[51] Again, competition was viewed as a more likely and certainly more attractive alternative to federal intervention.

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[50] *Ibid*., 4285.
[51] *Ibid*., 4294.

When David Adams, the executive vice-president of NBC testified before the committee, he was often more forceful in his belief that competition and not federal involvement was the best option to regulate the industry. As he interpreted the proposed legislation, it would extend "Government supervision to a whole new area of private enterprise in the fields of entertainment, information and advertising."[52] Adams desired that the existing system of license review by the FCC would remain the exclusive weapon in the federal government's arsenal of regulation. The networks, he hoped, would rise and fall on the wishes of the audience. Ideally, NBC would be "free to be turned down by the public, or have the public walk away from [their] service" if the network did not satisfy viewer demand. Senator Bricker, the primary voice of the committee, looked ahead to one of the significant debates that would soon come to the fore when he argued Adams' point. Since "the public wants to see television" it would watch whatever was put before them. Even more worrisome, stations that did not use network programs simply lost viewers and most likely went out of business. The cost of production meant that neither local network affiliates nor PBS stations could develop their own programming. This meant that stations relied on external sources for their broadcast content.

To Adams, the most threatening part of S. 376 was that federal regulations could conceivably extend into economic areas connected to broadcasting but not directly under the control of the networks. Should S. 376 go through, "the Commission could involve itself with such business matters as networks' advertising rates, the composition of their

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[52] *Ibid*., 4303.

advertising circulation structure, their sales policies, their financial arrangements with affiliates, and every other aspect of the business." Adams even paraphrased senator Bricker's comment from an earlier hearing when he said that the law would allow the FCC to regulate networks "to assure … fair dealing on their part with advertisers." This went beyond the realm of regulating broadcasting in the public interest, he argued. The business operations of networks were governed by "advertising mediums in a free-enterprise framework." These decisions should not be subjected to federal oversight.[53]

Adams concluded his opening statement by saying that NBC always operated in the public interest. Just because an enterprise involved "an important service to the public" this was not sufficient justification for government regulation. If the criteria of public service was all that was required, Adams argued that newspapers and magazines should be regulated as well. Necessarily equating public interest with government regulation was "repugnant to the principles of a free society." Even worse, to Adams' mind, such a view assumed that "responsible free enterprise" could not be relied upon to serve the needs of the public, "and that controlling it through officials in Washington [was] always the answer."[54]

Adams went on to describe one of the flaws in the government's argument for the need for direct network regulation. He admitted that license grants based on the scarcity of broadcast spectra were reasonable. This applied directly to the stations. There was nothing in network operation that provided an opening for federal oversight or review. "Placing networks under Government control," Adams said, "would be regulation for the

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[53] *Ibid*., 4316-4317.
[54] *Ibid*., 4318-4319.

sake of regulation."[55] Although his wording was perhaps over-dramatic – no one had suggested that the government would take control over any networks – Adams seemed to have a point. A review of the transcripts of the Senate's hearings fails to yield any clearly defined justification for government regulation of the networks.

Time and again, Adams pointed to the power of the market to regulate network operations indirectly. Networks needed no government regulation because they had "built-in controls, exerted by the elements" they served. The public, the advertisers, the stations all had influence over network programming and business operations. Of these, the public was "the final arbiter." If network programs were not well-received by the public, the audience would defect. "Networking," Adams said, was "a free-enterprise operation, intensely competitive in all its aspects. Networks compete[d] amongst themselves – for audience, advertisers, and affiliates. They also compete[d] with all other national advertising media – such as the magazines, newspapers, and Sunday supplements – and all of these competing media were unregulated."[56]

Adams summed up his testimony nicely when he pleaded with the committee that "the Government should leave free enterprise free." Federal oversight should be permitted only when there was a clear case of "public injury" that required some sort of government action. This was "the guiding principle of our free economy." It was even more crucial when a medium of "public expression" was involved.[57]

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[55] *Ibid*., 4319.
[56] *Ibid*., 4325.
[57] *Ibid*., 4326.

Ratings and programming

Just how free the market was stood at the center of much of the senate committee's inquiry into the role of ratings services and market research in broadcasting. To get at the heart of the matter, the committee called the founder of A. C. Nielsen, Co. to testify. Arthur Nielsen explained that he founded his company in 1923 because of a lack of reliable and accurate information on consumer habits. As he described in a company publication in 1937, Nielsen believed that corporations should expect a "moderate percentage of error" in their marketing decisions. However, no company should come to these faulty decisions because of a lack of information. The tools provided by Nielsen's firm, he argued, would lessen the danger of false information leading to poor marketing plans.[58]

It was clear to him that the problems of marketing products would soon become as crucial for corporations as the manufacturing process itself. He hoped to improve manufacturing and marketing in America, then, by providing corporations with the statistical information they needed to make more informed business decisions. Since poor market research put millions of stockholders' dollars at risk and "affected the cost of distribution and therefore the standard of living of the Nation," it was crucial that a sound system be put in place. Eventually, according to the committee, A. C. Nielsen came to

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[58] Arthur C. Nielsen, "Increasing Sales and Profits with Continuous Marketing Research" (Chicago: A.C. Nielsen, Co., 1937), 4. An internal publication from the Nielsen company, this was an address to the National Federation of Sales Executives in an attempt to convince them of the benefits of utilizing Nielsen's research. Throughout the address, Nielsen describes the many obstacles executives face when developing advertising and sales plans.

guide the marketing decisions of "the vast majority" of important corporations in food, drug and allied industries; industries that were responsible for over sixty percent of consumer advertising dollars.[59]

Many corporations who availed themselves of Nielsen's market research also spent large sums of money for broadcast advertising. According to Nielsen, these companies worried that their decisions in that segment of their marketing operations were based on speculation and hearsay and so approached Nielsen to adapt his statistical methods to measuring audience size. The first Nielsen audience measuring system was put into place in 1942 and extended to television broadcasting in 1950. Nielsen bragged that his ratings system had since become "accepted as the 'bible' of the broadcasting industry."[60] His boast would soon come back to haunt him as the committee repeatedly expressed concern that ratings exerted undue influence on network decisions regarding programming and advertising revenue.

At the outset of the hearings, Senator A. S. Mike Monroney asked a number of probing questions into the use of ratings as a legitimate tool for understanding and gauging audience preference. Monroney observed that the polling did not worry the committee so much as the "self-imposed Supreme Court ruling effect of finality" the ratings seemed to carry with Madison Avenue and network executives. Rather than basing decisions on personal review and reactions, executives seemed to rely on "the strict, stark figures that come out of the automation" Nielson had provided to the

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[59] Magnuson hearings, 4379.
[60] *Ibid*., 4380.

business.[61] He had also loudly criticized network executives' reliance on ratings on the senate floor, angry that they "'supinely bow[ed] to this fictitious god that [told] America what it may hear and see.'"[62]

After the statistician's opening statement Monroney began picking apart the efficacy of ratings as a reliable and legitimate tool for truly measuring audience choice. Was it not the case, he wondered, that ratings merely calculated the number of people watching a certain program and not the number of people who enjoyed or preferred that program? Even more problematic was the fact that many networks jumped on the bandwagon and produced programs similar to those on other networks that earned good ratings. "If all three networks [had] horse opera" on at a certain time, he argued, the audience sampling taken at that time would show that "the whole universe" wanted horse opera because that was all that was available to watch. In a mild concession, Nielsen admitted his system's failure to be a genuine measure of popular approval when he responded that his system "merely record[ed] what people viewed – not whether they liked it."[63] Clearly here was a significant problem with ratings as a measure of an audience's demand.

Similar concerns centered on the use of ratings to predict or influence network programming decisions. Nielsen was forceful in his assertion that ratings systems did not predict viewing habits or network decisions. Monroney countered that the problem was not with the statistics themselves but rather with how networks used Nielsen's figures.

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[61] *Ibid*., 4378.
[62] "TV Ratings – The Men Behind Them," *Newsweek*, 18 May 1959, 66.
[63] Magnuson hearings, 4401.

The people that used the ratings predicted, he said. This was the reason, then, for the "rash of giveaways of a certain kind; and then … a rash of westerns, and then … the who-dun-it series" and so on.[64] In many ways this would seem to be the opposite of measuring audience demand for certain programs. Networks based their decisions on high ratings, often because they could reap larger advertising revenues with muscular ratings numbers on their side. Since audiences sometimes had no choice but to watch a certain type of show, the ratings would seem to indicate broad popularity. If a ratings system merely led to a cycle of replication, this was no real indicator of public preference.

The slightly professorial Nielsen defended his process saying that if there were no real yardstick for measuring audiences, advertisers and program executives would "substitute guesswork for facts." In the long run this would mean that many programs would be cancelled simply because executives could not make accurate guesses about a show's popularity. This would certainly have a direct impact on advertising as well. It is interesting to note that an internal A.C. Nielsen, Co. publication from 1980 seemed to approve of the predictive power of the television ratings system. When listing the benefits of the Nielsen Co.'s statistical research, one of the primary goals of the process was to help "advertisers predict performance." Ratings also "guide[d] agencies in the buying of TV schedules" and "serve[d] as both a programming and sales tool for the networks, stations and program suppliers."[65]

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[64] *Ibid*., 4407.
[65] "The Nielsen Ratings in Perspective: A Description of the Media Research Group of A.C. Nielsen Company." (Northbrook, IL: Media Research Group, A.C. Nielsen, Co., 1980), 3.

One of the fascinating aspects of Nielsen's testimony was his repeated championing of what might be termed scientific capitalism permitted by his ratings and market research process. Though famous for developing one of the first mechanisms to measure television audiences, the Nielsen company made its name and made its founder's fortune by leading the way in the field of market research.[66] Taken together, Nielsen believed that these two services could allow corporations to base their decisions regarding advertising and sponsorship on detailed information rather than simple guesswork. The statistical information Nielsen provided through his market research services gave businesses specifics on which audiences used particular products allowing companies to increasingly advertise to the audience most likely to purchase their products. The same could be said for Nielsen ratings. By giving networks hard numbers showing how many people watched certain shows, ratings quantified popularity even if they carried no measure of preference. Thus ratings gave networks and sponsors alike scientifically accurate information to guide their choices. No longer would corporations toss advertising money around with little direction.

Nielsen was proud of his company's role in increasing the likelihood for corporate decisions to be based on statistical fact rather than speculation. Though he failed effectively to draw the line between the two, Nielsen argued that poor ratings were not responsible for a show's cancellation. Instead, "the business policy (generally of the network or sponsor) of seeking programs which [would] reach audiences of maximum size" caused networks to cancel programs. Nielsen praised ratings for giving advertisers

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[66] "TV Ratings – The Men Behind Them," 66. *Newsweek* pointed out that, despite the notoriety of its ratings systems, 78 percent of Nielsen's business was in market research.

the factual information needed to decide precisely where to invest their sponsorship dollars. "Skillful use" of ratings and research data allowed Nielsen clients "to employ the most efficient and profitable methods of marketing and to avoid costly errors."

In addition, accurate data lowered advertisers' overall cost as well as their cost per household because it ensured their ads would reach "audiences of maximum size."[67] Obviously, the major flaw with Nielsen's argument was that his ratings systems and the figures they provided were precisely a measure of the audience's size. If ratings were a statistical measurement of audience numbers and the networks based decisions on ensuring the maximum number of viewers for their sponsors, the ratings were exactly what was used to continue or cancel programs. Ultimately, this was contrary to the ideal of the free market that many lawmakers and witnesses championed. The sort of scientific capitalism Nielsen supported was an attempt to limit the vagaries of the market by providing corporations with statistical information they could use to more closely focus their marketing and advertising and thereby reap the maximum reward.

Doing away with audience research of the sort provided by the Nielsen Co. would endanger the American economy because it would make advertising much more speculative, he worried. Eliminating Nielsen ratings and market information would mean the advertiser would possibly spend millions of dollars on guesswork. Such spendthrift business practices would have "serious consequences."[68] While he never said it in so many words, Nielsen seemed to believe that his service had been at least partially responsible for the tremendous post-war consumer economy. In a 1944 address to a

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[67] Magnuson hearings, 4379, 4416.
[68] *Ibid*., 4420.

gathering in New York of students and executives working in marketing, Nielsen proclaimed his company's role in driving the American economy. Increasing corporate profits and cutting distribution costs would "make [American] goods available to increasing portions of the population, and thus bring about an increase in the American standard of living." Clearly, Nielsen somewhat grandiosely declared, market research, "in addition to exerting a vital effect on corporate sales and profits, [had] a very direct bearing on national and world prosperity and human happiness."[69] Since companies had more accurate market research to base their marketing on, they were able to manufacture and react to buyer demands.

Taken together, these things seemed to outweigh the "sociological questions … involved in deciding whether the interests of the public would ultimately be served better if television entertainment were selected by experts." Again, Nielsen drifted into a fluid interpretation of his system's relation to actual audience preference. He described audience choice in the entertainment world as being essentially a part of the democratic process. Most would agree that it was desirable "to allow every individual the maximum possible freedom of choice" in all aspects of economic and political life.

In light of this interpretation, it was not surprising to Nielsen that television, like other forms of entertainment succeeded or failed "in proportion to how well it please[d] the public."[70] In fact, Nielsen speculated that government regulation or control would fail to serve the public interest completely. The example of British television seemed to bear out Nielsen's beliefs. He described how, until recently, British programming had

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[69] Arthur C. Nielsen, "Advances in Scientific Marketing Research" (Chicago: A.C. Nielsen, Co., 1944), 1.
[70] Magnuson hearings, 4417.

relied on government subsidies to offset the lack of advertising revenue. When commercial money entered the picture in the fall of 1955 Nielsen ratings showed that nearly seventy percent of all sets were regularly tuned to the commercial, non-governmental stations. Clearly, Nielsen believed, Americans would similarly reject "some Government official" deciding what programs would be good for them.[71]

Evidence seemed to suggest to Nielsen that television was responsible for a much greater standard of living due to the cheap and effective advertising it facilitated. "The fact that television, operating in free competition with other forms of advertising" had garnered the "lion's share" of advertising revenue for many goods, showed that it could "move certain types of goods at a lower cost than any other medium." Any government that interfered with this free enterprise system risked "forcing certain advertisers to substitute less efficient methods of distributing goods – thereby increasing the cost of distribution and lowering the standard of living."[72] Though this was certainly worded in such a way as to enhance Nielsen's role in the post-war economic boom, it curiously differed from the testimony given during the juvenile delinquency hearings of several years earlier wherein television executives bemoaned their poor market share compared to print media.

Much of Nielsen's statement still worried Sen. Monroney. He came back to the question of whether ratings did exactly what Nielsen suggested. Entertainment survived on variety, he said. Again he criticized Nielsen's system for encouraging imitation and oversimplification and discouraging real choice. Networks and advertisers followed the

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[71] *Ibid*., 4421.
[72] *Ibid*., 4424.

leader, he pressed, and if a show received a good rating, "the other two networks jump[ed] on that and [tried] to parallel it." If this trend continued the reliance on ratings systems would "reduce variety." Monroney may have been a bit extreme when he declared that Madison Avenue did not generate any original ideas; however, his basic point was reasonable. "The more of this imitation that [went] on," he worried, "the more the monopolization of the television screen favor[ed] certain categories of entertainment – and therefore the higher the ratings [went] on that type of program, because that [was] all you [could] look at at the time."[73]

Finally, the senator got what he wanted. Nielsen eventually admitted that his ratings could easily be used, and in a way were almost designed to be used, as a substitute for the free market. Although they certainly did allow advertising agencies and network executives to come together to ensure larger and larger audiences to be exposed to commercials, ratings also affected what the public was able to choose from. As Nielsen said, an upward spiral of ratings for a certain genre would cause a self-perpetuating cycle where the numbers indicated audience preference for that genre when, in reality, it simply indicated a lack of alternatives.

Nielsen eventually conceded these were problems with a ratings system. His firm, he said, had devoted considerable energy to educating clients and the public about the misinterpretation and misrepresentation that came with his data. He had a client service that was designed to help each client interpret and utilize Nielsen, Co. findings "in a sound manner." Monroney was adamant, though, in his belief that ratings often did

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[73] *Ibid*., 4417.

more damage than service to audience choice. Advertisers and network executives had a duty to the television audience to find out whether viewers were bored with television fare. "The television habits of our children, our wives, and all of us," he feared, were "going to be forced into these molds." Since they had nothing else to do some nights, they "dutifully look[ed] at the stuff that [came] across" their television screens, whether "good, bad, or indifferent."[74]

Nielsen's earlier comment on the availability of alternate television programming would return to the center of debates when congress discussed the creation of a public broadcasting system during the Johnson administration. Critics, including the lawmakers in the senate commerce committee, seemed to overlook educational stations which "[gave] the public some choice for their minority likes and dislikes."[75] It is slightly silly to think that Nielsen genuinely believed that the tiny amount of non-commercial stations and programming was a legitimate counter to the overwhelming weight of network broadcasting. This tyranny of the majority in broadcasting wound throughout many of the congressional debates discussed here. It also stood at the heart of many lawmakers' attempts to develop a public broadcast system.[76]

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[74] *Ibid*., 4496.
[75] *Ibid*., 4418. Seligman, "The Amazing Advertising Business," 233. It is also interesting to note that the *Fortune* magazine article mentioned in CBS chief Frank Stanton's testimony discussed the role of market research in the advertising world. Many admen, the article suggested, were skeptical of research as a tool to ensure an ad's success. One executive quoted in the article declared there to be "'more hucksterism in research'" than in any other area of the industry. Though widely regarded as useless, agencies recognized the clients' demand for such services and expanded their role accordingly. Clearly, not everyone in the field agreed with Arthur Nielsen about the power or value of market research.
[76] *The New Republic*'s Sept. 1957 editorial quoted earlier described how this fundamental American concern related to broadcasting. "Even where the networks know that 26 percent of the viewing public would accept a program that doesn't insult the intelligence," it said, "such a program is not likely to be shown if another program is available which can command a 31 percent audience. The 26 percent might like Leonard Bernstein, but if the 31 percent prefer Oral Roberts, we'll *all* take faith healing."

CHAPTER 5

FAST BUCKS AND LOOSE MORALS: THE QUIZ SHOW HEARINGS AND TELEVISION RUN AMOK

In 1994, nearly a generation and a half after the scandal first swept into the public eye, American moviegoers were treated to Robert Redford's film *Quiz Show*. In typical Hollywood fashion the characters are nearly all crafted to evoke sympathy and to show the unique sense of postwar innocence that was apparently shattered by the revelation that television's most popular and profitable genre was rigged. Although it neatly compresses nearly three years of investigations, judicial proceedings and congressional hearings into three months, *Quiz Show* is remarkably accurate, even using the original congressional transcripts to craft the climactic scene depicting Charles van Doren's appearance before the House subcommittee charged with the investigation.[1]

The fact that *Quiz Show* was released nearly 35 years after the nation was absorbed in the revelations of the scandals as well as the film's critical and commercial success indicates how significant the event was for the broadcasting industry. Apart from the cancellation of what was perhaps the most profitable and recognizable genre on network television during the period, however, the scandals resulted in almost no major changes to how the industry operated. This was due in large part to the fact that the Subcommittee on Legislative Oversight, the chairs of the FCC and the FTC and the industry executives brought to testify feared the dangers of too much direct government

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[1] Noel E. Parmentel, Jr., "Boo Hoo," *National Review*, 21 November 1959. Parmentel unleashed his vitriol on van Doren after the tearful academic testified before the House Subcommittee. He castigated van Doren's family as being "political naifs, dilettantes, and semi-literates" and condemned those, both on Capitol Hill and in the media, who excused van Doren's missteps.

involvement and agreed that self-regulation by the networks and the relatively unfettered operation of the market would solve many of the problems the scandals exposed.

The first body to investigate the accusations of rigging was a grand jury empanelled by the New York district attorney's office. After months of testimony and deliberation, however, the grand jury tellingly "did not have adequate evidence for any criminal indictments." What they did come away with was enough evidence to "make a sizzling moral indictment" of the "tacticians" responsible for the TV quizzes as well as the networks and sponsors behind them.[2] The failure of the New York grand jury to hand down any criminal charges would also haunt the legislators of the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce. Once congressional legislators learned of the New York investigation, they moved swiftly to address the issue. Arkansas representative Oren Harris, the chair of both the subcommittee and its parent committee, began hearings into the matter in early October 1959.

Over the course of the proceedings it became clear that congress's interest in the matter extended beyond the question of the fraud perpetrated on the American public. Harris and his fellow representatives were concerned about the role of advertisers and sponsors in the scandal as well as how far the "controls" exercised by the producers bled into the realm of manipulation.

The scandals exposed

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[2] "'A Tawdry Hoax,'" *Newsweek*, 22 June 1959, 46.

One of the first witnesses called to the subcommittee's hearings was the man largely responsible for breaking the story in the first place: Herbert Stempel. Stempel was a student at City College of New York, had an IQ of nearly 170 and was not in serious financial need when he agreed to appear on the highly rated show *Twenty One* in October of 1956. In his first meeting with Daniel Enright, one of the show's producers, Stempel was run through a series of questions seemingly as a sort of preparation session for the upcoming telecasts. As Stempel would later testify, these questions often appeared on the program for him to answer during the contest. Enright and co-producer Jack Barry quickly discovered Stempel's uncanny talent for memorization. He began to get a reputation for being little more than a human sponge for facts and trivia.

After Stempel's run of successes on the program, producers Jack Barry and Dan Enright began looking for a replacement who would provide a telegenic counterpoint to his somewhat working class style. Ratings were poor and the producers hoped that a more charismatic star would help *Twenty-one* grow into one of the major quiz shows on television.[3] In addition, the carefully constructed persona the men had developed for Stempel (that of a penniless ex-GI struggling manfully in a contest of wits) was becoming bothersome. There was a certain irony in the decision to remove Stempel given the fact that Enright and Barry were responsible for the back-story that suddenly seemed so unappealing.

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[3] Kent Anderson, *Television Fraud: The History and Implications of the Quiz Show Scandals* (Westport, CT: Greenwood Press, 1978), 53.

Coincidentally, as a lark, a graduate student and associate professor at Columbia had recently submitted an application for another quiz show, *Tic Tac Dough*. When his application was reviewed, it was clear that he was over-qualified for *Tic Tac Dough*, but would be perfect for the more popular *Twenty One*. Charles van Doren seemed ideally suited to replace Stempel. Witty, urbane and with a distinctly professional look, van Doren also had the intellectual and academic credentials necessary to make the contest seem legitimate. After all, Stempel had shown that he was fully capable of defeating any and all challengers. Although it later became clear that Stempel was provided with the questions and answers in advance, for an audience unaware of that fact, there was a clear need to provide a competitor who seemed capable of defeating the champion on his own merits.

The first head-to-head meeting between the two men came on November 28, 1956. A few days prior to the contest, van Doren and another of the program's producers, Albert Freedman, had met to discuss last minute details of the telecast. During the conversation, Freedman asked van Doren whether he would be willing to work with the producers to allow for a series of ties between himself and Stempel in order to heighten the suspense and increase the entertainment value, thereby likely increasing profits for the producers and the sponsors.[4] Although van Doren repeated several times that he preferred that the contest would proceed honestly, Freedman insisted and eventually prevailed when he argued that van Doren's victory would be a boon for educators around the country. Indeed, van Doren's career after the program,

[4] Though the matter of increased profits was never stated explicitly during the meeting, it doubtless would have been a welcome result.

including an extended daily segment on NBC's morning show, *Today*, coincided with a period of reinterpretation for America's educational system. Education in the United States during the late 1950s grew increasingly focused on science and mathematics. The National Defense Education Act passed in 1958 was a response to what Americans saw as their failure to keep up with the communists in light of Sputnik's launch in October 1957.[5] Van Doren used his time in the public eye, then, to encourage an appreciation for poetry and literature in the face of a growing emphasis on technical education.[6] Freedman also implied that Stempel was unbeatable without such trickery and soothed van Doren's concerns by assuring him that these sorts of manipulations were common in the entertainment industry. Neither man was told that the other was receiving any aid or coaching, but Stempel assumed as much.[7]

From the start Stempel and van Doren were given specific instructions on what clothing to wear and what sort of gestures to use. At their first meeting, Enright had even told Herbert Stempel to wear a rather shabby suit belonging to his late father-in-law and to choose a cheap watch so the loud ticking of the second hand could add suspense if it should be picked up by the microphones.[8]

The contrast between the two was immediately apparent. Van Doren was precisely what Enright and Barry had hoped for – charismatic and charming. Stempel played his part as the opposite of the Ivy Leaguer in every way. Though van Doren, like

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[5] Stephen Whitfield, *The Culture of the Cold War* (Baltimore, MD: Johns Hopkins University Press, 1991), 72.
[6] Anderson, *Television Fraud*, 133.
[7] *Ibid*., 55-56.
[8] *Ibid*., 49. "Quiz Scandal (cont'd)," *Time*, 8 September 1958, 43.

Stempel, took his cues from Freedman, the tall Columbia man even seemed graceful when blotting his forehead of sweat. This particular gesture was carefully orchestrated for maximum entertainment value. For instance, a contestant should never wipe his or her brow as that would appear sloppy and may disturb makeup. Instead, a slow dabbing of the forehead was preferable and would carry more dramatic impact. Dramatic pauses were among the most obvious methods to increase suspense. As the stakes grew ever higher, contestants often took increasingly long pauses. This indicated to the audience the magnitude of the money on the line and simultaneously helped to cover up the fact that the contestants were occasionally given the answers in advance. If Stempel, van Doren or any of the other quizzers had answered too quickly, the illusion of the show as an unprompted and spontaneous challenge might be lost.[9] Though the quiz programs were presented to television audiences as honest contests of skill and knowledge, many of the shows resorted to elaborate precautions to maintain suspense and to coordinate which contestants would remain on air.[10]

During each of the head-to-head meetings between Charles van Doren and Herbert Stempel, the men played their parts to perfection. However, both had very legitimate reasons for wanting to keep the contest on the up and up. Stempel, angry over the growing journalistic coverage of him as nothing more than an intellectual oddball, considered van Doren too privileged and wanted to show his real mental ability by

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[9] *Ibid*. Herbert Brean, "'Controls' and 'Plotting' Help in Showmanship," *Life*, 15 September 1958, 24-26.
[10] J. Fred MacDonald, *One Nation Under Television: The Rise and Decline of Network TV* (New York: Pantheon Books, 1990), 138.
James C. Hultin, *The Quiz-Payola Investigations, 1958-1960* M.A. thesis Kent State University Graduate School, 1971.

beating the English professor without trickery. Van Doren, on the other hand, hoped to make a name for himself on his own merits in an attempt to move out from under the shadow cast by his father and uncle, both Pulitzer Prize winning authors. The Columbia professor also hoped that his performance on the show might improve the perception of academics in an America that largely saw intellectuals as stuffy eggheads.[11] *Newsweek* commented on this soon after the scandals were exposed. "Van Doren had come along – onto the TV screens – at the very moment that the most responsible people in the nation, including President Eisenhower, were seriously concerned about the American attitude toward intellectuals." At the same time, more and more people seemed suspicious of the honesty of the quizzes. "More than anything else," *Newsweek* argued, "the fresh new breeze that was Van Doren … provided the rebuttal to both these qualms."[12]

Ironically, Rep. Steven Derounian took a page from the senate's juvenile delinquency hearings when he offered a counterpoint to Van Doren's idealism. Where the erudite and charming grad student saw his appearance as a potential boon to education and academics, Derounian worried in a sort of op-ed piece in *Life* magazine about how quiz shows might negatively impact children. Children watching quiz shows would "see other kids appearing on rigged television programs, and they [would see] people whose education they [were] supposed to respect admitting that they participated

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[11] *Ibid*. 53-54.
Mary Ann Watson, *Defining Visions: Television and the American Experience Since 1945* (New York: Harcourt Brace College Publishers, 1998), 211.
[12] "Quizzes: ???????????" *Newsweek*, 19 October 1959, 28.

knowingly in fraudulent shows. What respect [could] our children have for education when they hear about things like this?"[13]

Although both men kept up their parts of the bargain, Stempel grew ever more upset with being ousted from the show. He also never shared the meteoric rise to celebrity van Doren experienced. He began talking to friends about the arrangement he had made to throw the December 5 match. During the broadcast neither player had given any indication that the fix was in and at the end of the night Herb Stempel left the show with nearly $50,000 while Charles van Doren moved on with $20,000. Van Doren's career on *Twenty One* lasted fifteen weeks and at one point the show became so popular that NBC moved it from Wednesday nights to Mondays opposite CBS's ratings and cultural juggernaut *I Love Lucy*.[14] In fact, it was another quiz program, *The $64,000 Question*, that supplanted *Lucy* in 1956 as the nation's number one show, a position *Lucy* had held for the previous four years running.[15] In the summer of 1957, five of the top eight programs on television were quiz shows.[16]

By that time Stempel had graduated from CCNY and struggled to find work while van Doren's star had risen dramatically. In the face of more rebuffs in his attempts to get

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[13] Steven Derounian, "Quiz-Prober Raps Winners, TV Brass," *Life*, 26 October 1959, 34.
[14] *Ibid*., 71
[15] Richard A. Schwartz, *The 1950s: An Eyewitness History* (New York: Facts on File, Inc., 2003), 254. In fact, despite the significant scandal resulting from the quiz shows' exposure as potentially rigged, the majority of television programming at the time consisted of variety shows like *The Jackie Gleason Show* or *The Ed Sullivan Show*, comedies like *Lucy* or a growing number of dramatic programs like *Dragnet*, *Gunsmoke* and *Alfred Hitchcock Presents*. These later examples would come to stand at the center of later debates regarding violence on television when Senator Thomas Dodd took over the juvenile delinquency subcommittee.
[16] Andrew J. Dunar, *America In the Fifties* (Syracuse, NY: Syracuse University Press, 2006), 248.

on other Engright-produced shows, Stempel began shopping his story to newspapers.[17] No one would publish his accusations without substantial supporting evidence, though, because they feared the possibility of lawsuits for libel. Indeed, as the quiz shows held their stranglehold on the ratings, magazine and newspaper articles about them were little more than glorifications of the eccentric personalities from recent episodes or tales of the suspense felt by the national audience as contestants went for ever-increasing sums of money.

Even during the height of the quiz frenzy, magazines were happy to point out that show producers' choice of contestants was often based as much on a person's personality and telegenic qualities as on his or her intellectual prowess. Even if the integrity of the genre's questions and contests was rarely in question, articles often admitted that participants were "a carefully picked group of eccentric specialists" and "unknowns who [had] enough personality to become 'personalities.'"[18] In an interesting twist of this approach, *Time*'s August 25, 1958 issue ran an article profiling what it called "the people getters," those responsible for finding the men and women who would make the best contestants. Even the selection process included coaching for the lucky few who might make it onto the air. After the initial screening, the prospective quiz celebrity was taught how to "'ham it up. Don't just blurt [the answer] out. Hold it back, stretch for it.'" One "people getter" profiled in the article concluded that quiz shows could not live on

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[17] "If You Ask Questions…" *Newsweek*, 15 September 1958, 62. "Meeting of Minds," *Time*, 15 September 1958, 47-48.
On the same day both magazines described recent grand jury testimony including taped conversations between Stempel and Enright. Though nothing conclusive was revealed about whether or not *Twenty-One* was rigged, the recordings portrayed Stempel as something of an unbalanced and desperate man with poor financial scruples.
[18] "$128 Bust," *Time*, 1 October 1956, 70. "On Getting Rich Quick," *Newsweek*, 11 February 1957, 74.

intelligence alone, though. "'What good is it,'" she asked, "'however bright you are, if nobody wants to look at you?'"[19]

Perhaps the first national magazine to speculate on the legitimacy of the quiz format in general was *Time*. In an April 1957 issue, the magazine opened its article "The $60 Million Question" with the question "Are the quiz shows rigged?" Walking a fine line between investigatory journalism and accusations or libel, the writer answered that the "producers of many shows control[led] the outcome as closely as they dare[d] – without collusion with contestants, yet far more effectively than most viewers suspect[ed]." *Time* argued that the major way producers controlled their shows was to tailor questions and categories to meet the specific knowledge of contestants. As long as producers wanted to keep a person on the show, they could continue providing him or her with questions he or she could likely keep answering. "Most big winners," the article pointed out, "[had] been blessed by crucial questions right up their alleys." Occasionally, however, even this level of control – a level to which many witnesses during the congressional hearings admitted – was insufficient to stem slipping ratings. At times some questions from a show's application questionnaire or asked during the screening interview magically appeared on the show itself. Despite these revelations, *Time* never went so far as to suggest that the genre was flawed or even that any specific program was guilty of rigging.[20] Four months later *Look* answered the question "Are TV Quiz Shows Fixed" with its own answer: "No TV quiz shows are fixed in the sense of being

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[19] "The People Getters," *Time*, 25 August 1958, 65.
[20] "The $60 Million Question," *Time*, 22 April 1957, 78-82.

dishonest. It may be more accurate to say that they are controlled or partially controlled."[21]

The quiz show scandal eventually broke in the national consciousness when a report about the rigging of CBS's less well-known franchise *Dotto* reached a reporter at the *New York Post* who promptly passed it along to the Federal Communications Commission. From there it was only a matter of time before the show came under investigation by the New York district attorney's office. A grand jury was empanelled and suddenly the earlier allegations of fraud made by Herbert Stempel and others were big news. By the summer and fall of 1959 Oren Harris of the House Committee on Interstate and Foreign Commerce announced that his Subcommittee on Legislative Oversight would begin its own investigation into the scandal.[22]

Congress begins its investigation

When Rep. Harris and his colleagues began their hearings in October 1959, they immediately began looking into areas of the scandals beyond the simple matter of untoward entertainment practices. Congress questioned former contestants, network executives and members of both the Federal Trade Commission and the Federal Communications Commission. Indeed, it was the subcommittee's mandate to oversee the activities of regulatory agencies and commissions like the FTC and FCC that led them to

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[21] "Are TV Quiz Shows Fixed?" *Look*, 20 August 1957, 46.
[22] William Boddy, *Fifties Television: The Industry and Its Critics* (Urbana, IL: University of Illinois Press, 1990), 218-219.

open the hearings. "The Subcommittee on Legislative Oversight," Harris said at the outset, "has jurisdiction over the Federal Trade Commission, which is charged with preventing and suppressing 'unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce' … and over the Federal Communications Commission, which is charged with insuring that broadcasting station licensees operate so as to serve 'public interest, convenience, and necessity.'"[23]

Harris and others were upset at what they interpreted as the failure of these agencies to deal with the scandals properly when they first broke and debated whether congressional action to regulate network practices was warranted. Indeed, the House hearings into the quiz show scandals fit squarely within the spate of investigations into television and mass culture that took place during the 1950s. In the late 1950s the U.S. Senate undertook its own inquiry into the need to curb network monopoly practices through regulating the networks themselves. They also looked at the power of ratings systems to influence networks' and advertisers' program choices. And during the early 1960s, Senator Thomas Dodd of Connecticut took over the senate's juvenile delinquency investigation turning its attention squarely on television, often threatening direct government involvement in regulating networks.

Among the first issues that caught the investigators' attention was the distinction quiz show producers made between what they considered necessary screening of their contestants and the spectre of manipulation this type of activity might raise. At the

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[23] House Committee on Interstate and Foreign Commerce, *Investigation of Television Quiz Shows: Hearings before the Committee on Interstate and Foreign Commerce*, 86th Cong., 1st sess., 1959, 7. [hereafter Quiz show hearings]

opening of the investigation, Oren Harris made a statement criticizing "'control' techniques"[24] that undermined the public's belief that the shows were legitimate contests of "skill, knowledge, and the ability to remember and think quickly under pressure." He went on to lament that "internationally respected financial institutions" signed off on the "gilt-edged integrity" and "distinguished educators" supposedly approved the questions for accuracy and degree of difficulty.[25]

It was clear to Harris that the quiz programs were not "'mere entertainment'" like motion pictures or fictional television shows. In fact, as Harris stated in his opening statement, he expected that the hearings would disclose that the improprieties and improper business practices would "extend even beyond what [they] had originally suspected." If these hearings laid bare "a pattern of deception of the American public" there would emerge a "serious gap in the present regulation of broadcasting practices" and a failure of the FTC mandate to deal with these new developments.[26] Legislators admitted that they doubted whether any existing laws were broken by the controls or rigging of the quiz shows. And, even at the end of the hearings, *U.S. News & World Report* questioned whether any new laws would be created to fill the void.[27]

With the lines drawn on congress's investigation, they began questioning producers to discover just what sort of controls they exercised on their programs. One of the first major witnesses was Albert Freedman, the man who coreographed much of the

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[24] *Ibid*., 9.
[25] *Ibid*., 7.
[26] *Ibid*., 9.
[27] "Dress Rehearsals Complete With Answers?" *U.S. News & World Report*, 19 October 1959, 60-62.

contest between Herbert Stempel and Charles van Doren on *Twenty One*. The questioning was led primarily by the subcommittee's counsel, Robert Lishman. Freedman, like other witnesses, described his desire to "put on a show … that would have a great deal of entertainment value" and one that people would thoroughly enjoy watching. In order to do this, he argued, "control was necessary" to a certain degree at certain times.[28] To this end, Freedman admitted to providing assistance to contestants in more than fifty percent of the broadcasts.

The producer freely admitted to providing the contestant questions and answers that later appeared on the program and even told the man the number of points he should select. He even agreed that he had used similar methods of control during his short career with another quiz show, *Tic-Tac-Dough*.[29] Like other witnesses, Freedman had difficulty fielding questions about the excitement of the production as having been a result of the manipulation by the producers. When chief counsel Robert Lishman asked if the program was less exciting "on the occasions when [questions and answers] had not been furnished," Freedman's answer seemed rather circular: "That is hard for me to say, because in both instances there were exciting shows – instances where there were answers given. And believe me they were exciting shows. And in shows where there were both questions and answers given."[30]

The most notorious of the producers during the quiz show era was Daniel Enright, the man most responsible for the famous *Twenty One* contests featuring Herbert Stempel.

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[28] Quiz show hearings, 217.
[29] *Ibid*., 220.
[30] *Ibid*., 223.

In his testimony before the subcommittee, Enright described a distinction between rigging and control. Rigging, he argued, would extend to "any process by which a contestant is given an advantage over another contestant" and which is "known by the staff which produces the show." Admitting this was done in some instances on *Twenty One*, Enright went on to provide a description of a control. These techniques would involve discovering what sort of knowledge a contestant possessed prior to his or her appearance on the show. For instance, Enright said, if the producer learned that a contestant had a good background in law or some other such topic, the producer could ask only questions he knew that contestant would answer if he wanted the person to continue on the show or he could drive him or her off the show by asking questions in an unrelated field. This would rise to the level of control, according to Enright. However, these things were not "deception" to Enright's thinking. In fact, he agreed that this sort of deception was "of considerable value in producing shows."[31] Lacking was any distinction between what was acceptable control needed for producers to ensure a show's entertainment value and rigging that would border on the illegal or immoral.

In one rather famous instance, Dr. Joyce Brothers appeared on *The $64,000 Question* in 1955. While this by itself was not notable, her area of expertise was somewhat surprising. Dr. Brothers appeared as an expert on boxing. This seeming disconnect was carefully calculated once it became clear in the application process that the psychologist could be something of an entertainment oddity on the program. Although her application was nothing special, Mert Koplin, a producer on the show,

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[31] *Ibid*., 452-453.

instructed her to "bone up on boxing" in order to come back as a more intriguing contestant.[32] The screening process described by Enright could yield such surprises and could end up sparking higher ratings as people tuned in to see a child expert on opera or a female shrink who was an expert on pugilism.

One of the more intriguing developments came when former contestants were called before the subcommittee. While most witnesses expressed frustration with the ways in which the quiz shows were run, there were a surprising number who argued that the quiz shows were not fraudulent and that their complicity in them was perfectly acceptable. One contestant admitted that earlier scandals in boxing, basketball and baseball were fraudulent but drew the line at the actions of the quiz shows, saying they were "an entertainment medium." He was not a salaried performer like those in professional sports and he felt that his form of entertainment appealed to the audience. In light of these factors, quiz show controls were not fraudulent. Another former contestant agreed with Rep. Walter Rogers's (R-TX) sarcastic comment that, "as long as it is entertainment, it makes no difference whether it is honest or dishonest insofar as the participants are concerned."[33]

This discussion about the distinction between reality and entertainment in mass media is certainly one of the more intriguing to come out of the hearings. A number of witnesses and even several of the producers believed that the quiz shows were not meant to be interpreted as contests of skill. In his early meetings with van Doren, Albert Freedman assured the Columbia student that controls such as those taking place on

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[32] *Ibid*., 876.
[33] *Ibid*., 274, 284.

Twenty-one were commonplace throughout television. Since the program was first and foremost entertainment, there was nothing untoward about enhancing the suspense of the production by coaching certain contestants or guiding them toward certain questions and categories.[34] It is interesting to note that even after the shows were revealed to have been manipulated, many viewers surveyed favored leaving quiz programs on the air despite the pretense.[35] According to one researcher in Pennsylvania, 39.9 per cent of respondents "'found the quiz programs educational and entertaining enough to want to see them on TV again.'" That equated to a statistical equivalent of 47 million Americans. Others had no qualms about appearing on shows they knew were rigged as long as they knew they would win.[36] Apparently, viewers preferred the entertainment of even a fixed contest to the authenticity of an uncontrived battle of wits.

There were commentators at the time who saw the quiz show scandals as evidence of an uncomfortable moral ambivalence in American society. Walter Lippmann, for instance, wrote in October 1959 that the scandals were indicative of the dangers in our form of commercial broadcasting. The power of commerce and materialism to influence the audience could lead to a debasement in audience tastes. This was exacerbated by the networks' tendency to pander to the lowest common denominator to attract large ratings and audience numbers. The best possible alternative, Lippmann argued, was not in self-regulation or government censorship, but was found in the

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[34] Anderson, *Television Fraud*, 55.
[35] Richard Tedlow, "Intellect on Television: The Quiz Show Scandals of the 1950s," *American Quarterly* vol. 28, no. 4 (Autumn 1976): 491.
[36] "Out of the Backwash of the TV Scandals…The Question: How Far the Fast Buck?" *Newsweek*, 16 November 1959, 66.

formation of a public television system to provide an alternative to the minority audiences whose interests were not satisfied by mainstream networks.[37] Lippmann's ideas for non-commercial television even made it into the pages of *Time* magazine which quoted extensively the columnist's belief that America's network system and "*laissez-faire* policy … has turned TV into 'the creature, the servant, and indeed the prostitute, of merchandising.'"[38]

Like many at the congressional hearings, Lippmann saw the kernel of the scandals as being a result of the economic motivations behind U.S. television. His legislative and industry counterparts, on the other hand, believed that, despite the occasional problems with the commercialism of television, the market – tied to self-regulation – was inherently the best mechanism to effect change. By the mid-1960s, however, perceptions had changed so that congressmen saw a public television system similar to the one championed by Walter Lippmann as a way to guide market forces toward the cultural improvement they had sought for so long.

Network involvement

Perhaps no issue surrounding the congressional investigation into the quiz show scandal carried with it more potential importance than the involvement of the networks and the corporate sponsors. As with other congressional investigations, it was the

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[37] Walter Lippmann, "The TV Problem," in *The Essential Lippmann: A Political Philosophy for Liberal Democracy*, ed. Clinton Rossiter & James Lare (Cambridge, MA: Harvard University Press, 1982), 412.
[38] "Prostitute of Merchandising," *Time*, 9 November 1959, 58.

combination of network oversight and capitalist motivation that provided the most fruitful areas of inquiry. In addition, testimony by network executives and corporate representatives was expected to shed light on the decision-making of the powerful people behind the shows themselves. As time went on, however, it became increasingly apparent that many, especially network officials, were reluctant to accept any responsibility for the deceptive practices on their shows. More than this, the labyrinthine meetings that took place meant that few people had direct dealings with top network management. The subcommittee's record is littered with uncertainty about how much the top echelon within NBC and CBS knew about the rigging taking place on their shows.

One of the first major network officials to testify was Thomas Ervin, vice president of NBC and the network's general attorney. In the first sentence of his statement, Ervin stated that the National Broadcasting Co. felt that "rigging of television quiz shows [was] a breach of public faith and a blight on a program type that otherwise [could] be both entertaining and instructive." No such behavior could be "justified" and none was ever countenanced by NBC. Ervin's statement went on to say that any sort of rigging should be revealed immediately upon discovery. No indication was made, though, that NBC ever tried to investigate the matter on its own. Certainly this seems to call into question the effectiveness and even the likelihood of voluntary self-regulation within the industry. Instead, despite assurances by Barry & Enright (the producers of *Twenty One*) that charges of rigging were groundless, NBC felt the need to take over control of the production for a cost of $2.2 million. At the request of the New York grand jury NBC refrained from interrogating the contestants involved in the criminal

proceedings and only informal meetings between the producers, the network and occasionally the contestants shed any light on the fraudulent activities.[39]

The only investigation NBC made into Stempel's charges came in the form of a two to three hour meeting between Daniel Enright, Enright's lawyer and Thomas Ervin. During the meeting, Enright provided written and recorded evidence in which Stempel disavowed his own accusations. This "thorough" investigation seemingly was enough for Ervin, as he never questioned another contestant.[40] For more than a year NBC did little to react to ongoing reports of fraudulent activities on its various quiz shows. Ervin admitted he made no effort to ascertain whether contestants were receiving assistance and the network "continued to exercise the same controls" with regards to guaranteeing the honesty of the broadcasts.

The first direct action the company took came when the allegations against *Dotto* surfaced in August of 1958. Even this internal inquiry did little to get at the true nature and extent of the problem. There was no detailed investigation into the methods of control nor any attempt to question current or former contestants about their experiences on *Dotto* or any other NBC quiz program. Instead, the company assigned an in-house attorney with FBI experience to "talk to all of the NBC unit managers on all of the quiz programs … to make a detailed and thorough study of the security procedures, the number of people who knew questions in advance, the ways in which the program ran, and … whether or not any untoward incidents had happened, whether they thought there

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[39] Quiz show hearings, 184-185.
[40] *Ibid*., 189. A press release produced in light of this meeting describes the conference as a "thorough" investigation by the broadcast company.

was any kind of coaching of contestants or rigging going on." The only people questioned during these three or four weeks were "NBC people working in the program."[41] Clearly there was a certain reluctance to expand beyond this somewhat insulated inquiry and Ervin even felt compelled to refute earlier testimony that his, and NBC's primary concern at the outset of the scandal was to exercise damage control. One witness who was present at the various meetings agreed with Rep. John Moss's interpretation that "the responsible officials of NBC … were primarily concerned with the unfavorable impact rather than the truthfulness of the charges."[42] Despite testimony that seemed to indicate otherwise, Ervin somewhat unbelievably assured the subcommittee that such matters were "not [his] concern at all."[43]

Chairman Harris criticized Ervin, saying, "it seems rather an unusual situation to have not gone to the contestant himself and made some inquiry." To this Ervin answered that he considered Daniel Enright above reproach and that Herbert Stempel was thought to be a totally unreliable and somewhat unbalanced witness.[44] It was not until even more charges were made public that NBC finally recognized a need to question contestants. By this time they were reluctant to do so for fear that any study of theirs would potentially interfere with the grand jury investigation taking place.

Ervin was working with an admitted handicap because, as he said, "you can have the best security system in the world" but if there are two people who plan to organize some sort of rigging supervision or detection would be "very difficult." In fact, a

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[41] *Ibid*., 192.
[42] *Ibid*., 109.
[43] *Ibid*., 190.
[44] *Ibid*., 197.

dishonest producer combined with a dishonest contestant would be able to find a way to bypass and beat "the best system" that could be devised.[45] Few of these excuses sat well with the subcommittee, though. Perhaps legislators' belief that self-regulation was the ideal solution left them scrambling for answers in light of the revelations of its failure. Between them, Thomas Ervin and Thomas Fisher, vice president and general attorney of CBS were often criticized for their failure to deal with allegations of fraud in a timely manner.

Although Fisher made high-minded statements about coveting the "respect and trust" of America's viewing public he also attempted to excuse the company's apparent lack of progress in an internal investigation by lamenting that CBS lacked the power of subpoena to force statements under oath.[46] This was not a satisfactory explanation for Congressman William Springer (IL) who asked whether the network official believed it was ultimately CBS's job to make an investigation into the alleged improprieties. At Fisher's acquiescence, Springer went on to condemn the network for failing to show the "vigilance [they] should for the American people under the license granted … by the Federal Communications Commission." Throughout the hearings, many commented on the need for corporations to live up to their responsibility to the public that is inherent in a democracy. This was a major aspect of the Progressive era's emphasis on corporate responsibility and it reappears in many of the hearings discussed here. As Springer noted, CBS's honesty and integrity was on the line. Even if the network was reluctant to abide by its civic duty voluntarily, failure to confront these matters would reflect poorly

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[45] *Ibid*., 193.
[46] *Ibid*., 433.

on network officials as well as the legitimacy of other programs broadcast by the network's affiliates.[47] Certainly this could threaten profits and advertising revenues in the future.

The issue of corporate social responsibility grew into a major debate within the business world during the 1970s and 1980s, often centered on matters of environmental responsibility. There were, however, commentators during the 1950s who had begun advocating for more corporate accountability in a broad sense. Economist and university administrator Howard Bowen wrote in 1953 that business leaders must consider the long-term impacts of their decisions. Corporations were increasingly powerful in affecting the every day life of citizens in a consumer economy as well exerting influence in the political arena. As such, their actions had consequences beyond the insular world of profit and loss, and other simple business considerations. Perhaps the basic consideration under which all business leaders should operate was the doctrine of public interest. Much like the requirements imposed upon broadcasters, corporations ought to behave in ways concurrent with general standards of public health and morality. Decisions made with these guidelines in mind, then, would almost assuredly lead to a stable and successful economy since they would limit negative consequences and would increase consumer confidence.[48]

At around the same time, though, economist Milton Friedman was developing a slightly different conception of corporate responsibility. Friedman argued that the

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[47] *Ibid*., 447.
[48] Howard R. Bowen, *Social Responsibilities of the Businessman* (New York: Harper and Brothers Publishers, 1953).

business world ought to be free from external conceptions of propriety as long as their actions did not violate individual freedoms. With a decidedly libertarian tone, the economist expressed his concern over the dangers inherent in a centralized government. Although a government was needed in order to secure personal liberties, a centralized government could only threaten those liberties. Apart from obvious threats to liberty posed by government excess (such as those revealed during the McCarthy hearings earlier in the decade), a centralized government could also damage economic and corporate freedoms. Friedman believed that only an unfettered economy, operating with a maximum of market freedom and with an emphasis on private enterprise, could yield generally regular growth and would secure personal liberties. Corporate responsibility, then, amounted to a business's duty to work in a competitive market, maximize profits and not infringe on individual rights.[49]

Congress held little sympathy for network executives who seemed more interested in damage control or excusing their lack of self-regulatory rigor than in weeding out potential illegal or deceptive practices. As was the case in nearly every other legislative hearing into mass culture, representatives wished that the industry would police itself rather than force governmental action. This certainly did not mean that Chairman Harris and the others on the subcommittee rejected federal legislation to remedy the problem. Instead, they hoped that by promoting self-regulation, congress could avoid the slippery slope of censorship.

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[49] Milton Friedman, *Capitalism and Freedom* (Chicago: The University of Chicago Press, 1962).

Advertisers

"The subcommittee believes that the deliberate cultivation in viewers' minds of the inseparability of the program and the product advertised compels inquiry into the fairness and honesty of program presentation as well as the fairness and honesty of representations made about the sponsor's product itself."[50] With this assertion made in his opening statement, chairman Oren Harris opened the door to one of the most intriguing aspects of the quiz show hearings, as well as perhaps the most overlooked. It was immediately apparent that congress had much more on its mind than simply studying the methods of control and rigging used in the programs.

One of the first witnesses to testify about the power of quiz sponsorships was Edward Kletter, a representative of Pharmaceuticals, Inc. the company responsible for manufacturing vitamin and iron supplement, Geritol. Geritol as a trade name was most closely associated with *Twenty One* and the connection between the two was seen by several congressmen as a significant factor in the product's success. In fact, Rep. Springer suggested that "unfair trade practices [like the quiz shows] were directly responsible" for increases in sales enjoyed by Pharmaceuticals, Inc.

Kletter provided sales figures for 1956 through September 1959 in an attempt to show that Geritol's connection to the *Twenty One* scandals actually had an adverse effect on the product. Unfortunately for Kletter, there was no way of knowing how sales were affected by the revelation of *Twenty One*'s rigging simply by looking at monthly sales

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[50] Quiz show hearings, 9.

data for the period in question. The problem was exacerbated by the fact that Kletter, himself, argued that Geritol derived less of a market benefit from its sponsorship of *Twenty One* than from its simultaneous sponsorship of other programs. Kletter even said that the company had records indicating that sponsorship of *The Guy Lombardo Show* "did as much, if not more, for Geritol than *Twenty One*." In any case, the arguments Kletter made still served to prove the effect television advertising had on sales figures, whether for good or for ill. Despite these facts, Kletter admitted that while the show was on the air Pharmaceuticals, Inc. considered *Twenty One* to be a good advertising investment even at a cost of three and a half million dollars per year.[51]

Though he was never directly confronted with the question, Kletter was indirectly implicated in the practice of controls when representatives questioned Daniel Enright. Enright made it clear that sponsors were often involved with deciding which contestants would stay on the program and which would be sent off. More often than not, according to Enright, the "appeal of the contestant" or the "excitement" a contestant could generate for the show drove much of the decision-making process. When pressed further, however, Enright conceded that ratings were involved.

Among the most damning testimony came when the producers and sponsors of the popular CBS quiz show, *The $64,000 Question* were questioned. One of the first men called before the subcommittee was Mert Koplin, a producer for the show and a man intimately familiar with the involvement of Charles and Martin Revson, the brothers in charge of Revlon cosmetics, the show's sponsor. Koplin described how one or the other

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[51] *Ibid*., 165-167.

Revson brother was nearly always in attendance at meetings to discuss contestants, questions or the show's format. At these meetings the men debated the appeal of certain contestants. Many times, Koplin said, the sponsors went so far as to state baldly that "it would be good for the show" if a certain contestant were retained or sent off. Beyond this, he agreed that oftentimes the Revsons expected that such wishes would be carried out "by using controls on the programs." If Koplin and the other producers of the show failed to satisfy these demands they faced meetings filled with reactions ranging from tense looks and body language to long lectures. One can almost sympathize with Koplin's predicament when he described how he "never found any pleasure" in his meetings with Revlon's representatives.

During his testimony, Koplin leveled a series of broadsides implicating Revlon, Inc. as a major contributor in rigging the shows. While there was certainly never any suggestion that any sponsor was involved directly in controlling or manipulating the broadcasts, it was clear that producers were pressured into rigging shows to satisfy the sponsor. For instance, Revlon often used ratings numbers to determine which contestants to keep and often drew conclusions that seem laughable and amateurish. "If we had a man with a beard on" that did well on ratings, Koplin explained, "the conclusion was that we should get more men with beards." Successful younger contestants would immediately result in a cry going up that there should be "a young contestant on every show." Occasionally, Revlon's influence was anything but subtle and collectively the sponsor's decision-making seems like that of a child with a favorite food. These revelations seemed to support Ronald Reagan's testimony during the motion picture

hearings that television's reliance on advertising revenue meant that networks were more limited in their programming choices than was the motion picture industry.

More often, though, criticisms of contestants were couched in more reasonable terms (at least more reasonable relative to the goals of the sponsors and producers). Revlon typically indicated that a contestant should be dropped because he or she was "dull" or lacked appeal or was "not good for publicity." To these ends, then, producers were often told specifically to control the program to keep a favorite contestant on or to depose one who failed to live up to expectations. Revlon even took Koplin and others to task when the controls they had devised failed to yield the desired results.[52] As ratings declined, Revlon's owners often increased their pressure on the producers to control the performance of contestants. Koplin bluntly stated that the sponsors of *The $64,000 Question* were fully aware that the program was being controlled but stopped short of admitting that Revson and others knew the precise methods used.[53] Many similar themes were raised when the House and Senate investigated ratings during their hearings into network monopolies.

Another producer for the show, Steven Carlin, described how Charles and Martin Revson often recommended changes in the categories used, sometimes feeling they were not interesting enough and other times suggesting new categories that could be invented. When pressed for specifics, Carlin guessed that the sponsor's wishes and suggestions were incorporated into the show nearly seventy-five percent of the time. Clearly,

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[52] *Ibid*., 750-751.
[53] *Ibid*., 754-755.

capitalist motivations, played out through the force of sponsor demands, were a significant factor in the development and control of quiz shows.

When Martin Revson, Charles' brother and executive vice president of Revlon, Inc. testified before the subcommittee, he repeatedly denied ever issuing orders with regards to contestant longevity or program controls. Not a single contestant, Revson stated in his opening remarks, "ever complained …that he was not treated fairly." Like chairman Harris intimated at the beginning of the hearings, Revson was concerned with the ties between Revlon's brand name and the integrity of the show. Certainly the decade's emerging realization of the power of branding seems to have influenced Revson's worry over the deleterious effects of negative publicity. "The slightest taint of dishonesty, the slightest hint of improper practice," he said, "could damage [Revlon's] reputation and wipe out [its] investment of so many millions. With so much at stake, no businessman … would ever think of permitting anything but the highest standard of integrity in connection" with the programs.[54] Later in his testimony, Revson answered a pointed question by Texas representative Walter Rogers saying that, had he known about the rigging, he would have cancelled Revlon's sponsorship even though the show "catapulted [Revlon's] sales by millions of dollars."[55]

The cosmetics executive argued that *The $64,000 Question* belonged to Entertainment Productions, Inc. (EPI) and not to Revlon. As such, EPI was responsible for any and all controls and questionable practices that went on. Among the limited rights Revlon had was a say in the selection of contestants. Revson pushed EPI to select

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[54] *Ibid*., 804.
[55] *Ibid*., 876.

contestants who "were true experts" and, perhaps more importantly for a show with such a significant economic concern, who would be "warmly received by the public." Although he admitted to making detailed suggestions about the lighting, contestant wardrobes and even pre-game conversations between the master of ceremonies and contestants, Revson "never once suggested that a particular contestant win or lose." In fact, he argued it never occurred to him that a producer could control such matters. At the conclusion of Revson's statement, chairman Harris made clear his confusion. "I cannot reconcile your statement," he said, "first your complete and total denial, and then your frank admissions of what part you had in developing these programs." Curiously, Harris never indicated that Revson's declarations of innocence stood in such sharp contrast with the statements of Koplin and Carlin.[56]

Almost immediately, the subcommittee's counsel Robert Lishman questioned the commercial impact of Revlon's sponsorship of *The $64,000 Question* and its spin-off program *The $64,000 Challenge*. He cited net sales figures for years the quiz programs were on the air showing that Revlon sales in 1955, the year *Question* debuted, stood at $51.6 million. The television commentator for *The New Republic* that year, Wendell Brogen, opened his August 8 editorial about the show with an anecdote about his corner druggist who had recently sold out of Revlon products and was eagerly awaiting a new shipment "because of the demand stimulated" by the quiz show.[57] Within a year sales had jumped to $85.7 million and by 1958, the year the scandals first broke in the national media, Revlon raked in $110.3 million annually. In fact, Lishman said, 1958's sales gave

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[56] *Ibid*., 806-807.
[57] *The New Republic*, 8 August 1955, 23.

Revlon a two to one advantage over its nearest competitor, Max Factor.[58] Though Lishman apparently got some of his figures from a recent *Fortune* magazine article, he did not go quite so far as the article's author who suggested that "the upsurge of the New York house of Revlon last year demonstrate[d] that one can sell an abundance of lipstick, nail enamel, powder, and hair spray, and indeed overturn the whole cosmetics industry, if one sponsors a television show called *The $64,000 Question*. It [was] no reflection on the quality of Revlon's merchandise to suggest that one could, apparently, sell an outright facial corrosive in quantity if the program were hawking it."[59] Revson finally agreed that this growth in net sales was due in no small part to the company's sponsorship of both *Challenge* and *Question*.

Revson denied, though, that he ever made specific commands or suggestions that any contestant should be removed or retained based on ratings. He even rejected the suggestion that any controls were being used on either of the shows. If he had known that any controls were used, Revlon would have immediately dropped its sponsorship of the program.[60] To counter this assertion, the subcommittee produced a memorandum from Revlon's advertising agency suggesting that "a little bit of rigging" might be needed to make the show "come off properly." Revson tried to argue that this use of the word "rigging," coming as it did before the scandals broke, was not a potential red flag. Instead, it was meant very loosely.

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[58] Quiz show hearings, 810-811.
[59] Daniel Seligman, "Revlon's Jackpot," *Fortune*, April 1956, 136.
[60] Quiz show hearings, 815.

Representative John Moss asked Revson just what was meant by the term, if not a method of fixing the show to achieve certain ends. Although Revson agreed with Moss that the terms were synonymous, he continually said that the terms were not the same when the memorandum was created early in the show's existence. Only after the scandal broke, Revson argued, did the term "rigging" come to mean some sort of manipulation or control.[61] Unfortunately, Moss failed to get the cosmetics executive to define precisely what he felt "rigging" meant in the context of the memo. When Martin Revson resumed his testimony later in the hearing, he managed a rather poor explanation for the memorandum. Rep. Moss pressed Revson to explain in light of the memo how he could conclude that there "was not the slightest connotation of a fix on the contestants." Revson answered that Al Ward, the company's advertising executive who wrote the memo in question "was an actor" and his "whole viewpoint toward a show was in terms of drama."[62] This somewhat unsatisfactory answer once again reflected the question about the relation between entertainment and reality.

Martin's brother, Charles, had earlier been described as the less involved of Revlon's brotherly executive tandem. In some cases, though, Charles Revson was presented with more probing questions than Martin. At the outset of his testimony, Charles agreed that the behavior of the rigged quiz shows was crooked, and though he stopped short of calling it fraudulent, he considered the producers and contestants to have been guilty of deceit. From this point, the questioning led by Rep. Rogers took a surprising turn. Rogers pressed the executive about the startling sales figures which

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[61] *Ibid*., 819-820.
[62] *Ibid*., 870-871.

showed Revlon's profits skyrocketed during the company's sponsorship of quiz shows, asking him whether he attributed the increase to the programs. Revson argued that the increase was due "in part" to *The $64,000 Question* and *Challenge* but could also be tied to the introduction of new product lines that helped boost sales.[63] "As a matter of fact," Rogers continued, "the increase in … sales far exceeded the percentage" of Revlon's advertising budget devoted to television sponsorship. To the representative's mind, television advertising clearly represented a sizeable influence on sales and Revlon profited directly by the quiz shows, scandals notwithstanding. As such, Rogers believed that Revlon should consider compensation to the public. "You brand these other people as deceitful," Rogers said, "and I agree with you … but you are the one who profited the most by the deceitful practices that were played upon the American people. I am wondering what is in your mind and the mind of the Revlon Co., to try to make restitution or correction of a wrong which you admit occurred."

Revson was understandably somewhat taken aback by this particular question. The profits, he argued, were the result of sponsorship and money honestly invested. Since Revlon was not aware of the rigging or scandal taking place until after the fact, the company was not directly complicit in the fraud. Rogers compared the company's decision to that of the contestants who justified keeping their winnings. Revson had earlier stated that he had a personal feeling about whether contestants should return the money they won by deceitful means. While he would not state that feeling publicly, one can assume he would appreciate the return of winnings taken fraudulently. Painted into

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[63] *Ibid*., 888-889.

the corner, then, Revson had little to say about Rep. Rogers' argument that Charles and his brother both were "willing to accept the profits from [the shows] and let the contestants take all of the blame." Perhaps doing more damage to his case, Revson countered that Revlon paid for the show, paid for the time and even for the contestants, "so therefore in turn … made a profit on it."[64]

Revlon's financial involvement in programs came up again when Rep. Moss wondered whether Revson felt it was right that the sponsor, who had no experience in broadcasting, had control over aspects of programs. Was it proper, he questioned, that the sponsor had the right to "interfere in any way with the content of a program?" Revson agreed that sponsors should have every right to involve themselves with programming, since they had supplied financing. Moss pressed the point by extending that right to print media. If a sponsor could influence television shows, did that mean that simply by purchasing ad space in a newspaper, one could legitimately claim the right to influence editorial policy? Revson's only answer was to suggest that television programs had more facets that went into production. Apparently his argument was that Revlon was able to become involved in parts of the process without being completely enmeshed in the system.[65]

Even this limited amount of control, Moss argued, rose to the level of censorship. Using the most specific definition of the term (that of "prior restraint"), Moss told Revson that the sponsor was able to exercise a high degree of censorship. Revson countered by arguing that the sponsor's influence only extended to the point of

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[64] *Ibid*., 890-891.
[65] *Ibid*., 904-905.

suggestion. Revson's attitude seemed naïve to the congressman. "The suggestion from the man who pays the bill," Moss said, "has a certain persuasive ring to it."[66]

In the end, the Revson brothers damaged their own case by continually asserting that corporate responsibility extended to influencing the content and format of a program but failing to admit that sponsorship carried with it a certain duty to honesty. Since they paid for the program, contestants and time, they argued, they had the right to make their wishes known to producers. Clearly, as Rep. Moss said, these suggestions were made because Revlon expected them to be applied. Once the matter came to the point of Revlon's responsibility with the scandal, neither brother was willing to admit culpability.[67]

Regulation

During the hearings, the subcommittee heard a great deal of testimony surrounding the need to regulate improper advertising or fraudulent programming.[68] Conservative mouthpiece William F. Buckley, Jr. described his take on the government's role in broadcasting in the January 2, 1960 issue of his magazine *National Review*. Though he pointed to Charles van Doren as being almost solely responsible for the scandals, Buckley was somewhat forgiving in his treatment of the industry as a whole.

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[66] *Ibid*., 905.
[67] Watson, *Defining Visions*, 18. Watson argues that sponsor and advertising money tended to impact program quality in a generally negative way.
[68] Kevin Mattson, *When America was Great: the Fighting Faith of Postwar Liberalism* (New York: Routledge, 2004), 150. Mattson suggests that liberals like Arthur Schlesinger, Jr. and John Kenneth Galbraith saw the quiz scandals as evidence of why the government should use the FCC to step in and oversee broadcasting.

Networks had undertaken a daunting task. It was no easy thing to provide entertainment for millions of viewers every night and it was almost inevitable that someone in the audience would be dissatisfied. The solution, he argued, was not to expand the power of the FCC; such an answer would certainly not appeal to a man of Buckley's conservative ilk. He advocated a plan where broadcasters would not be given free access to the airwaves to make their money from advertising revenue. Instead, audiences would pay for television directly in a manner similar to the cable and satellite systems of today. Recognizing the virtual impossibility of such an arrangement, however, Buckley's final answer to the outcry over the quiz scandal was to encourage the FCC to open local markets to more stations and allow audiences more choice.[69]

Because of the mandate to oversee the activities of the FCC and FTC, the subcommittee questioned both chairmen about their agencies' performance during the years of the scandal. The first commissioner to testify was John Doerfer of the Federal Communications Commission. As was the case in nearly every congressional hearing into media and regulation, the question of censorship emerged almost immediately. Subcommittee chairman Oren Harris felt that government involvement with the production of shows would stretch toward censorship, but also wanted to be certain that congress had authority to deal with the problems.[70] Chairman Doerfer was reluctant to say that his authority extended into overseeing the creation of programming. Consistently pointing to the constitution as a guarantor of free speech and a free press, Doerfer argued that the FCC had no right to interfere with programs. It was up to

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[69] William F. Buckley, Jr., "One Man's Advice to the FCC," *National Review*, 2 January 1960, 9-10.
[70] Quiz show hearings, 512-513.

regulatory agencies to punish stations and networks that knowingly and deliberately deceived the public once it was clear that a law had been broken. As the scandals existed, however, it was not apparent that any specific law had been broken. While Doerfer and congress recognized that a fraud had been perpetrated on the viewing public, the fraud was "a kind of deceit [in] which the most important element [was] missing, … an extraction of a consideration from somebody who [was] harmed." If no one suffered from the practice, there was little chance or justification for legislation or punishment.

In addition, it was almost impossible to create laws requiring that everything shown on air had some sort of disclaimer. Doing so could invade "almost the entire field of entertainment and public service programming."[71] Doerfer foresaw a danger in such legislation because it might lead to such strict language that dramatic license would be severely hampered, practically emasculating what the legislation hoped merely to limit.[72]

The tool by which the FCC could enforce regulation of programming existed in the its licensing of network affiliates. Rather than preemptive legislation outlining specific violations, federal regulation came through the refusal of a station's license once it was clear the station was not operated in the public's interest. Specific rules would be extremely difficult to develop, especially given that the courts could throw out legislation that violated restrictions on prior restraint. One major drawback to such an approach was the need for the lengthy review and investigation period it demanded. Because the FCC could only remove a station's license to broadcast once it became clear that the station

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[71] *Ibid*., 510.
[72] *Ibid*., 515.

had committed some violation of the public interest, and even then only when the station applied for a license renewal, regulation was only possible after the fact.

This process riled Rep. Walter Rogers[73] who criticized the FCC for taking so long to begin its investigation of the quiz show scandals. Rogers condemned Doerfer and the FCC's lack of action and largely rejected the argument that the FCC needed to study the constitutionality of potential action. Instead, once any fraud was revealed or even suspected, the FCC should begin proceedings to limit it. Stopgap legislation could put a stop to a practice that even radio and television people had testified was deceitful and fraudulent. "Do you think," Rogers pressed Doerfer, "that the American people ought to be subjected to being deceived and defrauded … while you … decide whether or not you have the constitutional power to move in…?" The FCC chairman continually defended himself by appealing to the overarching authority of the constitution in matters of free speech. Even suggesting to congress legislation to deal with such fraud was beyond Doerfer's scope at the time.[74] Rogers was still not satisfied. Where else but congress, he argued, could the FCC get the power to deal with the deceit? Given congress's position in the legislative food chain, it was inexcusable that Doerfer and the FCC failed to bring the scandal to the subcommittee's attention, instead preferring to wait until congress undertook its own investigation.[75]

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[73] Rogers (D) was an eight-term Congressman from Texas who served 1951-1967. A lawyer by profession, Rogers was one of 5 Texas congressmen who signed the Southern Manifesto protesting integration in light of the Supreme Court's rulings in the mid-1950s.

[74] Joseph A. Grundfest, *Citizen Participation in Broadcast Licensing Before the FCC* (Santa Monica, CA: Rand, 1976), 14. Grundfest points out that the FCC has extra-legal methods to encourage compliance. The so-called "raised eyebrow" – informal tools like public speeches, memos or staff contacts – could yield welcome results without the messiness of jurisprudence.

[75] Quiz show hearings, 521-522.

Ultimately, Rogers suggested, the problem came with the FCC's failure to develop a plan to regulate the networks. Much like criticism voiced during the juvenile delinquency hearings under Sen. Kefauver and Dodd, there seemed to be substantial evidence presented during the hearings that the networks had plenty of advanced knowledge of the scandals yet they did nothing until "they began to lose interest and the shows did not maintain their ratings." The "American dollar" was at the heart of the matter.[76] Doerfer continually hedged his responses when pressed about the FCC's ability to regulate problems like the quiz scandals. He suggested that the problem boiled down to the fact that independent producers created programming that was merely broadcast on network signals. If the networks had created the quiz shows, there would have been less chance or motivation for scandal. As Doerfer saw it, the networks would want to maintain their integrity too much to allow such deceit. The chairman failed to address the corollary that it was still up to the networks to put the problematic shows on the air. According to Doerfer, the FCC had no right to enter into direct regulation of the production companies per se since the agency's mandate was specifically limited to overseeing the use of the airwaves in the public interest. Moreover, such intervention would involve the government directly in the operation of the market.

It was this distinction that caused the subcommittee and the FCC chairman to go around in circles during the discussion. Congressmen verbally bludgeoned John Doerfer about the FCC's failure thoroughly to investigate the allegations and for his constant equivocation on the question of where the Federal Communications Commission could

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[76] *Ibid.*, 524.

legally become involved. Doerfer maintained that the commission could only deal with matters that were in specific violation of the law and that constitutional and legislative blocks on censorship and free expression severely limited the FCC's right to become involved in other cases. Congressman John Moss punctured the FCC chairman's reluctance to develop legislation when he noted that only the courts could rule definitively on the legality of a law passed to regulate fraudulent or misleading programming. Obviously, the courts could only make such rulings if and when the laws were passed and put to the test. As such, Doerfer's ongoing refusal to discuss his agency's authority in such matters was a moot point.[77]

Representative John Flynt, Jr. of Georgia summed up much of the subcommittee's dissatisfaction when he criticized the FCC for behaving like "an ostrich that puts its head in the sand because he doesn't want to do anything about" the problem. In a slight bout of hyperbole, Flynt said he would rather see chaos on commercial broadcasting "than see things that tend to further corrupt the morals of the American people." Nor could he stomach the failure of "the agency which has the responsibility of preventing and correcting" such abuses.[78]

Doerfer did allow that both the FCC and the FTC had ample authority to step in when fraud or deceit existed in the field of "commercialization."[79] This was limited, though, to situations where specific legislation was on the books to permit direct agency action. Unfortunately, though, it was no easier to get at the heart of where legislation

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[77] *Ibid*., 536.
[78] *Ibid*., 539.
[79] *Ibid*., 517.

could rightfully be applied, even with this distinction. In an effort more clearly to discover the government's right to regulate broadcasting, the subcommittee also grilled Earl Kintner, chair of the Federal Trade Commission when he appeared shortly after FCC chairman Doerfer.

Almost immediately, chairman Oren Harris asked Kintner about the lack of regulation in place to allow government intervention. While Kintner admitted that the FTC's powers were relatively broad because of the agency's mandate to deal with "unfair methods of competition" he cautioned the subcommittee that the courts advised the regulators "to stick to the illegal practice itself and not go into the area of morals and good taste of business." Harris reassured Kintner that the subcommittee was not in place to level criticism against the FTC (a courtesy largely refused FCC chairman Doerfer). The representatives' goal was rather to discover what went on in the scandals and determine the need and opportunity for legislation to prevent such malfeasance in the future. Such legislation, Kintner offered, would be "the sure way of handling the problem." Any thought of broadening the rulemaking powers of federal oversight agencies, though, should be directed toward the Federal Communications Commission as it would have the most direct jurisdiction over the field of broadcasting.[80] Harris was cautious about the efficacy of expanding rulemaking power. Given the failure of the FCC and FTC to deal with the present situation, further rulemaking authority "would just be spinning the wheel."[81]

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[80] This confusion about which regulatory body was most responsible for preventing abuses would be echoed in the Payola hearings a few months later.
[81] *Ibid*., 552.

Like the earlier exchange with FCC chairman Doerfer, discussion with Earl Kintner quickly settled into something of a blame game. Once again it was Texas representative Walter Rogers who led the way in criticizing the FTC's record on investigations of the quiz shows. In a direct reference to Doerfer's earlier testimony, Rep. Rogers rejected Kintner's suggestion that the FCC would have better jurisdiction over the quiz scandals, instead chiding the chairman for passing the buck. Clearly frustrated with both agencies' constant shirking of responsibility, Rogers pressed the point that the FTC had the ability to issue cease and desist orders even without civil or criminal liability. If a practice existed that was not specifically anticipated by legislative bodies, even if it was not criminal in nature, the FTC would not have to wait until the legislative bodies got into action and created a civil or criminal liability. Kintner agreed that his agency could, and often did, involve itself in unfair business practices in gray areas of fraud and deception. Such decisions were made, however, based upon traditional circumstances of fraudulent or false advertising. This reliance on legal precedent or tradition was unsatisfactory, Rogers argued, because the FTC must not escape responsibility simply because it had never gotten involved in such matters before. That thinking was dangerous because "any new medium of communication is certainly not going to be permeated with tradition because it has never been in effect before." The agency's responsibility was to protect the American people and to "maintain a fairness and to prevent people from being bilked."[82] If this meant that the FTC should become

[82] *Ibid*., 568.

involved in fraud before congress passed specific legislation, so much the better. Besides, it was only in this way that the agency would be living up to its mandate.

While Kintner did not quibble with Rogers' interpretation, he repeated his objection that these deceits were more in keeping with the Federal Communications Commission's oversight capacity than with that of the FTC. If the matter at hand had centered on false or misleading advertising, the FTC would have broad powers to issue warnings. Since the gist of the quiz show scandal "was in the program itself, rather than in the advertising that was disseminated over the air," the FTC was not in position to become directly involved. Rogers again pressured Kintner that the best tool in these cases was to issue warnings, cease and desist orders or even punitive actions allowing the courts to pass the ultimate judgment on whether such determinations were legally warranted. "One body under our form of government can answer" whether government regulation is justified, Rogers said, "and that is the judiciary." The only other option for FTC investigators or FCC officials would be to "come to the Congress" for guidance or to get legislation passed that could directly address the fraud taking place.[83] Amidst ongoing buck-passing, Rogers lost his temper:

> Of course, I can't accept that as an excuse any more than I would accept the apologies of Mr. Doerfer that he had not stopped working on the case. He has been on it 15 months to date. Nothing has been done about it. The American public has continued to be defrauded. I think the crux of the matter is this: There is deception and fraud being practiced, and if the Federal agencies set up for this purpose are not going to act, we ought to find out why they are not going to act. If legislation is necessary to correct it, it ought to be passed. If they are not going to enforce it after it is passed, but continue to say, "We still think there is a gray area," "We

[83] *Ibid*., 568-569.

> don't have jurisdiction," I think something ought to be done to correct the situation by doing away with the agencies and creating ones that will act.[84]

One of Kintner's only saving arguments lay in the fine line between corporate sponsorship of fraudulent quiz programs and the issue of false advertising. Whereas false advertising had long been evident in misrepresentation of products, bait and switch sales tactics and other clear violations of fair trade, the new combination of corporate money and clearly deceitful programming choices made prosecution and regulation difficult. Counsel Robert Lishman said that the terms of sale clearly indicated that the script or program was handled as a product and not simply as a service. If a person sold this product to a network "without letting [the network] know that the value of the product is based on deceit," that should be a violation of sections of the Federal Trade Commission Act. Against this argument, Kintner suggested that television programs are essentially services and should not be equated with a simple commodity, like "nylons or Post Toasties" that the FTC has a legitimate interest in regulating. As Lishman saw it, though, since the networks could adjust personnel and could "get rid of the people who were furnishing the services in connection" with the programs, it was clear that the package was the ultimate purchase. In this sense, it constituted a product and not simply a vehicle for advertising and entertainment.[85]

To support his point of view, Lishman got the FTC chairman to admit that the point of American commercial TV was "to assist in the selling of the sponsor's products." Since the "advertiser want[ed] as many people as possible, prospective

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[84] *Ibid*., 570.
[85] *Ibid*., 581.

consumers of his products, to be exposed to the commercials on the program," there [was] a reasonable assumption that "there [would] be a correlation between the size of the TV viewing audience as reflected in the ratings and the prospects for sales of his products." Ultimately, the program [was] nothing more than an "advertising tool used to attract as large a viewing audience as possible." Kintner countered the counsel's suggestions by pointing to the problems faced when combining the two parts of the broadcast. The FTC had always been primarily concerned with false and misleading advertising, not with the program itself. If the advertisements per se had been false, then the FTC could step in with regulatory orders.[86]

Such a distinction was impossible as Lishman saw it. "Since the object of the advertising on TV [was] to attract the largest possible viewing audience," the FTC should "have some interest in the methods used to attract that audience. … In view of the intimate relationship between the program and the product," it would seem unrealistic "to separate the methods used to represent the product itself from the methods used to attract a large audience before which to parade the sponsor's commercial sales pitch." Kintner was afraid of the legislative and regulatory slippery slope such thinking could cause. If the government (either directly or through its agencies) became involved in such a fine question, where would it lead? The courts, he countered, had refused the right to "censor books that had the same false and misleading and fraudulent statements that the advertising of the same product had." It allowed the restriction of the advertisement but not of the larger vehicle in which the ad was contained. All entertainment came down to

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[86] *Ibid*., 591.

some form of deception, Kintner said. Granted, the modern mass communications system required a good deal more self-control than the carnival barkers and medicine men of 100 years before, but a specific law should be devised to deal with complex situations like the quiz show scandals.[87]

Lishman was still not convinced that a distinction could be made between the program and the sponsorship / advertising that paid the bills. The facts seemed to show that "the sponsor-advertiser profit[ed] directly from the use of the rigged TV show which he use[d] as the vehicle to put his name and his product before the American people." As such, how could one "separate such deceptive programming from the narrow direct advertising of the product that occurs during the program?" To this Kintner finally managed a more clearly stated counter argument: "You have a situation where the television program itself is a means of disseminating at intervals the advertising. That advertising is, under our law, of direct concern to us. The programming and all that goes into it, I think, is of primary concern to the Federal Communications Commission." Even if, as Lishman suggested, the program and the advertising within it were so "intermixed and interrelated" as to be all of a part, this did not rise to the level of meeting the legal requirements needed to regulate the program, Kintner said.[88]

A major problem clearly existed in broadcast media. The FCC and FTC had jurisdiction that, paradoxically, was at once simultaneously too vague and too specific to deal with certain problems in the industry. In the most cynical sense, each agency could easily deflect blame for its failures by saying it was not the ultimate authority. Perhaps

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[87] *Ibid*., 592-593.
[88] *Ibid*., 597.

even more dangerous was the possibility that neither agency would become involved in fraud because of debate over who had jurisdiction. Throughout these debates between the subcommittee and the agency chairmen, it was clear that these questions would require new solutions.

One solution that Kintner posited was to emphasize the need for voluntary self-regulation on the part of the broadcast and advertising industry. Since the industry had a powerful interest in maintaining its integrity, it would behoove the federal government to encourage voluntary self-regulation by the broadcasters and advertisers. The FTC, Kintner said, was a referee intended to make sure that open and fair competition could flourish. Just as the agency did not want to see business operate without rules fairly enforced, neither did it want the market to be "hog-tied with regulations and encumbered with referees." The answer to this was clearly "self-discipline" on the part of businesses and businessmen. "More than any other thing, it will eliminate the need for more law and more government." Like other federal regulators and business representatives discussed throughout this work, Kintner relied upon a distinctly American tradition of self-regulation. It concerned him that so many businessmen had come to the federal government in an effort to get legislation that would "whittle down their own free enterprise system, their own individual freedoms upon which business has grown and the country has grown." Businessmen were citizens who owe the same degree of adherence to the laws as any other person. "Their responsibilities not only extend toward obedience to the laws on the books, but extend also toward protecting the good name of their industry. This is one of the responsibilities of living in a democracy."

Kintner was heartened to note, though, that there was a "growing awareness" in the business community of the need for "individual policing and individual responsibility … or else those businessmen realize they will get more and more federal regulation and more and more laws which will further limit their activities."[89] It is also important that the FTC head was pushing for self-regulation to protect the business world even if it didn't ask for it. This proposition would also ensure that the interests of the individual consumer would be protected. Since the FTC was not in a position to address each and every case of fraud, encouraging fair competition and emphasizing industry self-regulation would protect consumers through the oversight of the entire free market system. Ultimately, "the competitive free enterprise system, if it is kept free of restraints of trade, inures to the benefit of the American public."[90]

Kintner's was not the only voice in favor of self-regulation. Later in the hearings the president of CBS, Dr. Frank Stanton, also argued that such an approach would be best for all involved. Television played a role in mass distribution and helped support the national economy's reliance on mass production, Stanton said. As such, "in the long run it is as much to the advantage of the advertiser as to the broadcaster that there be public confidence in the medium of television and public support for its practices." Clearly, then, the broadcasting industry would be well-served by self-policing to make sure it walks the straight and narrow. It might be a good idea, Stanton allowed, for the FCC to have broader and more specific powers to regulate networks and programs. It might also be a good idea for congress to develop new laws regarding deceitful programming

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[89] *Ibid*., 553-554.
[90] *Ibid*., 599.

practices. Speaking on behalf of the industry, though, Stanton believed that "legislation is no cure-all for these ills and that the primary responsibility lies with the broadcasting industry itself."[91] Robert Lishman, often the devil's advocate on behalf of the subcommittee, questioned whether the self-policing desired by Stanton and Kintner would tend to wait until some outside agency mobilized its resources, galvanizing the industry to start its own investigation. Obviously, such a situation would be less than ideal. Stanton reassured the subcommittee that such a fear was unfounded and that the industry would certainly take action independent of outside pressure.[92] The CBS head's assurances rang hollow, however, in light of NBC's admitted failure to investigate allegations of impropriety on its own shows.

The primary concern the subcommittee had with the efficacy of self-regulation was not the speed at which the industry would start investigations. Instead, concern was raised over putting the fox in charge of the chicken coop. Since businessmen were the ones responsible for the scandals, how could one reasonably assume that they would be motivated to regulate themselves out of a profit? When the businessmen themselves denied they had any part in the fraud, the industry clearly was not in a situation to fix itself.[93] Rep. Rogers unleashed his acerbic tongue on Kintner when the FTC chair suggested self-regulation. Although he was a staunch supporter of the free market system, Rogers realized that "some people would very well destroy this Government in order to earn a dollar." Talk about letting those kind of people self-discipline themselves

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[91] *Ibid*., 1091.
[92] *Ibid*., 1095.
[93] *Ibid*., 554.

was “like making an agreement with a bunch of tigers not to eat a bunch of lambs.” The primary interest of businessmen was “how many dollars they can make and get away with it.” Such a position had been borne out by everyone who had appeared on the witness stand during the hearings. Kintner’s faith in the goodness of the system centered on his assertion that representatives of the industry were citizens like the rest of us and had a “responsibility for abiding by the law and not injuring in any way” their fellow citizens.[94]

Conclusion

With the spectre of censorship constantly in the back of their minds, the representatives tried to come up with solutions that would allow the market to operate somewhat unfettered while still maintaining regulative oversight. The only direct legislation that came out of the hearings dealt with specific examples of misleading behaviors on quiz programs. In the future, there would be punishment for anyone who presented a quiz show as an honest contest of knowledge or skill when some sort of direct control was in place. Questions of sponsorship and self-regulation were still foremost. It was clear that legislators faced a conundrum. If rampant greed was commonly agreed to have been at the crux of the scandal (greed both on the part of sponsors hoping for ever larger audiences for their ads and on the part of producers hoping to turn their franchises into valuable commodities), how could self-regulation by the industry hope to combat the

[94] *Ibid*., 570-571.

problem? Clearly this would create a significant conflict of interests. Unlike the debates over regulation of comic books, industry self-control was largely rejected as a legitimate option to deal with the quiz show scandals. The power of the free market and the important connection between corporate sponsorship and programming meant that, in this case at least, traditional notions of self-policing seemed unequal to the challenge.

On the other hand, government involvement would seem to overstep the bounds of regulated capitalism. As FTC chairman Kintner feared, too much government regulation would likely stifle the creative impulses of program producers. In addition, it might actually hurt the chances for the public to get quality and diverse programming. Many thought that the competitive nature of free enterprise caused a general leveling of quality and content. Networks, in this interpretation, would react to popular demand by increasing quality or varying programming rather than be bypassed by an audience presented with other choices.

Finally, there was a very real problem with the ties between advertising and program control. A fine line existed between the corporate sponsors, who had a legitimate desire to advance their own interests, and the producers who had a vested interest in keeping both the sponsor and the audience happy. In addition, there was a clear worry about what constituted simple advertising versus what rose to the level of audience manipulation. As mentioned above, several members of the subcommittee were

convinced that advertisers for the quiz shows hoped to conflate in the audience's mind their product's integrity with that of the show itself.[95]

Late in the proceedings surrounding the quiz show hearings, Chairman Harris was presented with a number of letters and telegrams sent by the leadership of the American Society of Composers and Producers (ASCAP). They complained that a rival upstart music group known as Broadcast Music, Inc. (BMI) was using its connections with the broadcasting industry to monopolize what music would be played on air. Furthermore, the letters alleged that BMI provided financial inducements to disc jockeys who played records of BMI artists. Almost as soon as the quiz show hearings concluded in 1959, the subcommittee turned its attention to the next scandal to envelop the world of American mass culture – payola.

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[95] "Industry Primer Shows Why It's Hard to Set Responsibility," *Life*, 16 November 1959, 32-33. Part of *Life*'s cover story dealing with the quiz scandal, this article outlines each of the factors involved in making a successful television show. Between the sponsors, ratings, the producers, the networks, the local stations and the various regulating agencies of the government, it was nearly impossible to assign blame for impropriety let alone determine just where corrective legislation would be best directed.

CHAPTER 6

PAY FOR PROFIT: THE PAYOLA HEARINGS AND REGULATING MANUFACTURED DEMAND[1]

In March 1960 *The American Mercury* published an article describing and editorializing on payola, the most recent scandal to shake the American culture industry. Midway through the article, the author, Shields ReMine, included a statement that neatly tied together nearly every aspect of the topic that congressional investigators touched on during their hearings into the practice. "Far more important" than lawmakers attempts to define the practice and enact punitive legislation to prevent it

> [would] be their inquiry into what influence it [had] on the basic thinking of the entire communications industry. For one thing, its acceptance [had] helped lead broadcasting (including television) into thinking the airwaves were its private resource to exploit at will …. The airwaves belong to the people, as do all natural resources. The federal government only leases the airwaves to broadcasting. Their use must be entirely consistent with the public's interest, a responsibility of both the FCC and the industry. That the airwaves be commercially exploited is essential; but how utilized, and how closely the FCC dares let itself regulate free speech is the problem. A notion intensely repellent is that Uncle Sam, in any way, should ever become the Big Brother of Culture.[2]

The road by which the Harris committee came to its investigation of the payola scandal was almost as circuitous as the one that led it to its earlier investigation of television quiz shows. As the Special Subcommittee on Legislative Oversight closed its hearings into the quiz show scandals it learned of secret payments made to radio and television stations by the owner of Hess Brothers Department Store of Allentown,

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[1] I have treated this topic in more detail in: Shawn Selby, *They Knocked the Rock: Congress and the Payola Hearings* M.A. thesis, Ohio University, June 2002.
[2] Shields ReMine, "Payola," *The American Mercury*, March 1960, 33.

Pennsylvania, Max Hess. Hess testified that these payments, soon to be known as payola, were a "'common practice'" whereby he could get "plugs" for his store "or its wares." These payments differed from traditional forms of advertising, though. Rather than just paying local stations to get advertising spots on the air, Hess paid stations to get on-air personalities to mention his store during programs.[3] In another instance, the businessman paid $15,000 to get one of his employees onto a television quiz show so the man could mention his store on the air.[4]

In addition to the revelations surrounding the Hess situation, congressmen of the House Special Subcommittee on Legislative Oversight received a written complaint from the American Society of Composers, Authors and Producers (ASCAP) that their rival Broadcast Music, Inc. (BMI) was engaged in unfair business practices in an attempt to increase their share of the music market. ASCAP dealt primarily with printed music and collected royalties for its members whenever their music was performed. It handled many mainstream popular artists like Frank Sinatra and Kay Starr. BMI, on the other hand, was owned by 557 radio and television stations with ABC being the primary owner. The other significant player in the music industry was the American Guild of Authors and Composers (AGAC) who's president accused BMI of achieving "'control of American popular music [through the] forced feeding (of) rock'n'roll music to the public'" in a letter in late 1959 to Federal Communications Commission chairman John

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[3] House Committee on Interstate and Foreign Commerce, *Responsibilities of Broadcast Licensees & Station Personnel: Hearings before the Special Subcommittee on Legislative Oversight*, 86th cong., 2nd sess., 1960, 1. [hereafter Payola hearings]
[4] "From One Scandal to Another," *U.S. News & World Report*, 7 December 1959, 43.

Doerfer.[5] Flush with the media attention and public recognition from their investigation into the quiz show scandal, members of the House Special Subcommittee on Legislative Oversight expanded their inquiry to a new scandal – payola.

On the first day of the hearings, Chairman Oren Harris spelled out many of the broad themes with which the Representatives would come to be interested in the course of the next six months. First, Harris was worried about the quality of music sent over the airwaves. Like his counterparts in other congressional hearings, the Arkansas Democrat expected a competitive market would help solve the problem of poor quality cultural product. When payola was engaged in, Harris concluded, the public interest suffered. He believed that "when the choice of program materials" was made "in the interest of those who [were] willing to pay to obtain exposure of their records," there was a decline in the quality of broadcast programs. Second, payola apparently misled the public as to the actual popularity of the records chosen for airtime. Similar to ongoing debates over the role of ratings in influencing network programming, congressmen worried that payola put before the public records that were not really popular. Instead, successful recordings benefited from behind-the-scenes shenanigans. Because of payola records' repeated airings the public wasn't given any other choices and ended up buying music based on familiarity rather than legitimate preference. Finally, payola constituted "unfair competition" between those individuals who engage in the activity and the "honest businessmen" who refuse.[6] In some cases, though, this benefited the smaller distributors and performers who may not have had access to the exposure available to established

[5] Shields ReMine, "Payola," 33-34.
[6] Payola hearings, 1.

artists and major record labels. Again, this was similar to discussions during the various television hearings regarding the connection between the networks and their local affiliates.

When one examines the transcripts of the hearings it becomes apparent that the men on the Subcommittee were involved in weighing issues much more significant than what is often thought. Theirs was not simply an attempt to destroy rock and roll through punitive legislation, although this may certainly have been a welcome result for many of the committee members.[7] Instead, representatives were concerned with the ability for mass media, in this case the disk jockeys, to create fads. There was little doubt in chairman Harris's mind "but that a lot of these so-called hit tunes and questionable records, insofar as acceptable music is concerned, would never have reached the top had it not been for the various unusual ways of getting them there."[8] Was it possible, he questioned, for a savvy broadcaster to manufacture the popularity of a certain record? Or did there have to be some level of quality inherent in the record itself that resulted in its success?

In addition, legislators worried about what payola had to say about the activities of the mass market in general. After all, those responsible for the practice were simply engaging in a form of more direct advertising. Rather than paying an ad agency to get spots programmed to promote a product or service, they were paying the disk jockeys to

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[7] Linda Martin & Kerry Segrave, *Anti-Rock: The Opposition to Rock 'n' Roll* (New York: De Capo Press, 1993), 85. Martin and Segrave posit the relatively common idea that the payola hearings were essentially an attempt by conservative congressmen to neuter rock and roll by attacking the apparently illicit means by which it was distributed and broadcast. Though they mention the hearings connection to earlier congressional investigations, Martin and Segrave's interpretation, like so many others, overlooks the deeper debates revealed by the hearing transcripts.

[8] Payola hearings, 620.

play a specific record. Since this fact was never revealed to the audience, there seemed to be some question about the authenticity of the record's popularity.

When the committee spoke with FCC chairman John C. Doerfer and FTC head Earl W. Kintner midway through the hearings, there emerged a clear concern on behalf of all parties as to the best and most democratic way to address the issue of legislation. Prior to the commencement of House hearings the FTC had filed complaints against several record manufacturers and distributors expecting them to eliminate questionable business practices. These complaints did not carry any threat of punitive legal action to force compliance and many went unanswered. The FTC's actions, though, reflect the government's reliance on extra-legislative methods to pressure industry cooperation.

Rock and roll: manufactured popularity?

Many representatives seemed convinced during the investigation into payola that unfair and unscrupulous business practices were responsible for rock and roll's meteoric rise to popularity. Especially in light of rock and roll's apparently substandard quality, the only explanation congressmen could see for the music's rapid success was that distributors and producers had conspired to force it down the throats of unsuspecting teens. Why else would little Johnny and Sally pick Little Richard over Perry Como? Surely there must have been some sort of cabal within the music industry whereby the mass media created this fad and promulgated it upon the youth of America. This conspiratorial interpretation was not surprising given the recent discoveries regarding the

operation of the culture industry. Coming swiftly on the heels of the quiz show scandals and hearings into potentially monopolistic practices by the television networks, congressmen may have been primed to be suspicious of seemingly manipulative practices in the world of mass culture.

However, it was not a Congressman nor even the committee's chief counsel Robert Lishman (whose beliefs both politically and ideologically were clearly sympathetic with the majority of the committee) who first broached the issue of payola's role in perpetuating bad music. Instead it was disk jockey Norman Prescott, a record spinner from Boston, Massachusetts. As far as Prescott was concerned, the "toughest problem" surrounding the payola scandal was that "radio itself" was responsible for promoting and exposing "obviously rank or bad music."[9] The worst thing about payola, then, was that the radio stations which aired rock and roll failed in their responsibility to serve the public interest by broadcasting such inferior music.

Disc jockey Stan Richards agreed that rock and roll music was hardly worth the wax it took to imprint it on a record. Although he could have made more money playing "gassers" by Fabian, Richards stuck with Frank Sinatra, who he felt was the "greatest singer of all time," and represented "quality in entertainment."[10] Rather than spend time listening to records by independent labels, which were largely engaged in recording rock and roll, Richards looked for established stars like Perry Como, Kay Starr or Peggy Lee. Even Pat Boone, whose sanitized cover records of Little Richard songs outsold the

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[9] *Ibid*., 247.
[10] *Ibid*. "Gasser" was a term used by rock and roll disk jockeys to describe a record that was hot or especially popular.

originals, was good enough for Richards' shows. Apparently it was not so much the content of the music as it was the race or reputation of the performer that drew the line between good and bad music.

Race may have been a factor in the decision to investigate payola in 1960. The practice had been in existence in the music industry for decades and had never before come to the point of a congressional investigation. Historian Stephen F. Lawson argues that the growing stresses in the United States over the civil rights movement and rock and roll's clear connections with African-American culture made the music a target for conservatives worried about collapsing boundaries between white and black youths. Since lawmakers did not investigate payola until it was connected with rock and roll, the timing of the 1960 hearings would seem to suggest that race was a primary motivator in the hearings.[11] While racial matters may have been a factor, the transcripts of the hearings demonstrate that it was not the primary reason for the inquiry. Congressmen had very real concerns with the nature of the media industry that went beyond worries about racial inter-mixing.

Richards also praised the committee's work in exposing payola and the sub-par music it promoted. He agreed with Representative Samuel Devine's (R-OH) prompting that the industry would not have undertaken any changes if the Subcommittee had not

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[11] Steven F. Lawson, "Race, Rock and Roll, and the Rigged Society: the Payola Scandal and the Political Culture of the 1950s," in *The Achievement of American Liberalism: The New Deal and Its Legacies*, ed. William H. Chafe (New York: Columbia University Press, 2003).
For further discussion on rock and roll's connection to race relations see: Michael T. Bertrand, *Race, Rock, and Elvis* (Chicago: University of Illinois Press, 2000).

been in existence or at least until the "trend or popularity" of the music had died down.[12] Devine served in the House from 1959-1981 after a career in the FBI. He also served on Ohio's Un-American Activities Commission. Like other hearings, the payola investigation was useful as much for exposing problems to the American public as for leading to specific legislation. As many witnesses and lawmakers stated during other hearings, one of the primary responsibilities of congressional investigations was to serve as a forum to expose problems and educate the public on how to solve them. Harris and his cohorts, fresh off their investigation of the television quiz show scandals, almost certainly felt the same way.

Rep. Steven Derounian of New York raised an interesting complaint when addressing the case of pop idol Fabian. In an echo of the debate over authenticity that appeared during the quiz show hearings, Derounian pointed out that the teenage singer predominantly lip-synched his songs when he appeared on *American Bandstand*. Derounian went on to suggest that Fabian was only put on television because he was physically attractive. Rather than artists being criticized for suggestive movements, the performers in question were under fire for being too attractive. Like quiz show producers, Dick Clark, the producer of *American Bandstand*, seemed to choose his performers on the basis of their appearance rather than their talent.

Derounian accused Clark of getting "a big hunk of young man who has got a lot of cheesecake to him" and putting him on television. The kids, "thrilled" by this, rushed out to buy the records (though Derounian suggested that the recordings were likely the

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[12] Payola hearings, 249.

result of studio trickery or even "hormone treatments.") Clearly, in Derounian's mind, the "singing part" of a performer's talent was not the most important part in getting him or her on the air. Rather, the artist's physical appearance played "a great part" in determining whether or not Clark would let him appear on his show.[13] In this case, record sales – and *American Bandstand*'s ratings – ballooned in response to the appeal of the performer much like ratings rose when audiences liked the contestants on the quiz shows.

Payola not only seemed to enhance the opportunity for bad music to become popular, but it also seemingly limited the chance for "better" musicians and artists to reach the young audience. Representative Bennett of Michigan questioned whether this "rock and roll stuff" that appealed to the teenagers would have been played "regardless of the payola." Norm Prescott assured the congressman that, even if payola did not get the music on the air in the first place, the practice kept rock and roll on the air "because it fill[ed] pockets."[14] A similar exchange took place between Rep. Mack and Stan Richards. Mack clearly expected that "without the gratuities" of payola, "only the best music would get played." Richards agreed. Without payola, the broadcasters would still program music that was popular and would "reflect the taste of Americans," but it would be of "better quality."[15]

Chairman Oren Harris complained that the public had "no say about the type of programming put off on them" and, hoping to spark congress to enact corrective

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[13] *Ibid*., 1341-1342.
[14] *Ibid*., 39.
[15] *Ibid*., 250.

legislation, citizens had sent "innumerable" letters to the committee complaining about "the kind of music and the kind of broadcasting trends" that were going on.[16] "A lot" of the "so-called hit tunes" Harris noticed on air were "questionable records," at least insofar as "acceptable music" was concerned. Thus, there was no question in his mind that they would never have reached the top "had it not been for the various unusual ways of getting them there."[17] Payola, then, and not audience demand, was responsible for rock and roll's popularity.

Like the television hearings, a great deal of discussion during the payola investigation focused on how the music industry measured popularity. Chairman Harris, for instance, noted that many of the records that had been promoted as the top 50 "had never even been played before."[18] Who could say, then, whether these records were actually popular in the most common definition of the word? This concern led to several abortive attempts on the part of the committee to trace the manner in which the industry ascertained a record's popularity.

One such attempt was made by Representative John Moss of California. Moss's experiences as a small business owner in California helped shape his attitudes towards competition. A believer in regulation to guarantee opportunity for small businesses, Moss saw payola as evidence of the sort of commercial bribery big corporations used to

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[16] It is interesting to note once again the role of constituent letters in motivating congressional action. As has been argued congressmen, likely not the most regular consumers of popular culture, often relied on letters to help them determine which cultural investigations to undertake.
[17] *Ibid*., 620.
[18] *Ibid*., 248.

undermine competition.[19] He pointed to the use of ratings systems in the television industry as a sort of corporate collusion where networks and ratings firms could join to determine broadcast content without real input from audiences. These ratings systems created a "circle" whereby the viewer had "no opportunity to express a preference." If a community had three networks, Moss explained, the ratings might indicate that one of the three was receiving more attention. The next week, all three networks would have a similar program – Moss used the example of a Western. Then, when the ratings were taken, everyone in the town would be watching a Western.[20] Because of this, the networks began filling their schedules with Westerns and viewers would be forced to watch a genre that may or may not be the most accurate reflection of the public's taste or preference. Since they had gotten caught in the circle of manufactured popularity, however, the public would not be able to express their choices.

Moss clearly assumed that the mechanism of top 50 radio would, and did, lead to a similar phenomenon. The listening audience, told that a certain group of musical selections were the most popular, would not have the opportunity to listen to any other songs. As such, they would be manipulated into supporting these same songs by purchasing the records. This cycle of business engineering would lead to the perpetuation of music, or other cultural productions, that didn't actually reflect the public's preference. Moss never explicitly condemned the practice as a flaw inherent in the system of consumer capitalism, however his concern can easily be connected to worries about the creation of fads in other industries, such as fashion or automobiles.

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[19] Lawson, "Race, Rock and Roll, and the Rigged Society," 221.
[20] Payola hearings, 623.

Rep. William Springer (R-IL)[21] also questioned the programming choices of television networks as an extension of his consideration of payola. He directed his interrogation towards the head of Am-Par (the abbreviation for American Broadcasting – Paramount Theater, Co.), Leonard Goldenson. How did Goldenson determine, Springer asked, what people want to see? Goldenson replied that one cannot determine such an abstract and circumstantial thing, rather "you try to give them as wide a palate to choose from" as possible. To Springer's mind, however, the network had failed miserably in its duty to provide the general public with programming that was culturally and musically decent. ABC's discontinuation of various programs of quality music, Springer lamented, was "the worst mistake that has ever been made on any network." In other words, ABC had not fulfilled its own mandate to provide a "wide palate" of programs for the public.

Springer called ABC's the *Voice of Firestone*, "the best cultural musical program since TV" had been introduced. A sort of classical music variety show, the *Voice of Firestone* was the only way for many people in Springer's district to be exposed to the sort of cultural entertainment he felt was most beneficial. Unlike the musical performances on *The Ed Sullivan Show* or other variety programs, the *Voice of Firestone* devoted its time solely to classical performances. In light of its cancellation, and seeing a trend of similar programming decisions on other networks, Springer threatened that he would do everything he could to get a hearing within the subcommittee on the issue of programming. Since the committee had been interested for months in "improving the

[21] Rep. Springer served in the House for twenty-two years in between stints as a local magistrate and state's attorney in Champaign, Illinois.

quality of programming," it was wrong for broadcast outlets to eliminate the "cultural programs" demanded by the "discriminating audience we have in America."[22]

In the end, Goldenson informed Rep. Springer that his decision to end the program was due to its inability to compete with the more action oriented shows on other networks. In an effort to respond to public demand, culture took a back seat to violence. The replacement show *Bourbon Street Beat*, a short-lived show about a group of private detectives in New Orleans, was "one of the worst programs" Springer had ever seen. Springer's comments prefigure many of the arguments made in the mid-1960s to justify a public broadcasting system to provide the cultural programming lacking on commercial networks.[23]

Ratings systems and measuring demand

The congressmen also discussed the accuracy and use of ratings systems that were similar to those broached in other hearings described here. Congressman Moss recognized the cyclical nature of ratings. The number of plays of a record, he thought, would have "a very definite impact" on the ratings. There would be a sort of "ring-around-the-rosy" situation making it impossible to determine whether popularity was in response to demand or vice versa. Dr. Joseph Daly, the Chief Mathematical Statistician for the Bureau of the Census, agreed and expressed some surprise that people in the music business had not "studied in some more scientific fashion … just what the effect of

[22] *Ibid*., 1418.
[23] *Ibid*., 1417.

exposure [was]."[24] That same day, Joseph Tryon, a professor of statistics and economics at Georgetown University, saw the same problem. "Unfortunately," he lamented, "the relationship between popularity and number of record plays is very much a chicken-and-egg proposition."[25]

The question over popularity also led to a conundrum regarding disk jockeys, especially significant figures like Dick Clark. The debate became whether they played music that was already popular, or whether they programmed records in an effort to manufacture popularity. Relatively early in the proceedings a representative of Am-Par records explained that Dick Clark, or any disk jockey "of his size or importance," would not play a record "until after it became an established hit." Once enthusiasm had been created for the record through shows and "mediums, other than his,"[26] the disk jockey would feel justified in programming the song on his station. The disk jockey, then, was acting first and foremost in reaction to the popularity of a certain recording. It was not his job to establish a public demand for the song.

In the course of his statements before the committee, however, Dick Clark contradicted this by suggesting that he played records primarily to allow less well-known and less established artists the opportunity to become popular. Clark said that "some artists don't need as much play as others."[27] Because of this, performers like Elvis Presley may not get as much consideration on *American Bandstand* as lesser-known artists like Duane Eddy. Chief counsel Robert Lishman questioned whether Clark played

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[24] *Ibid*., 1003.
[25] *Ibid*., 1008.
[26] *Ibid*., 493.
[27] *Ibid*., 1222.

any songs by Perry Como, Frank Sinatra or Bing Crosby on *American Bandstand*. "If a record is popular," he queried, "why don't you play it." Clark argued that his audience was not interested in performers like Perry Como or Frank Sinatra.[28]

Lishman then proceeded to ask Clark why he might play a record "467 times" prior to its peak in the Billboard ratings and only 49 times afterward. The *Bandstand* host responded that one might play a record before it showed up on ratings charts due to some indication that the song would be a hit. Then, once the record was established, it was smart to taper off the number of performances in order to avoid driving the audience away.[29]

Rep. Moss was more accusatory when discussing the issue with Clark. Moss maintained that Clark played records that the disk jockey "hoped might be developed into popular pieces." This was readily apparent due to the fact that Clark was "picking records and starting to play them … before they had any popularity." Clark was not, Moss stated, "responding to a popular demand for a recording" because at no time was he "acting in response to requests." Nor was he "acting in accordance with readily determinable knowledge of which records are selling." Thus Moss assumed that there were two possible reasons for Dick Clark's success at promoting records. Either he was an "excellent picker" of the "rather peculiar music" performed on his television program or the playing of records on his program "had a tremendous impact in stimulating a desire" on the part of teenagers to buy certain records.[30]

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[28] *Ibid*., 1223.
[29] *Ibid*., 1225.
[30] *Ibid*., 1330.

Throughout the hearings certain Representatives consistently expressed their conviction that simple airplay could force a record of poor quality to become a hit. Chairman Oren Harris felt confident that "a diskjockey can take any record, if it has any substance to it whatsoever, and through the broadcast medium, make it a very popular record." Although the witness to whom he was speaking, disk jockey Wesley Hopkins, disagreed, Harris pressed his assertion that "the playing of records through the broadcast media" helped to form the "opinion of the people regarding" the record. Hopkins responded with much the same argument that other music industry witnesses used. For a record to be popular it had to have a certain something – the "it" factor – before it could become a significant success. If the record did not have "it," it would not succeed commercially, "no matter how often" it was played.

Implicit in this discussion was also the recognition that disc jockeys of the 1950s and 1960s were often significant figures in teen culture, with an influence exceeding their role as record spinners. Many notable DJ's built sizable audiences by developing over-the-top personas that appealed to young listeners. Wolfman Jack, Cousin Brucie and Alan Freed (known by the moniker "King of the Moondogs") all won fans through their wacky promotions and boisterous on-air banter as much as through selecting popular records for their shows.[31] It may have seemed possible to Harris and others that the cult of personality that developed around major disc jockeys could allow them to push certain records to become popular even if they did not have "it."

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[31] Bill Brewster & Frank Broughton, *Last Night a DJ Saved My Life: The History of the Disc Jockey* (London: Headline Book Publishing, 1999).

Harris once again moved the hearings into economic matters when he wondered whether payola limited the public's exposure to records without the financial support of the major labels. "A lot of records that have 'it' never are brought to the attention of the public," worried the chairman. "Therefore the public does not have the benefit of that record."[32] The records in question were more than likely those released on smaller, independent labels that were largely engaged in producing rock and roll. Rep. Harris's concern for the lack of exposure given to small label recordings, therefore, seems somewhat interesting in light of his criticism regarding the poor quality of rock and roll. It also seems to support Dick Clark's argument that he helped to bring lesser-known artists to the public's attention.

British economist and Nobel laureate Ronald H. Coase presented a pragmatic argument in favor of payola in 1979, nearly two decades after the scandal led to legislation designed to prevent the practice in broadcasting. Coase argued that station managers and disc jockeys likely would not significantly alter their broadcast selections to satisfy record distributors who paid them payola if those "plugged" records would risk damaging the audience numbers that were the lifeblood of a station's revenue stream. And, in a striking similarity to the idea of middle-men in the economic system that was expressed during the comic book hearings, Coase suggested that disc jockeys would be more closely in tune to the preferences of their audiences and so could choose records that would appeal to listeners, irrespective of payola. Coase also pointed out that payola put the economic emphasis of broadcasting on record buying rather than on enticing

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[32] Payola hearings, 198.

audiences to buy products advertised on the air. Finally, the economist declared that payola was useful in the record industry because it allowed smaller labels to compete with larger, more established firms, ultimately encouraging healthy competition.[33]

The committee's chief counsel, Robert Lishman, also recognized the effect payola had on getting records exposed. With so many records on the market all of them could not possibly get airtime. In order to get exposure for your record "you [had] to pay for it."[34] In fact, the *American Mercury*'s March 1960 article on the subject argued that payola in one form or another was "an antique practice" that assisted "every popular song hit" America had ever had.[35] Even if legislators did not want to admit it, the practice was intrinsic to the music industry. Given the timing of the hearings, it seems likely that congress was spurred to investigate largely because of concerns with the type of music that was being "pushed" on disc jockeys and the listening public. At no time did the Representatives investigate why the smaller labels felt the need to engage in payola in order to get their product onto the market. These independent record producers and distributors obviously felt the need to utilize these unfair business practices. No inquiry was made, however, into why this was so.

There was also no attempt to discover why the practice seemed to be limited to the labels and broadcasters most associated with rock and roll. Was this due to a repressive musical establishment that still made it difficult for rock and roll acts to become successful? Or was it simply a case where more successful artists like Perry

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[33] R.H. Coase, "Payola in Radio and Television Broadcasting," *Journal of Law and Economics*, vol. 22, no. 2 (Oct. 1979).
[34] Payola hearings, 1124.
[35] Shields ReMine, "Payola," 30.

Como and Dinah Shore no longer had to rely on questionable tactics to get their music heard? When looked at from one angle, payola's success (if the practice was as effective as the public and the congress seemed to believe) allowed for many more young men and women to experience the American dream. Had it not been for the use of payola in certain instances, certain records and performers may never have made it into the music business. payola, then, could almost be seen as having been beneficial to the music industry because of its ability to infuse into it a talent base that would have stagnated without payola's ability to grease the wheels of the media machine.

A paradox arose between the congressmen's ostensible desires and their statements relating to specific cases. Whereas Harris fretted over the possibility that somewhere, someone was not being heard because of the influence of payola, Derouinan and others were concerned that disk jockeys were exposing artists that were no good. In either case, the debate continued to focus on the ability of disk jockeys and other media outlets to create a demand for popularity. Indeed, there was no doubt amongst either the congressmen or the witnesses that the best way to expose a record to the public was through performance – the more performances the better. As Chairman Harris said there was "no better way" to get "particular records in the homes or before the public" than to have the record played "eight times a day or six times, whatever it is…." And the best way to get the record in a position to benefit from such exposure was to get the recording to "certain people" with the "authority and opportunity" to broadcast it to the public.[36]

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[36] Payola hearings, 274.

Congressman John Moss of California was even more upset with what he saw as Dick Clark's ability to create popularity, seeing it as being not only manipulative but done in a consciously self-serving way. Moss had already come to the conclusion that "the playing creates the demand" rather than the reverse. According to Moss, Clark was "attempting to create a demand in an area of music, to guide it, because of a unique opportunity," to promote records in which he had a vested interest. National magazines at the time also pointed out that the popular television star had financial interests in many of the records he aired on *Bandstand*. Clearly critical of the emcee's lack of forthrightness, *Newsweek* was sure to let readers know that Clark had a one-third stake in Swan Records, the label that pressed one of the recordings the star seemed keen on putting at the front of a recent broadcast.[37] Interestingly, the magazine seemed to temper its tone a week later admitting that "payola in one form or other [had] long been part of the music industry."[38]

What was more, Moss said, Clark had assured the committee that he was responding "to the popular demand for music."[39] Like Chairman Oren Harris's statements earlier, Moss was clearly upset with what he no doubt saw as a lie on the part of the disk jockeys. If they were indeed playing music the public wanted to hear, where were the established stars who did not play rock and roll?

Clark railed at Moss's suggestions. As was the case with much of the debate between the two men, their exchanges seemed much more vituperative than they were

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[37] "Payola Blues," *Newsweek*, 30 November 1959, 94.
[38] "Jockeys on a Rough Ride," *Newsweek*, 7 December 1959, 98.
[39] Payola hearings, 1331.

with other witnesses. Clark defended himself and his profession, pointedly commenting on Moss's lack of first-hand experience in the industry. "People who have been in the business" of radio and broadcasting knew that "as a rule of thumb" it was unreasonable to think they could force upon the public "anything they do not want." "It is literally impossible," Clark said, "to force a record to become a hit."[40] Though he never lost his calm, even temper, the nattily-dressed emcee clearly grew frustrated with lawmakers' attempts to implicate him in improper business practices.[41]

Moss then made one of the most telling statements of the hearings. "Exposure," he declared, was the "essential ingredient in making it possible to create demand." Creating demand through repetition within the music business was "no different than merchandising anything else,"[42] according to Moss. The more the public saw an advertisement, heard a song or viewed a television program, the more likely it was that consumers would buy the product, want the record or continue watching the show. Similar comments are peppered throughout the hearings into television. A good deal of debate during Sen. Thomas Dodd's hearings into television practices focused on the use of teasers to entice viewers into watching certain programs. In addition, Moss's views seem very like economist John Kenneth Galbraith's arguments about manufactured demand in American consumer society.

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[40] *Ibid*., 1316.
[41] "Music Biz Goes Round and Round: It Comes Out Clarkola," *Life*, 16 May 1960. The *Life* article about Dick Clark's appearance before the subcommittee detailed the industry personality and seemed largely ambivalent about his guilt or innocence. Though it outlined Clark's shady tendency to overplay records in which he had a financial interest, the article also seemed admiring of the star's Teflon testimony. Though repeatedly the target of criticism and accusations, Clark managed to come through the hearings largely unscathed and even received chairman Oren Harris's endorsement as being "'a fine young man.'"
[42] Payola hearings, 1317.

The incredible expansion of the youth market during the 1950s and 1960s seemed to heighten the dangers of a culture industry run amok. By 1958 a teen's average weekly income was ten dollars, four times its level in 1944. Teens that year spent an estimated $9.5 billion, largely on impulse purchases like records, comic books and movie tickets.[43] The fears over juvenile delinquency that had sparked some of the earliest inquiries into mass culture during the decade were overtaken by fears connecting the economic power of young people with a culture industry seemingly unconcerned with the potentially deleterious nature of its output. As more and more teens had access to radios and the rock and roll broadcast over them, the possibility that the music's rebellious style would influence youth behavior seemed to increase. Teens had cars and radios, phonographs and records with which to proclaim their struggles for independence and recognition. Automobiles gave young people a freedom and mobile rebelliousness that they had never experienced. Now they could simply drive away from overbearing parents. They could also take their sweetheart necking on Lovers Lane to the sounds of the Platters. This connection of rock and roll to sex was one of the most potent factors in the nearly instantaneous negative reaction from adults. The rhythms and suggestive lyrics implied a youthful world where Dionysian delights ran rampant and trampled on the values and conservative ideals that America embraced at the height of the Cold War. Anything that suggested that American young people were oversexed, unintelligent apes must be eliminated.

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[43] Tom Engelhardt, *The End of Victory Culture: Cold War America and the Disillusioning of a Generation* (Amherst, MA: University of Massachusetts Press, 1995), 134. Engelhardt's book is a fascinating look into the social pressures of the Cold War which caused the American public to lose faith in the idealistic mantle seemingly bestowed upon the nation by the victory over fascism and triumph over the Great Depression.

Rock and roll suffered perhaps the most castigation of any aspect of the growing youth culture. Most adults feared rock and roll as some sort of anti-American implant. Almost without exception those who most strenuously condemned the music felt it must have come from either the Communists or the Devil, (or both). During the 1950s and the era of the rapidly heating Cold War, it was essential that the youth of America be kept in a state of social purity and conservatism akin to the one that was ostensibly present during the decades before. If the young people of the United States succumbed to this heathen music there was no telling where it would end.

> In what is perhaps the only genuine instance of Soviet-American agreement, rock and roll was found by both to be responsible for almost every lamentable social condition. If civilization were to crumble into dust, the blame would no doubt rest entirely on the new music of the young. Curiously enough...each side accused the other of instigating this insidious sound. [44]

What most adults at the time failed to realize, however, was that the very restrictiveness that they felt was essential in maintaining order was the thing that was driving their youth further into rebellion.[45]

Major developments on the technological scene also contributed to the growth of mass culture during the 1950s. This expansion, in turn, led to the need for expanding markets and eventually the staggering rise in youth-oriented cultural production. While cultural theorists continue to debate the co-optation of youth culture for mass culture production, there can be little doubt that the 1950s and 1960s saw the first widespread

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[44]Robert G. Pielke, *You Say You Want a Revolution: Rock Music in American Culture* (Chicago: Nelson-Hall, 1986), 68-69.

[45] Glenn C. Altschuler, *All Shook Up: How Rock 'N' Roll Changed America* (New York: Oxford University Press, 2003). Altschuler's book is perhaps the best text available dealing with the social and cultural implications of the rock and roll era.

attempt by the culture industry to adopt the mannerisms and styles of young people and redirect them outwardly to develop huge market potential. In many ways, post-war technology aided this effort.

The convenience of the 45 RPM record and the transistor radio changed completely the ways in which listeners absorbed popular music. Although the advent of the 33 1/3 RPM record came at about the same time as the 45 (1948), in terms of importance to the *rise* of rock and roll as a youth cultural phenomenon the 45 was much more significant. This was due in large part to the type of music that was recorded on the various formats. Whereas the 33 1/3 RPM record, or LP (short for long-playing) was used primarily for more "serious" music such as concertos, symphonies and the like, the 45 RPM was the signature record for popular music. The new format was also eminently more portable and convenient than the earlier 78 RPM records.

78's were fragile, large, and cumbersome and required enormous, furniture-like pieces of machinery on which to play the records. Teens could take the 45 RPM records anywhere, however, due to their sturdier construction, much smaller size, and the innovation of the large center hole for use on the turntable. In addition, the turntables needed to play these discs were small and simple to operate. They could be taken on sleepovers, campouts and picnics, creating a much greater connection between the audience and the musician. Now a fan could take his or her favorite record literally anywhere at any time. The most inexpensive 45 RPM machine cost about $12.95 and was "probably the single most important piece of technology facilitating rocknroll's

appearance."[46]

The 45 RPM record also had the interesting feature that, due to the physical limitations on the amount of music able to be recorded on each side, songs were suddenly limited to around three minutes each. This forced the emerging bebop movement in jazz into the margins of the popular music culture because of the nature of the extended (often musically obscure) improvisations enjoyed by jazz impresarios. The traditional popular music of the early to mid-1950's (that of Perry Como, Theresa Brewer and others) already fit within the limitations of the three minute single due to the fact that 78 RPM records had essentially the same restrictions on time that the 45 did. In this case, the ease of transport and the relative resistance to damage inherent in each disc became the deciding factor. Soon, even artists weaned on other formats began to record strictly on 45's. Even today, when such time constraints are essentially arbitrary considerations, the average pop song is marketed at around three minutes.

The other significant technological innovation that directly affected the manner in which the music and radio culture was disseminated was the transistor (specifically its use in the portable radio). Transistor radios were also introduced in the early 1950's by many corporations including Texas Instruments and RCA. Their creation and mass distribution gave rise to a youth culture that held their personal, portable radios in the highest regard.

Since their inception radios had served the family as the gathering place and center for household entertainment. The family would gather around the radio at night

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[46]Philip H. Ennis, *The Seventh Stream: The Emergence of Rocknroll in American Popular Music* (Hanover, NH: University Press of New Hampshire, 1992), 133.

and listen to an agreed upon program. With the emergence of the transistor radio, individuals were free to choose their own music (at times clandestinely). Teens would ostensibly enjoy their time with their parents listening to the Burns and Allen show, but at night, they would hide under their covers listening to the contraband broadcasts of rhythm and blues from Memphis, or Cleveland. The record (specifically the 45 RPM single) became a method of connecting the performer and the audience more thoroughly than ever before and the radio broadcasts of those records became the primary source of experiencing that connection.[47]

The power of the radio in shaping a national consciousness towards rock and roll and thereby facilitating an increase in youth-oriented mass culture cannot be overemphasized. Given the discretionary income and freedom to choose, teenagers across the country bought radios in droves. Many of them also purchased the earpiece attachment that would allow them to listen in almost total secrecy while their parents were blissfully unaware of the corruption occurring within their walls.

Young people also began getting radios in their cars, an innovation that was made possible by the transistor. This allowed for an unprecedented amount of musical portability and convenience. Now that the nation was becoming increasingly mobile, and the automobile was emerging as a necessity rather than a luxury item, the idea of including radios in cars expanded the market for popular music dramatically. More and more people began commuting to work from homes in the suburbs. City centers were being replaced by the expansion of business centers outward from the original business

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[47]Carl Belz, *The Story of Rock* (New York: Oxford University Press, 1972), 46.

districts of the city. Cars had once been a big ticket item that was not absolutely necessary for the average worker with access to metropolitan public transportation and the convenience of business centers being nearby. They soon became essential.

Because of this new type of radio listening audience, radio broadcasts were tailored to specific audiences at specific times during the day, including rock and roll during the time when young people would be driving home from school. Teens could even turn up the radio during their dates and while arriving for other rites of social passage like the prom and sock hops.[48] The radio inserted rock and roll into nearly every moment of a teenager's life. And, as teens had more and more money to spend, rock and roll and the advertisements that went over the airwaves with it could produce huge profits.

PAYOLA AS ADVERTISING

In light of the very real economic concerns raised by the growing youth market and the questionable practices lumped under the payola heading, lawmakers looked into payola's connection to traditional forms of advertising. Many of the record distributors and record label representatives who testified that they had given payments to disk jockeys and station personal had claimed the expense on their taxes as an advertising or promotional expense. Clearly, these businessmen expected some sort of positive outcome from their outlay and legislators hoped to discover just what that expectation

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[48]David Szatmary, *A Time to Rock: A Social History of Rock 'n' Roll* (New York: Schirmer Books, 1996), 23.

was. As congressman Moss stated it, they must have had "some way of justifying it."[49] Being "pretty good" businessmen, they probably felt that they were "getting value for every dollar" they expended.[50] And since most of those involved had charged the payments to their books as "advertising," clearly they felt that the activity was not so very different from more standard forms of promotional expenditures.[51] Donald Dumont of Dumont Records, Inc., put forth this very argument when he "figured that advertising and promotion was a legitimate expense of a businessman." After having been in business for a few months he decided to show his appreciation to people that had been helpful to him by sending them a check. In his mind it was no different from "buying them a sweater or a case of liquor or something."[52]

In Rep. Mack's interpretation, however, the situation was more a matter of survival on the part of the men making the payments. Mack often seemed to defend the small businessman's stake in the industry. Like those who worried that network policies limited affiliates' ability to sell highly profitable advertising spots during peak hours, Mack believed that payola was evidence of smaller labels needing a way to level the playing field with larger labels and distributors. As he saw it payola was not simply a "question of advertising or promotion." Rather, it was an "accepted fact" in the business that "payola was necessary to survive." Without it smaller record distributors would never move enough of their product to compete with the larger companies. Although the witness to whom he addressed this statement disagreed with it, Mack made mention of

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[49] Payola hearings, 452.
[50] *Ibid*., 489.
[51] *Ibid*., 326.
[52] *Ibid*., 547.

the fact that even with payola the man was "having a difficult time surviving."[53] This realization is telling in light of the belief expressed throughout many of the other hearings into mass culture that competition would serve to improve the quality of cultural product. Here, Rep. Mack was suggesting that payola was actually a necessary evil for smaller labels to allow them to compete with the larger companies and their substantial market share.

Whereas the bulk of the hearings were centered on payola's existence in the music and broadcast industry, congressman Bennett felt that the matter of Hess's Allentown department store was more important to discuss as it covered "a variety of things." In fact, it went into a "much broader field of practices which … seem to be improper." Hess, according to Bennett, had even admitted to making payments to television networks directly for special consideration. Thus Hess's charges implicated not only local stations, but also "network programming." As such, they represented the most egregious form of payola uncovered to date.[54] Unfortunately, perhaps because their mandate did not extend to network television reviews, the lawmakers failed to delve deeper into this provocative issue.

Regulating the regulators

Congress's reason for investigating the practice of payola was not necessarily to enact any specific legislation. Nor was it to determine the extent of the practice itself. In

[53] *Ibid*.
[54] *Ibid*., 649.

reality the Special Subcommittee on Legislative Oversight was created to oversee the operation of various federal regulatory agencies and to ensure that they were acting within the boundaries imposed upon them by congress. It was in this context that the Subcommittee tried to find out whether the FCC and the FTC were doing their best to limit the practice.

In his book *Forge of Democracy: The House of Representatives* Neil MacNeil argues that the evolution of the House oversight committee stems from the responsibilities placed upon Representatives by the United States Constitution. Because it controls the purse-strings of the American government, and because it has been given the mandate of overseeing the activities of the various regulatory agencies within the executive branch, MacNeil argues that the House of Representatives "has held vast authority to oversee the entire government establishment." In the interests of expediency and political convenience, the House as a whole eventually delegated these responsibilities to its various committees.[55]

It was the responsibility to ensure that the FCC and the FTC were operating effectively and in the best possible public interest which caused the Subcommittee to begin the investigation. During their interrogation of the chairmen of the FCC and the FTC, congressmen wrangled with whether existing regulation was sufficient to handle the situation, or whether the House should enact legislation to address the issues more effectively. There also arose a certain amount of debate as to whether or not forcible, punitive legislation was the best way to proceed with eliminating payola and other unfair

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[55] Neil MacNeil, *Forge of Democracy: The House of Representatives* (New York: Van Ness Press, 1963), 175.

practices. As during the juvenile delinquency hearings and other investigations into mass media, representatives wondered if voluntary regulation would be sufficient to solve the problem.

Given the nature of payola itself, the responsibility of federal oversight fell to both the Federal Communications Commission and the Federal Trade Commission. As the quiz show hearings revealed, there was often confusion over which oversight agency was responsible for ensuring the culture industry operated within the law and in the public interest. Since the activities involved the apparent bribery of owners and operators at radio stations, the FCC was responsible for determining the practice's effect on broadcast licensees. The FTC was charged with investigating the issue of bribery within the broadcast industry and its potential negative impact on competition. As such, both agencies held their own investigations. The Subcommittee soon summoned them to detail their findings and to suggest options for better enforcement of the legislation.

FTC Chairman Earl Kintner appeared before the Committee on March 4, 1960. In the course of his investigation, he said, he had discovered 255 disk jockeys in 56 cities engaged in payola. Although he suggested that congress establish a "criminal statute" to eliminate payola, Kintner assured the committee that the FTC in the meantime would do everything within its power to "eradicate the practice" through its "civil procedures."[56] Kintner clearly felt that this level of authority was inadequate, however, and that civil procedures would not result in the kind of punishment that would discourage further participation in the practice.

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[56] *Ibid*., 659.

Despite his recommendation for a criminal statute, he never waivered in his belief that self-regulation was the best way to ensure the public interest without interfering in the operation of the market. Kintner hoped that "the industry [would] engage in a fair amount of monitoring."[57] Much like the corporatism endorsed by Herbert Hoover and FDR in the early stages of the Great Depression, Kintner believed that the industry itself would be best equipped to deal with the problems at hand. Given the opportunity, the broadcast industry could right its own ship without the need of potentially dangerous government interference. At the same time, though, Kintner told the committee members that he could best eradicate payola by "going to the source and securing orders against those making the payments."[58] In order to gather evidence of untoward business practices, Kintner admitted to monitoring telecasts and broadcasts since 1956. Rep. John Moss expressed concern over the practice, questioning whether it would undermine the "independence of broadcasting or advertising." Kintner responded that it was a "proper policing function" of the FTC and that they monitored only the "commercial portions" of the broadcasts which fell directly within the jurisdiction and responsibility of the commission.[59]

Whereas the FTC was interested in the practice's corruption of fair and healthy competition, the FCC's focus was on the ways in which payola seemed to coerce broadcasters to play records they would otherwise reject. By basing programming decisions on such blatant financial machinations rather than on the best interests of the

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[57] *Ibid*.
[58] *Ibid*., 655.
[59] *Ibid*., 659.

public, payola seemed to undermine the validity of the license process. FCC chairman John Doerfer agreed with Kintner's suggestion that congress enact legislation to force individual licensees to "inaugurate internal checks or controls" in an effort to stop payola before it affected broadcasting. Like Kefauver before and Dodd later, Kintner's idea was another curious overlap where federal legislation would force private businesses to engage in "voluntary" self-regulation.

Oren Harris, however, felt that not only was the industry's record during payola less than stellar but the FCC had also dropped the ball. Harris thought that the FCC's investigation was somewhat "belated" and that any self-regulating actions within the broadcast industry had begun only after the subcommittee opened its investigation.[60] *U.S. News & World Report*'s December 1959 article about payola indicated as much saying that "stations and networks" only tightened their supervision over programs when rumors of payola spread.[61]

Although he admitted that some of the stations involved had been "most cooperative" and had "taken action"[62] to rectify the situation, Harris clearly worried that relying on internal policing and monitoring would be inadequate. Until congress began hearings into the matter, he argued, the industry had not taken any action and did not "even pay any attention" to payola. The industry was "rather consistent" in its assertion that everything would be alright if they would be permitted to clean their own house when in reality it had had ample opportunity to do so and had simply ignored the

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[60] *Ibid*., 693.
[61] "From One Scandal to Another," *U.S. News & World Report*, 43.
[62] Payola hearings, 659.

practice. It is not surprising that Harris and others on the committee felt this way given their almost identical criticism during the quiz show hearings a few months before. Thus, a significant tension arose between the desire on the part of congress to allow the industry to regulate itself and the recognition that such a system would potentially result in ongoing questionable business practices.

Since the industry seemed incapable or unwilling to regulate itself to congress's satisfaction, committee members sought Chairman Doerfer's suggestions as to the best way to end payola. Doerfer asked for more congressional legislation to aid the FCC's interdiction in unfair broadcast practices. It was in the public's best interest to create preemptive legislation so that future problems could be eliminated before they became significant enough to warrant congressional investigation.[63]

Unlike FTC Chairman Earl Kintner, Doerfer had no "implicit faith" that payola would disappear "without corrective measures." Since, however, the FCC only had the capacity and legal authority to regulate the broadcast licensees, Doerfer asked for greater "flexibility in suspending or taking action against" licensees. In addition, he requested a law making it a crime to engage in "rigging" or "payola" practices. The proposal would provide for fines up to $5,000 or imprisonment up to one year, or both.[64] Finally, there should be a "salutary weapon" designed to combat the "deception" inherent in payola. This statute would allow the FCC to investigate practices "outside the fold of the

[63] *Ibid*., 698.
[64] *Ibid*., 676.

licensees per se."[65] Because the FCC had no "supervising powers" over business practices it was forced to rely on complaints from within the industry, Doerfer argued.

Again, congressman Moss took exception to Doerfer's interpretation of his commission's limited powers. Admitting that the FCC may have no "supervisory power over business practices," Moss refused to concede that it had no power "over the broadcasting business." "If," he said, "you are constituted to regulate, the only possible reason for regulation is the practice of the broadcasting itself." The only other purpose for which the agency could have been created is to ensure "the public interest."[66] Even this seemed to carry with it an implicit mandate to regulate the business side of broadcasting. Clearly Rep. Moss wanted the FCC to deal directly with the content and programming of the broadcasts sent over airwaves licensed by the federal government.

He articulated this view explicitly later in the course of the hearings while interrogating Dick Clark. "Radio and television" were the only industries in existence, Moss argued, "where, by regulation do we create value." Until the broadcast industry is "regulated and restricted and licensed" "nothing of value exists." In addition, the license was only justified when the "operator and the performers undertake, in the public interest, to inform and to entertain and to inform and to educate."[67] Moss admitted that the license was justified when the operator undertook to entertain the audience, in other words, entertainment via the broadcast of popular programming. However his consistent attacks

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[65] *Ibid*., 712.
[66] *Ibid*., 713.
[67] *Ibid*., 1199.

on the "raucous discord"[68] of rock and roll lead one to believe that he was not concerned so much with genuine popularity as he was with perpetuating his brand of popular music and programming. Regardless, his comments presaged much of the concern with cultural quality that would resurface during hearings into public broadcasting a short time later.

It is interesting to note, however, that Moss was unwilling to engage in discussions as to how to legislate into existence this value-creating regulation. In his discussions with John Doerfer, Moss reacted negatively to the FCC chairman's suggestion that the purpose of the hearings was "to probe extensively the power of the Commission, and what power it should have, what powers can constitutionally be given to it, what powers could wisely be given to it." In almost explicit contradiction to his statements elsewhere in the hearing Moss fired back that the Subcommittee was "trying to develop the facts" surrounding the emergence, extent and details of payola. They were not acting as a "supreme court" in an effort to ascertain the "scope of the authority of the Commission." Nor was the Subcommittee engaged in determining the "constitutionality of what they [the FCC] do."[69]

The Representatives on the Subcommittee expressed displeasure with the manner in which the FCC and the FTC undertook their regulatory activities. In a congress already antagonistic to the Republican president, an attack on the Eisenhower-appointed head of the FCC was an opportunity not to be missed. As the congressmen saw it the oversight agencies were tardy in their investigations, they were too reticent to act

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[68] *Ibid*., 770.
[69] *Ibid*., 713.

forcefully or, in the case of FCC Chairman Doerfer, they became connected with the practice itself.[70]

The political climate of the time gave a certain amount of credence to the congressmen's concerns. A scant eighteen months before the investigation into payola exposed Doerfer's role in accepting a free vacation aboard the luxury yacht of a major record company executive, another of Ike's appointees was forced out of office in a similar scandal. Eisenhower's Chief of Staff, Sherman Adams, was forced to resign when it came to light that he had accepted gifts from a businessman with government contracts. Although the allegations were largely uncontested and potentially unsubstantiated, Adams' resignation cast a disparaging light on an administration that had pledged to be "clean as a hound's tooth."[71] In addition, the Democratic majority within congress may have seen a public mandate in their landslide victories during the midterm elections of 1958. Like Kefauver's apparent use of congressional investigations to build his national profile during election years, the Democratic congress may have felt that the time was ripe to garner good press before the 1960 presidential election.

Rep. Peter Mack of Illinois was upset at the FCC's lackadaisical approach to payola. The agency seemed to "sit back and take action only when" congress pointed out a disreputable practice.[72] The committee suggested that Doerfer and Kintner do everything within their power to curtail the unfair business practices by methods they already had in their arsenal. John Moss was not satisfied with the FCC's preferred tactic

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[70] Booth Mooney, *The Politicians: 1945-1960* (New York: J.B. Lippincott Co., 1970), 279.
[71] Gary Reichard, *Politics as Usual: The Age of Truman and Eisenhower* (Arlington Heights, IL: Harlan Davidson, Inc, 1988), 148.
[72] Payola hearings, 700.

of writing letters to broadcast licensees explaining the potential for punitive action against them, however. Doerfer excused his agency's actions by saying that payola was the result of "machinations" on the part of "independent program packagers" and therefore did not require the sort of clear threats Moss expected.[73]

One option was to use license renewal to enforce stations' compliance with federal expectations. In Doerfer's opinion, the use of shorter-term licenses would allow the FCC to observe more closely the activities of suspect stations. This would not only result in a "bettering effect on the performance of the station involved but would also have a beneficial influence on broadcast stations generally."[74] Thus, stations could be kept in line simply by threatening them with the revocation of their broadcast license for improper activities.

When congressman Moss stated that the "regulation to date" had failed in its duty to "protect the public," he was clearly expressing a concern that the content of the broadcasts themselves were of paramount importance. "If we did not have to protect the public," he argued "we would let this thing battle out" in the market. Again he put forth his belief in the fundamental need for regulation. The public had invested "many millions" of dollars over the years to regulate the broadcast industry "to create something of value." Thus they were entitled to have the government work to ensure their protection. To Moss's mind the market was the cause of the problem and only government intervention could ensure that broadcasting would serve the public interest. However, his comments indicate a certain implicit faith in the power of the market to

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[73] *Ibid*., 715.
[74] *Ibid*., 676.

correct problems. Only in the most egregious circumstances was it appropriate for the government to directly regulate the culture industry.

Doerfer warned the congressman that he was treading close to the realm of censorship. Moss answered that the public interest must be protected "even if it requires monitoring of programs" to make sure that station personnel "kept the promises" made when the license was applied for. It had not the "tiniest shadow" of censorship. Instead, it enforced standards already set by the government. Censorship as Moss saw it was the "specific prior restraint of content."[75] It was not really censorship, Moss felt, unless the government told individuals what they could and could not write, sing, speak or paint prior to the actual moment of creation. Responding after the fact to programming that violated standards set by the government did not qualify. Besides, Moss argued, the government already set standards on advertisers so what he was suggesting was not so far removed from this practice and its legislative precedence. This still raises the specter of censorship, however as a station, network or broadcaster operating under the threat of losing a license would likely alter programming accordingly.

When congressman Mack debated the issue of regulation with the head of American Broadcasting – Paramount Theaters (often referred to as Ampar in the proceedings), Leonard Goldenson, he was even more explicit in his desire for control over the content of the broadcasts themselves. If the stations or the networks could not or would not oversee the "trash" that was being sent over the airwaves, the "Government" would have to step in and fill the void. Mack included "rated TV shows" and "some of

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[75] *Ibid*., 718.

these rock-and-roll songs" in his list of possible targets. He even expected that the Federal Communications Commission would "ultimately have control over the networks as well."[76] It is difficult to imagine how Mack's statements, especially his apparent promotion of government controlled regulation of broadcast content, can be seen as anything less than state sanctioned censorship. His ideas, though, were not so different from those put forth by Thomas Dodd as he extended the senate's juvenile delinquency hearings into television in the early 1960s.

U.S. News & World Report for one seemed to agree in late 1959 that the end result of the congressional hearings would almost certainly be enhanced federal oversight of the broadcast industry. The payola investigation, it concluded, represented "the biggest cleanup ever directed at the nation's airwaves." The "new legislation" that was being proposed in light of the subcommittee's actions would "extend federal regulation over broadcasting" and would lead to "some important changes in TV and radio."[77] By the early part of 1960, *Newsweek* had a clearer handle on things, however, recognizing that the FCC probably would not get the stringent laws it hoped for to prevent deception in the industry.[78] Though the government did develop laws making payola and other under-the-table payments illegal, it was *Newsweek* and not *U.S. News* that seemed most prescient regarding the lack of fundamental change in broadcast practices that resulted from the hearings.

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[76] *Ibid*., 1396.
[77] "From One Scandal to Another," *U.S. News & World Report*, 42.
[78] "Good-by, Ookie Dookie," *Newsweek*, 22 February 1960, 61.

Goldenson objected to Rep. Mack's antagonistic characterization of all television and radio programming saying that over the past decade the industry had made "some of the greatest shows that [had] ever been seen by the American people." He agreed that the government had "control over the licensees" and could regulate their activities. Still, the complete subversion of the broadcast industry by the pernicious effects of "excessive commercialization" worried Moss. This commercialization was not simply the result of the FCC's failure to regulate the industry, although that was a contributing factor. Moss also expressly blamed industry executives' unwillingness to maintain "precise ethical standards" in an echo of other lawmakers' emphasis on corporate responsibility.[79]

Conclusion

As we have seen, many congressmen on the subcommittee worried about the right of the government to interfere with what was seen as a predominantly private business. Although the FCC licensed the airwaves themselves, the line between governmental oversight and outright censorship was too ill-defined to be tackled directly. Thus, the Representatives seemingly preferred to sidestep the issue entirely in an attempt to avoid the creation of legislation that could be potentially damaging politically or that might collapse under judicial review.

Another aspect of this same fear was the connection it bore to the issue of state-sponsored censorship. While some individuals on the committee were less concerned

[79] Payola hearings, 1396, 1429.

than others about the dangers of governmental intervention, most of the committee members were understandably reticent to engage in any law making that could result in a limitation of broadcasters' freedoms. For most, however, this concern was less about censorship than it was about interfering with the operation of the market. At the same time, these legislators were worried about the potential for abuse on the part of the corporate world should the government remove its oversight entirely. Monopolistic capitalism could prove to be just as insidious as totalitarian censorship if used to detrimental ends. Because of this, regulatory agencies such as the Federal Communications Commission and the Federal Trade Commission must walk a thin line between heavy-handed oversight (which could precipitate state-sponsored censorship) and a complete reliance upon self-monitoring within the broadcast industry (which put the fox in charge of the henhouse).

Many commentators saw in the scandals in television and radio during the late 1950s evidence of America's spongy moral character. In the midst of an ideological contest with communism, the American public was bombarded with images and statements about our ethical superiority over godless communists. Such a view seemed antithetical to the revelations made during the congressional hearings in 1958-1960. As such, these discoveries unleashed a wave of critical statements from politicians and intellectuals alike. Given the timing of the two scandals, it is not surprising that the quiz show hearings resulted in many more statements than did those into payola.

Shortly after news broke about the rigging of the quiz shows, no less a personage than President Eisenhower commented on the damage the scandal had done to the

national character. He compared the quiz scandal to the discovery of the 1919 World Series fix in which eight members of the heavily favored American League champion Chicago White Sox were revealed to have participated in throwing the championship to the underdog Cincinnati Reds. Ike believed that the scandals showed the danger that "selfishness and greed" might "get the ascendancy over those things that we like to think of as the ennobling virtues of man."[80]

Others also saw in the scandals evidence of America's rampant materialism. Newspaper editorials agreed that the rigging undermined public trust in the integrity of American institutions. John Steinbeck worried about the decline in American ethics caused by Americans having "'too many THINGS'."[81] Other critics believed that the quiz and payola scandals proved that the capitalist system, driven as it was by greed, was incapable or unwilling to regulate itself.[82] *New York Times* critic Jack Gould described the scandals as a symptom of the age in an editorial he penned for the October 12, 1959 issue. He said that every agency or group that had a chance to control the fraud had failed in its responsibility, resulting in a "world of continuing and unrelenting compromise" that all parties came to expect as "part of the price of commercial success."[83] In the final analysis, then, a commercial system for television and media would almost inevitably foster an atmosphere conducive to scandals. At the very least,

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[80] Kent Anderson, *Television Fraud: The History and Implications of the Quiz Show Scandals* (Westport, CT: Greenwood Press, 1978), 153.
[81] Stephen Whitfield, *The Culture of the Cold War* (Baltimore, MD: Johns Hopkins University Press, 1991), 176.
[82] Richard Tedlow, "Intellect on Television: the Quiz Show Scandals of the 1950s," *American Quarterly*. vol. 28, no. 4 (Autumn, 1976): 493.
[83] Jack Gould, "A Plague on TV's House," in *Watching Television Come of Age*, ed. Lewis L. Gould (Austin, TX: University of Texas Press, 2002), 148.

greed could make self-regulation problematic. As such, congress looked into the possibility that direct government intervention could solve the problem.

In the hearings run by Connecticut senator Thomas Dodd a short time later, these tensions would lead to some of the most heated exchanges of any of congress's investigations into cultural matters. Dodd and his compatriots often threatened network executives with direct government oversight of the television industry. The cordial tone of earlier hearings was replaced by a much more confrontational one. Moreover, the failures of the culture industry exposed by the payola scandal and other investigations likely influenced lawmakers' shift to a more aggressive approach as well as their search to see in public broadcasting a solution that addressed concerns over quality while still protecting the competitive nature of the market and retaining self-regulation as the ideal form of cultural oversight.

PART THREE

LOOKING FOR ANSWERS: FEDERAL OVERSIGHT, SELF-REGULATION OR PUBLIC BROADCASTING

By the start of the 1960s, two major scandals in television and the music industry and concerns over juvenile delinquency had led to a number of hearings into mass culture. Two overriding themes emerged from these congressional hearings. First was the belief that self-regulation on the part of the industries involved was the most legitimate solution to the problems disclosed. We have seen how, in nearly every case to come before the House and Senate, lawmakers repeatedly emphasized the industries' responsibility to improve their product and to ensure the quality of cultural fare. This resulted in extensive discussion of the implementation and effectiveness of the various codes of conduct adopted by comic book publishers, motion picture studios and the television industry.

The second major theme to appear throughout the hearings discussed here was the role of the consumer market in determining what the culture industry produced. During these debates congressmen espoused a slightly paradoxical view of the economic mechanisms at work in the world of mass culture. On the one hand, legislators often stated that competition within the various arenas of popular culture would help to guarantee ever-improving quality. As the public sought out mass culture material that was of better quality, those outlets which lost business would necessarily improve their product to reclaim their lost share. At the same time, however, it did not escape the

notice of these same lawmakers that the very competition they saw as a mediating factor was leading to the increase in ratings systems to measure audience share and was leading to sponsors having a great deal of control over the content of television programming, especially. Perhaps nowhere was this more evident than in the quiz show scandals.

These twin themes of self-regulation and economic factors behind mass culture found something of a resolution in the legislation to create the Corporation for Public Broadcasting in 1967. In 1961 and again in 1964 Senator Thomas Dodd of Connecticut once again brought the executives of the three major television networks before the Senate Subcommittee to Investigate Juvenile Delinquency. Much more aggressive and confrontational than his predecessor Estes Kefauver, Dodd was upset at what he believed was a lack of responsibility on the part of network heads. He pointed to statistics and testimony suggesting that the amount and severity of violence and sexually suggestive material on television had increased noticeably since the subcommittee began its investigation in the mid 1950s. How could one expect the industry to regulate itself when all the evidence seemed to show a shocking lack of concern for the public interest and a slavish devotion to acquiring larger and larger ratings numbers in the search for maximum profits? Much like his comrades in arms Edward Celler and John Bricker, Dodd indicated that self-regulation was an ideal that, while preferable to government involvement, seemed incapable of solving the problems confronting the industry. Each of his hearings was peppered with statements threatening direct government regulation of the networks should the situation not improve soon.

Dodd's investigations never yielded any legislation creating the television czar favored by some commentators. Nor did they significantly increase the capacity for the Federal Communications Commission to regulate or oversee program content. However, they did point the way to the hearings in 1967 which created the organizational structure for public broadcasting in the United States. As we shall see, congressmen and witnesses alike repeatedly expressed their hope that public television would serve as a benchmark for cultural programming, forcing networks to improve their product or risk losing audiences to the new service. Blithely ignoring the very real possibility that network shows were so successful because they had been accepted by a public which actually *liked* them, lawmakers seemed convinced that public television's cultural and informational fare would force a general improvement in the quality of programs on commercial television as well. They saw in public broadcasting a way to irrigate the "vast wasteland" described by then-FCC chairman Newton Minow in his infamous 1961 speech to broadcast leaders. The American audience was almost certainly thirsty for theatrical and musical performances, biographies, documentaries and other programs the networks lacked. Given the choice, then, this silent mass of the public would eagerly abandon their westerns and crime dramas in favor of more cultural shows.

The Public Broadcasting System (PBS) and its parent organization, the Corporation for Public Broadcasting (CPB) were an outgrowth of an increasingly influential non-profit sector. Both the Ford Foundation and the Carnegie Corporation developed plans to create and fund public broadcasting. Their proposals (especially the Carnegie plan) neatly tied up many of the threads developed throughout the hearings

discussed here. Enacted almost verbatim by congress, the Carnegie proposal served to expand competition by providing an alternative to the programming commercial television used to attract viewers and thereby sponsors. In addition, the CPB would – at least in theory – be insulated from government interference by establishing a quasi-independent board of directors to distribute federal allocations. These civic-minded men and women would guide programming without the temptations of profits or ratings which seemed to undermine the commercial networks. Ultimately, then, the PBS system created in 1967 allowed networks to remain in essentially the same form while ensuring that self-regulation would survive as the oversight of choice for the culture industry.

CHAPTER 7

THINGS GET MEAN: TELEVISION AND THE JUVENILE DELINQUENCY HEARINGS UNDER SEN. DODD

In early 1959 one of the luminaries of the television universe decided to take a year-long leave of absence from his work on CBS and, although he would return to work on various productions for the network for the next two years, Edward R. Murrow's sabbatical seemed to some commentators to be indicative of television's sagging quality. Murrow was one of the most respected figures in broadcasting. He famously tackled contentious issues on his several news programs, including a blunt criticism of Senator Joseph McCarthy's tactics on a March 9, 1954 episode of his show *See It Now*. To many, Murrow represented the best of what television could provide: an honest, forthright source of information and elucidation; a tool for developing a civic-minded populace which was exposed to the best of culture and information on a free medium.

Although the reporter had publicly stated that his departure had nothing to do with any difference of opinion with CBS leaders or any personal dissatisfaction with CBS programming, *The Commonweal* saw Murrow's departure as tangible evidence of television's dimming promise. Coming as it did on the heels of the quiz show scandal and only weeks before the revelation of the payola scandals, Murrow's announcement illustrated "a widespread feeling that T.V. [was] going downhill as a serious artistic or intellectual medium and … even on the level of pure entertainment it [was] hardly inspired." "We fear," said *The Commonweal*, "those who saw the Murrow leave of absence as a symbol of television's failure were right; furthermore, we have a rather

strong suspicion that in their hearts of hearts a good many people inside television agree with us."[1]

Murrow himself had condemned television's emphasis on entertainment and distraction in an October 1958 speech before the Radio-Television News Directors Association and Foundation convention in Chicago.[2] Any viewer of American television during prime time hours, he said, would find only "evidence of decadence, escapism and insulation from the realities of the world in which we live." The newsman feared that, unless something was done soon, the nation would be in "mortal danger." Despite his dire cautions, however, Murrow was convinced that the commercial system of broadcasting the United States had developed was "the best and freest yet devised." In the chief battle of the age, that against the threat of Communism, television could serve a great role in securing America's interests. This could only be accomplished, though, if enough leaders in the industry would work towards the best the medium could offer and limit the greed and corporatism rampant among the networks.[3]

Despite the quiz show scandals and the revelation that questionable business practices may have spread to other aspects of the culture industry, there was nonetheless some hope in the national media that industry leaders or the congress would take corrective action. In January 1960, *Harper's Magazine* ran an editorial wondering whether there was a new hope for television. The author, John Fischer, knew that such

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[1] "Exit Mr. Murrow," *The Commonweal*, 13 March 1959, 613-614.
[2] Joseph E. Persico, *Edward R. Murrow: An American Original* (New York: McGraw-Hill Publishing Co., 1988), 408. Persico describes how Murrow, after watching a broadcast of the phenomenally popular *$64,000 Question*, turned to his friend and producer of many of his news programs, Fred Friendly, and wondered how long *See it Now* would be able to maintain its prime time slot.
[3] http://www.pbs.org/wnet/americanmasters/education/lesson39_organizer1.html March 31, 2008.

optimism had been punctured in the past – congress had "made a few righteous gestures toward reform; and then within a few months all was forgotten" – but he saw indications that "a genuine change [was] beginning to ferment within broadcasting itself." In part this interpretation was due to the number and extent of recent congressional investigations. However, Fischer seemed reluctant to place complete faith in lawmakers to develop any substantive legislation. Instead, he hoped that the better men within the broadcasting industry would press for improvement as they risked losing audiences and sponsorship because of poor quality programming. The quiz scandals had damaged public confidence in television and Fischer wondered if this would be enough to scare network executives straight.[4] He would doubtless be disappointed in the attitudes exposed during the senate's questioning of industry leaders, though.

It was the two attitudes outlined above that seemed to define congress's approach to broadcasting in the 1960s. On the one hand there was a pervasive feeling that the culture industry was struggling to find direction and needed some sort of push to guide it towards a more beneficial role in society. On the other hand, there was a sense that the time was right for more direct involvement on the part of the government. In light of this, it is perhaps not surprising that congressmen in the 1960s were more confrontational in their dealing with network leaders and were more willing to find alternatives to address the ongoing problems they saw with television's programming.

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[4] John Fischer, "New Hope for Television?" *Harper's Magazine*, January 1960, 12, 14. Fischer also expressed an unusual take on television's poor quality when he argued that the fraud of the quiz shows paled in comparison to the "systematic falsification of American history in countless phony Westerns." 14.

During the 1960s the subcommittee to investigate juvenile delinquency passed among several different chairs but was most often led by Democratic Sen. Thomas Dodd of Connecticut.[5] In a June 1962 article, *The Nation* characterized the junior senator as a curious amalgam of liberal and conservative viewpoints. Though the Americans for Democratic Action gave him a 90 percent positive rating for his congressional voting record, the portrait pointed out that Dodd's investigative methods while in congress were considered by some to be "doubtful" and by others to be "reminiscent of McCarthy." In the final analysis, however, Dodd appeared to be a man of strong convictions who pressed hard for the ideals in which he believed.[6]

Under Dodd's chairmanship, the subcommittee held two different sets of hearings into television's role in youth crime. The first was held in June and July 1961 as well as January and May 1962. The second occurred in 1965. When reviewing the transcripts of the hearings under Dodd's leadership, one is struck by the senator's far more aggressive tone towards the network executives who attempted to defend their companies' programming record. Whereas both Hendrickson and Kefauver in the mid-1950s were polite almost to the point of being deferential, Dodd repeatedly took witnesses to task for what he saw as the industry's failure to reduce the levels of violence and sexual content in their shows.

The industry Thomas Dodd investigated beginning in 1961 was quite different from that put under the microscope of Sens. Hendrickson and Kefauver six years earlier.

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[5] James Gilbert, *A Cycle of Outrage: America's Reaction to the Juvenile Delinquent In the 1950s* (New York: Oxford University Press, 1986).
[6] Herbert Krosney, "Senator Dodd: Portrait in Contrasts," *The Nation*, 23 June 1962, 517.

Television had grown to monumental proportions in a very short time. In 1950 only 12 percent of American homes had a television. By the end of the decade, the number had skyrocketed to more than 87 percent. Though the real boom came in the latter half of the decade, between 1949 and 1952 families purchased TVs at a rate of nearly a quarter of a million sets every month. With such a huge and rapidly expanding potential audience, the economic size of the industry grew apace. Network profits increased sixfold, from $41.6 million in 1951 to $244.1 million in 1960.[7] Certainly Dodd and others could see a powerful civic and economic motivation in their investigation. Such staggering figures might also have been behind legislators' more confrontational tone as the stakes were much larger on all sides.

The congressmen's concern over the economic side of television is evident in their repeated discussion of familiar issues like network advertising techniques, the role of ratings and the efficacy of networks' internal oversight. Senators also speculated that networks and their affiliates were abrogating their responsibility to the public by showing questionable programs at times when too many children would be watching. And they accused networks of airing teasers to encourage audiences to watch upcoming programs. While this in itself was no cause for alarm, Dodd and others pointed out that these teasers often tended to emphasize the violent or salacious aspects of shows in an effort to draw audiences and their attendant ratings by appealing to the baser interests of viewers. This concern echoed the worries expressed during Sen. Kefauver's investigations into motion pictures that advertisements used misleading images to entice audiences to the theaters.

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[7] Andrew J. Dunar, *America In the Fifties* (Syracuse, NY: Syracuse University Press, 2006), 235-237.

And, while chairman Dodd often assured the assembled witnesses that he was not universally critical of television's record of improvement, almost in the same breath he sharply criticized networks for not reacting to public and governmental concerns. Dodd explained that the broadcasting industry had had ample time since Kefauver's investigations had concluded, yet they had seemingly done nothing to correct the questionable programming. Moreover, Dodd saw little change between his own subcommittee's two sets of hearings in the 1960s. All this was despite executives' repeated assurances that they would right the ship in response to the government's pressures.

In light of such recalcitrant behavior by network leadership, it is not surprising that Dodd and his cohorts were significantly more acerbic in their treatment of witnesses representing the broadcasting industry. For the first time during the hearings discussed here, congressmen broached the possibility that the government should and might become involved in establishing standards for broadcast programming. Since the self-regulatory code the industry relied upon seemed incapable of solving the problem, Dodd and others warned that congress could well pass laws to get the networks' house in order. This potential legislation would probably be enforced by the Federal Communications Commission but lawmakers were never explicit about how such a mechanism would be enacted or enforced.

Dodd's comments were not the first time government action was threatened to the networks. President Kennedy's selection for the chairmanship of the FCC, Newton Minow, famously called television a "vast wasteland" during a speech before the

assembled industry leadership in May 1961 and implied that the FCC would become involved should the networks fail to regulate themselves to the government's satisfaction. Prior to Kennedy's installation of Minow as FCC head, the commission had enjoyed a rather cozy relationship with the broadcast industry. Minow was certainly more interested in the idea of external regulation to ensure program quality and rejected that programming should be tied to ratings figures.[8] Like the debate broached during the monopoly hearings discussed earlier, the FCC head believed that too much stock was put in audience numbers as determinant of program success. Popularity, in other words, was not the same as quality. Nor was providing shows that seemed to appeal to audiences the same as meeting the requirement of serving the public interest.[9]

Minow's appearance before the subcommittee shortly afterward introduced into the congressional record many of the themes of industry responsibility he championed during his brief tenure as FCC chair. Minow also cautioned that the FCC would almost certainly strengthen its oversight activities should broadcasters continue to shirk their responsibility to the public. Even national media seemed encouraged about the prospects of some improvement in broadcasting because of Minow's tough and interventionist stance. *Newsweek* noticed a feeling that finally "something might be done about the chronic woes and evils" that were exposed during the FCC's hearings early in Minow's chairmanship. Though the hearings in question were not the juvenile delinquency hearings discussed here, the revelations and tone were similar and both Minow and Dodd

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[8] Mary Ann Watson, *The Expanding Vista: American Television in the Kennedy Years* (Durham, NC: Duke University Press, 1990), 18-27.
[9] Newton Minow, "The Vast Wasteland," in *How Vast the Wasteland Now?* (New York: Gannett Foundation Media Center, 1991), 21-28.

were amenable to government involvement in regulation should voluntary industry oversight fail.[10]

The FCC chairman took the stand on Monday, June 19, 1961 and immediately presented the FCC's case for expanded regulation over broadcasting. Although there were obvious concerns over censorship and free speech guarantees, Minow argued that the Communications Act of 1934 required that broadcasting be operated in the public interest. It was this mandate that allowed the FCC to include programming in any license review. Regulation was a balancing act. "The regulatory responsibility of the Commission," he said, "essentially involves the maintenance of a free and competitive broadcast system … and the reasonable restriction of that freedom inherent in the public interest standard of the Communications Act."[11] Here again is the tension between the stated desire to maintain the competitive market's ability to influence cultural quality while recognizing that regulation needed to fill the gaps left by the market. Ideally, that would mean industry self-regulation; however, witnesses and lawmakers admitted that self-regulation was not always successful.

Minow in his statement went on to congratulate the industry's attempts to police itself. Though the continuity departments set up by networks had only been in existence for a short time when Minow testified, they would be a central point of discussion during the 1965 hearings. "Substantial benefits" would almost certainly emerge from networks' internal oversight. But, like FCC commissioner Freida Hennock had during the Kefauver

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[10] "Where Are the Sparkling Shows of Yesteryear?," *Newsweek*, 3 July 1961, 70.
[11] Senate Committee on the Judiciary, *Effects on Young People of Violence and Crime Portrayed on Television: Hearings before the Subcommittee to Investigate Juvenile Delinquency*, 87th Cong., 1961 & 1962, 2217. [hereafter Dodd 1961/2 hearings]

hearings five years before, Minow placed a large amount of responsibility on the viewing public which needed to make their wishes known in an effort to influence programming. In an interview with *Life* correspondent James Mills, Minow described his firm belief that license renewals for stations should be handled with public hearings so that the station's audience could make its views known to the FCC.[12]

One of Minow's ideas to spur some improvement in programming and to pressure networks to be more responsive to their public obligations was to license the networks themselves rather than licensing the affiliated stations. He testified that the Commission was in the process of developing legislation to enact such direct regulation.[13] Like the discussion of a similar plan during the earlier monopoly hearings, however, the FCC never did institute any such regulation.

Minow also suggested that the creation of an educational broadcasting system might provide the sort of competitive push to encourage networks to improve their programming. Not only would this provide shows of high cultural quality, it would help secure the "free system … in accordance with the best traditions of free society." In the final analysis, then, and "despite all the imperfections" America had developed "perhaps the most effective broadcasting system in the world."[14]

After Minow resigned the chairmanship in June 1963, William F. Buckley, Jr. penned another plea for pay-television using the FCC head's career as evidence of why such a system would be a reasonable solution to the problems in broadcast quality.

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[12] *Ibid*., 2218. "Family Man as TV's Watchdog," *Life*, 16 June 1961, 84.
[13] Dodd 1961/2 hearings, 2226.
[14] *Ibid*., 2220-2222, 2233.

Overlooked in Minow's condemnation of networks, Buckley said, was the very real restriction on station frequencies. This meant that audiences could not have the amount of choice many felt would help improve overall programming. Though he agreed in principle with "90 percent" of Minow's criticism of the networks, Buckley attributed the chairman's oversight to his unfortunate liberal leanings, his "egalitarian biases." As a free-thinking conservative, Buckley could present an alternative that would enhance the market system while again relying on competition to improve the quality of television shows. As he had championed several years earlier, Buckley pressed for the implementation of pay-television. In this system entrepreneurs would "seek out their quality audiences" and giving them pay-TV outlets.[15] Unstated in this argument was an explanation of exactly how such a system would get around the admitted restrictions on broadcast frequencies. Perhaps Buckley assumed that these pay-TV stations would replace the network affiliates in local markets.

Whether or not Thomas Dodd was influenced by the FCC chair's attitude regarding government involvement in broadcasting, the fact remains that he, and others on the subcommittee, clearly saw a larger government role as an almost inevitable outcome of the hearings. Unlike other debates about the efficacy of self-regulation, Dodd's subcommittee took a much more nuanced approach. Using internal memos and correspondence between television executives, the subcommittee made a compelling case that the continuity departments of the various networks' did not work as advertised. There were seemingly numerous examples of programs which had been aired despite

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[15] William F. Buckley, Jr., "On the Right: The Partial Insight of Mr. Minow," *National Review*, 4 June 1963, 442.

containing scenes that had been criticized or were marked for correction or deletion by continuity reviewers. Such a situation seemed to show a complete collapse of self-policing. If networks went ahead with airing shows that included scenes their own review process found problematic, how could the government and a concerned populace rely on industry self-regulation to solve the juvenile delinquency problem?

Violence on television

Dodd's comments regarding the quality of American television in 1964 admitted the difficulty with criticizing the industry as a whole. In his opening statement he praised the "magnificient [*sic*.] contribution" television had made with regards to public events programming and that "the growth and improvement" of such programming by both the networks and independent stations was a significant factor in any "fair assessment of television." He went on to offer his "most sincere and unequivocal congratulations and praise to the television and radio media as a whole" for this "great achievement." An achievement "made all the more impressive by the fact that frequently public service programs [were] produced at a great financial loss to the producers." Unfortunately, however, networks had failed to improve their record when it came to prime time shows. During the most profitable hours of the broadcast day, Dodd and others saw networks filling the airwaves with shows "permeated with … excessive crime, violence and debased moral standards." Perhaps worse, this trend toward amoral programming was often done in spite of a growing body of expert opinion that images of violence and other

suspect behavior almost certainly led to juvenile delinquency. It seemed to Dodd that networks chose such a policy "presumably to assure the maintenance of high ratings" and thus get the biggest sponsors.[16] Though rarely specific about the shows he was critical of, the highest rated shows that fit his analysis were almost exclusively Westerns. *Gunsmoke*, *Bonanza* and *Wagon Train* dominated ratings in the early 1960s while action-detective shows like *The Fugitive* and *77 Sunset Strip* spawned a raft of imitators but rarely ousted their more successful competitors.

The industry's appetite for these higher ratings caused them to show programs with objectionable content at times when more and more children could be watching. Since "the most violent shows" were being shown at earlier times than they were originally intended for, the effect on impressionable children was almost certainly more significant. In addition to the problems raised by earlier airtimes, Dodd and others worried that there was little or no "editing of objectionable content" by the networks. This apparently surprised the lawmaker since he "felt that even the industry was embarrassed with" the worst programs based on his communication with them. Throughout the hearings, Dodd and his compatriots often bemoaned the increase in the number of violent incidents as well as what seemed to be an increase in the nature of the violence portrayed. Combined with more and more academic studies showing a direct

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[16] Senate Committee on the Judiciary, *Effects on Young People of Violence and Crime Portrayed on Television: Hearings before the Subcommittee to Investigate Juvenile Delinquency*, 88th Cong., 2nd sess., 1965, 3729-3730. [hereafter Dodd 1965 hearings]
James von Schilling, *The Magic Window: Americn Television, 1939-1953* (New York: The Haworth Press, 2003), 121. Dodd's views may have hit rather close to the mark. In 1947, in the very early days of broadcast television, NBC had limited crime shows in reaction to concerns over their effect on juvenile delinquency. However, the sharp decline in revenue as advertisers abandoned the less popular shows forced the network to return the violence to their programming.

relationship between violent images and violent behavior, such a trend was worrisome to say the least.[17]

During the first series of Dodd's hearings in 1961 and 1962, the subcommittee entered into the record a recent *TV Guide* article by a social critic very familiar to the juvenile delinquency problem. In his article "Do You Really Like 'The Untouchables'?" psychiatrist Frederic Wertham posited that American audiences had been conditioned to enjoy violence despite their natural inclination towards peace. Wertham suggested that the culture industry, whether it be comic books or television shows, was surprisingly successful at molding people's tastes and attitudes towards an appreciation for crude violence.[18]

Though Wertham was most concerned with ABC's gangster series, Dodd and others mentioned the program only rarely. *The Untouchables* lasted four years on ABC, helping to improve the network's ratings with its blend of action and detective stories. The violence on the show was often stylized – as was much of the violence on television at the time – rarely showing outright murder, instead relegating beatings and shootings to off-screen. This was due in large part to the requirements of the television production code which banned scenes of killings or excessive violence. Many of the shows most criticized by the senators were less successful overall. For instance, *Bourbon Street Beat*, another ABC detective show, lasted only a year but was subjected to repeated criticism

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[17] Dodd 1965 hearings, 3735.
[18] Dodd 1961/2 hearings, 1924-5.
Arthur Schlesinger, Jr., *The Crisis of Confidence: Ideas, Power and Violence in America* (Boston: Houghton Mifflin Co., Inc., 1969), 26-27. Schlesinger also speculated that pervasive images on television and in comic books tended to indoctrinate kids into violence from an early age. And, in light of the coverage of the Vietnam War that was brought into American homes via the nightly news, Schlesinger worried that violence was increasingly used as a means of establishing self-identity.

from senators. In fact, of the few shows mentioned by name during the hearings and singled out for special attention, none reached higher than eighth in the ratings and none charted more than one year. It should be pointed out that both shows originally aired at night, during primetime. *Bourbon Street Beat* was broadcast at 8:30 on Mondays while *The Untouchables* was on much later, at 9:30 or 10 on Tuesday or Thursday depending on the season. Taking this into account, lawmakers criticized networks and affiliates for rebroadcasting shows intended for later airtimes at earlier times when more kids might be able to see them.

Added to this was the fact that audiences seemed to develop viewing habits causing them to watch similar programs whether they had violent content or not. Indeed, it would seem that networks relied on this so they could plan their schedules to maximize ratings and sponsorship. In the 1961 hearings, and in his *Life* magazine interview, FCC chairman Newton Minow had suggested that ratings were perhaps the single most important factor in network executives' programming choices. "The reason why so much of TV [was] so bad," he was quoted by *Life* as saying, "[was] that broadcasters reach[ed] for high ratings by catering to the most unthinking, most tasteless element of the population." Taking this "lowest common denominator" as the basis for its programming choices, the industry then imposed these "subterranean standards on everyone else." This "slavery to ratings" unfortunately blocked "the artistic, the different, the imaginative program" from reaching the masses.[19] One wonders how fans of the most criticized shows felt about Minow's rather blunt characterization of the average television viewer.

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[19] *Ibid*., 2224. "Family Man as TV's Watchdog," 84.

In a personal statement or credo Minow had written on the eve of his appointment to chair the FCC, the former Illinois lawyer suggested that the "'general goal of the greatest appeal to the greatest number is a fact of economic life'" and should not be condemned outright by those critical of mass media like television. "'But in attracting the greatest audiences most of the time,'" he went on, "'a station owner cannot bypass the minority 'some' of the people during some smaller portion of its programming time.'" Ultimately, "'the will of the majority is never allowed to persecute … a minority.'"[20]

Although Arthur Nielsen had testified during the monopoly hearings that his ratings service had clarified and improved the ways networks marketed and developed their programming, during the first set of Dodd's hearings into juvenile delinquency, there were a number of witnesses who were openly critical of ratings systems. William Capitman, president of the Center for Research in Marketing, for instance, questioned just how accurate ratings could be given the nature of broadcasting in America. In a concern repeated during other hearings into television, Capitman pointed out that ratings measured the choices people made "from among what exist[ed]." Thus, the problem with ratings was that networks didn't really know what people wanted but rather what they decided to watch from the slim options presented them.[21] Logically this would lead to a powerful argument in favor of public broadcasting since PBS would not be tied to ratings but could provide a wide selection of alternative programming that would appeal to a broader cross-section of the population. The fact that Capitman worked for a market research firm himself gave his statement a good deal of authority.

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[20] "Television and 'the Public Interest,'" *Newsweek*, 11 September 1961, 64.
[21] Dodd 1961/2 hearings, 2457.

Another significant figure in the industry who spoke out against ratings was the head of the National Association of Broadcasters (NAB), Leroy Collins, who had been governor of Florida. Collins was convinced that ratings were incapable of truly reflecting audience size on a local basis and likely not capable of reflecting it on a more national scale, either. Despite Nielsen's repeated defense during the monopoly hearings that his ratings systems were statistically valid, there were still many who doubted that sampling of the sort used in ratings services could accurately measure a viewing audience of several million. Collins stopped short of totally condemning the broadcasting industry, however. He speculated that, whether they used fallible ratings systems to aid their decisions or not, network executives legitimately believed they were providing what audiences wanted to see. Even though Collins saw network leaders as misguided but genuine, Dodd countered that giving the people what they want was not sufficient in the case of a communications medium as powerful as television. Simply meeting audience demands was not "a reason or justification" for the types of violent or salacious programs networks chose to air.[22]

Interestingly, the legislators based much of their argument on figures they compiled with the help of the American Research Bureau (ARB), a statistical research company designed to measure audience share. Agencies like ARB and Nielsen were criticized by lawmakers during several hearings for their role in influencing network programming decisions; however, they clearly could be useful for congressmen who needed numbers to back up their claims of network malfeasance. These statistics seemed

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[22] *Ibid*., 2259.

to serve the purpose. The problem with debating something as indefinite as violence on television, though, was that personal interpretations and even an agenda on the part of the legislatures involved could influence what was and was not seen as representing an increase. As so often happens, the discussion often boiled down to a he said, he said conversation about violent excerpts taken out of context and differences of opinion regarding who was ultimately responsible for the broadcast policies of networks and their affiliates. In light of this, the most significant debates were not centered on violence on television but were rather the more fundamental debates over the nature of the network system and the potential for self-regulation.

Affiliate programming procedures

There was often confusion within congressional hearings about just what responsibilities stayed with the networks and what should be left to the affiliates. During the juvenile delinquency hearings led by Thomas Dodd, this ongoing discussion centered on whether the networks should exert their influence to force affiliates to show programming at certain times. As we have seen, congressmen worried that violent programs were regularly shown at times when more children could see them. As the hearings progressed, this fear expanded into the recognition that programming decisions at the local level often exacerbated the problem. Affiliates often chose to air shows at times other than originally intended by the networks, thus possibly exposing even more

children to them. While this certainly worried lawmakers, they also wondered if networks reaped larger profits from such broadcasting choices.

Henry Plitt, president of ABC Films, was taken to task over his firm's involvement in distributing violent shows for syndication. Though ABC Films was responsible for distributing programs to individual broadcasters and "smaller networks," the company had no control over when those programs were telecast. Moreover, once the show was handed off to the affiliate or local station, it was up to that station's continuity department to approve the program for a certain airtime. This problem was bad enough, but the staff director for the subcommittee, Carl Perian, pointed out that ABC Films shared in the profits generated by many of the shows. In fact, of the thirty-five cases where such a relationship existed, nearly 77% were of the action-adventure type. Perian pointedly questioned whether ABC Films effectively profited in shows over which it had "little or no control in terms of content or when they [would] be telecast." Plitt refused to be baited. He assured the subcommittee that neither his company nor ABC broadcasting would distribute any program that was "basically detrimental." Every program that was aired on affiliated stations had gone through two levels of examination: first with the network continuity department and second with the licensee who chose when to air the show. As such, Plitt saw nothing untoward in the operation of ABC Films or ABC in this regard. Apparently trying to draw Plitt into a moral debate, Perian interpreted the executive's statement to mean that he "assume[d] no responsibility" for the situation.[23]

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[23] Dodd 1965 hearings, 3815-6.

Perian was not the only one to express this attitude. Chairman Dodd also seemed to carry some preconceptions into his questioning of the ABC Films president. To Dodd's mind, the worst thing about the arrangement was that networks had reaped profits from their initial showing of programs and now were making more money while exposing them to even more kids at earlier broadcast times. It would seem that the networks were failing in their responsibility to their audiences' well-being. Plitt disagreed with Dodd's interpretation, however, arguing that reruns would not draw audiences of similar size to when the program was shown initially. Though Plitt's reasoning was based on the fact that audiences had already seen the show and some viewers would therefore be less likely to watch it again, there was also the fact that the initial showing was broadcast across the entire network system including all the affiliated stations whereas the rerun was only shown on an affiliated station with a smaller, local audience. Despite Plitt's argument, Dodd stuck to his belief that the audience would include more children at 7 o'clock than it would during later hours, when the show was originally aired on the network. Plitt gave in on that particular point. But he repeated that his company had no control over when affiliates aired the programs they had leased. Like Perian, Dodd interpreted this to mean that Plitt "[didn't] care."[24]

Dodd went on to say that ABC Films or ABC should suggest when affiliates ought to air problematic shows at the time the station leased the program. As long as ABC made a buck, though, he guessed everything was alright. That was "the basic trouble in the industry," Dodd said. Networks would do "anything to increase the ratings,

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[24] *Ibid*., 3817.

anything to make money," whether it negatively affected children or not. Though making money was "perfectly legitimate," it should not be the "overriding consideration." It seemed to the chairman that networks "[knew] that … more children" would watch violent shows than "something less violent." This was apparently their reasoning for showing "highly objectionable material" during children's viewing hours.[25]

Plitt's interrogation became more balanced when Carl Perian brought up the fact that networks often took into consideration when a program was slotted for broadcast when they created the show in the first place. This meant that they could easily have increased or decreased the amount of violence or sexual suggestiveness based on when the program was supposed to be aired. If a program's potential audience was a factor at the show's creation, shouldn't it be a factor in when a show was rebroadcast? Beyond which, the continuity approval was also based originally on the show's intended broadcast time. Thus, it seemed reasonable that networks should try to adjust the show "in view of the fact that [it would] be seen by a much less sophisticated audience."[26]

Oftentimes, the debate seemed to bog down in questions of what was and was not objectionable. These arguments seemed to take an inordinate amount of the senators' time. When it managed to discuss more productive matters, though, the hearing pointed out aspects of commercial broadcasting and the network system that seemed to contradict the potential for self-regulation as well as demonstrated loopholes in the FCC's regulatory capacity. Discussing the FCC hearings that were coincident with the Senate investigations discussed here, the author was pessimistic about the chances networks

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[25] *Ibid*., 3818.
[26] *Ibid*.

would voluntarily clean their own houses. Perhaps the only solution in sight, he said, was for the creation of a "government-sponsored, non-commercial fourth network." Even this was not likely to be put into practice, though, given the era's apparent "concern to maintain 'free' if irresponsible enterprise."[27] Nevertheless, these comments point out the realization that the problems within competitive broadcasting were almost impossible to correct while clinging to the ideal of the free market. It is no surprise, then, that public broadcasting was an increasingly attractive alternative allowing networks to continue operation relatively unfettered by government interference while still providing an option for audiences looking for educational, cultural or informational programming. When the subcommittee questioned NBC vice-president Walter Scott, they began broaching issues of the business relationship between networks and their affiliates.

As was the case with ABC, NBC had no control over what time stations chose to air syndicated programs. However, the network often received financial benefit from the syndication contract. As Carl Perian pointed out, nearly 86% of the shows NBC syndicated and in which they had a financial interest fell into the action-adventure category which drew the most ire from critics. In effect, Perian said, NBC was renting or profiting from shows over which they had "little or no control in terms of content or when they [would] be retelecast." Scott repeated the argument that the programs had already been approved by the network's continuity department and thus affiliates should

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[27] Nat Hentoff, "Irrigating the TV Wasteland," *The Commonweal*, 11 August 1961, 447

have no reason to be concerned with program content. From there, it was wholly up to the station to decide how to construct its own broadcast schedule.[28]

Appearing with Walter Scott was the president of NBC Films, Morris Rittenberg. Rittenberg argued that the corporate relationship between networks and their affiliates would be damaged if networks began telling stations when to air programs. Such a policy would be neither appropriate nor proper. No executive mentioned the huge time and manpower commitment that would be required should networks begin directing the operation of their affiliates. Nor did they point out that such a connection between networks and stations would move even closer to the type of monopolistic business arrangement feared by congressmen in earlier hearings.

Perian again suggested that shows originally intended for adults and supposed to be shown during prime time hours when fewer children would be watching should not be moved to earlier airtimes when kids could be exposed to more adult material. Ever critical of network executives' apparent shrugging of their responsibility, Perian pressed Rittenberg, saying he had "no concern … for the fact that shows … originally designed for adult viewing audiences [were] now being shown to children." Rittenberg understandably took exception to this somewhat belligerent characterization. NBC had a "very definite responsibility." They simply had no control over stations' programming decisions. Perian then took a different tack. "Don't get me wrong," he said to Rittenberg, "I am not criticizing you. What I am saying is you have no control under the FCC regulations to dictate to an individual broadcaster when he telecasts programs. Is

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[28] Dodd 1965 hearings, 3847.

that correct?" The NBC executive agreed. Senator Dodd, however, chose not to pursue the staff director's line of questioning, instead returning to the idea that networks or the industry as a whole "ought to assume more responsibility."[29]

Rittenberg argued that the best thing the network could do given the limits it faced was to provide stations with "a balance of programs" which would allow them to work out a program schedule that served the locality while still freeing time for network programming. Because of the nature of the network system and because the government licensed individual stations based on a mandate to serve the public interest, the stations had the responsibility to present a balanced schedule that was "not harmful or deleterious." Dodd still was not satisfied.[30]

In later testimony from Merle Jones, president of CBS Films, the subject came up once again. Jones agreed with his counterparts that the decision when to broadcast syndicated programs should be left solely to the affiliated stations. It was, he declared, "the sole responsibility of the licensee." Dodd's frustration returned. The networks' approach was "an inadequate way of handling" the matter. The programs were bad enough when shown on the networks. As long as these "highly objectionable shows" were being shown on local stations at times more children could see them, congress would continue to receive letters from irate viewers. Jones was unsure how CBS or any network could address the subcommittee's concerns while protecting its business interests. As an owner and operator of a handful of stations, CBS operated as a licensee

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[29] *Ibid*., 3848.
[30] *Ibid*., 3849.

in a manner of speaking and Jones did not "believe it proper for anyone distributing film to try to have any control over" where the network chose to air programs on its stations.[31]

Chairman Dodd turned Jones' arguments against him. Since the network did have its own stations, what would be so objectionable about encouraging those outlets to air certain programs at certain times? Even if the network did not explicitly tell stations when to air problematic shows, it seemed reasonable for them to advise or suggest when they might be shown so as to avoid negative feedback. Jones worried that any attempts to restrict a stations' freedom to schedule their programs might make them reluctant to purchase or lease those programs. Moreover, he pointed out that the affiliates were certainly not ignorant of the nature of the shows in question. They knew when it was originally aired, what its content was and how popular it was. More suggestion or comment on such matters would be "redundant." In an attempt to defend his network's record, Jones then argued that "considerable progress" had been made in addressing the problem of violence on television. He hoped that congress would allow the industry to "try to improve and correct [the] problem in the programs in their original form."[32]

Though Dodd told Jones that the subcommittee thought the industry "ought to take the initiative and do this yourselves,"[33] the chairman and his fellow senators often expressed their belief that the networks had so far failed to fix the problem. Since it was clear to him that the industry as a whole refused to take responsibility, preferring to pass the buck on to the stations, Dodd saw government intervention as the only alternative.

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[31] *Ibid*., 3858.
[32] *Ibid*., 3858-3859.
[33] *Ibid*., 3859.

Indeed, the industry would "bring on severe controls if [it did] not take some responsibility." Since this was almost certainly the "view of the great majority of the American people," Dodd felt little compunction about threatening broadcasters with legislation to improve program content.[34]

Self-regulation and the networks' continuity review

The chairman was not alone in his view that industry self-regulation had failed to satisfactorily limit violence on television. New York senator Kenneth Keating[35] was the most vocal subcommittee member to comment on Dodd's suggestion that the government become more directly involved. At the beginning of the hearing, Keating worried about the freedoms protected by the first amendment. As a public servant, however, he declared that congress could not "afford to turn its back on this problem" as long as there was a chance that its neglect would worsen the situation for young people.[36] Keating also discussed his views with ABC vice president Thomas Moore. Many of the letters the subcommittee received, Keating said, included support for the idea of government intervention in network operation and programming decisions. He was "very reluctant" to implement anything "that might smack of Government regulation of what the public [was] going to see," however, preferring that parents exert their own control over what

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[34] *Ibid*., 3849.
[35] Republican Kenneth Keating graduated from Genesee Wesleyan Seminary in 1915 and began his congressional career in the House of Representatives. After being defeated in his reelection bid to the Senate to Robert Kennedy in 1964, he went on to serve as ambassador to India and Israel until his death in 1975.
[36] *Ibid*., 3774.

children watched. Despite this reasonable attitude, Keating worried that the industry was not doing its part to give parents enough alternatives. It may happen, he speculated, that the pressures on both the industry and the government would become so great that there would develop "an overwhelming outcry in favor of the Government doing something" with regard to violence on television. Fortunately, so far there had been little attempt to pass legislation to create a "Federal czar" of television (an idea posited as far back as the Kefauver and Hendrickson hearings in the mid-1950s). But in cases where the industry was unwilling or incapable of reacting to the demands of a concerned public there could very well come a time when "the elected representatives of the people" would no longer be able to withstand, and should not withstand the demands of the people for a cleanup.[37]

At the start of the hearings, Dodd admitted that the broadcasting industry had indicated at least "a willingness to cooperate," but the lack of clear improvement worried the investigators.[38] In an effort to allow the industry plenty of opportunity to fix itself, congress had thus far "refrained from introducing remedial legislation." Such legislation, though, was nonetheless "one of the alternatives [congress had] considered to assure the operation of the television industry in the best interests of the public." Dodd hoped that holding periodic hearings into television violence could "document the trend of programming, test the good faith of networks …, and demonstrate to the industry and to

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[37] *Ibid*., 3806.
[38] von Schilling, *The Magic Window*, 208-209. Von Schilling suggests that the regulatory impulse of the early 1950s dissipated not because of financial factors surrounding the rapidly growing profits to be made. Instead, the expansive nature of the industry in terms of creative talent and programming meant that performers at the core of early television were extremely popular. Networks, then, were reluctant to limit their artistic freedom.

the public alike that [the] committee meant business in its effort to gain adherence to the very code which the television industry set up for itself."[39]

Certainly the senators and congressmen throughout the hearings discussed here were universally in support of industry self-regulation to improve the quality of popular culture and mass media. Why, then, was there such a noticeable change in their tactics during the television hearings chaired by Sen. Dodd? Granted earlier hearings had worried about the lack of punitive measures in self-regulatory codes as well as the problems revealed when companies failed to police their own activities sufficiently (such as during the quiz show scandals). Unlike earlier hearings, however, Dodd and his cohorts had access to internal correspondence and memos from within the major networks detailing the operation of their continuity departments. It was the responsibility of these continuity departments to review network programming prior to broadcast and recommend any changes necessary to get that programming in line with the television code of the National Association of Broadcasters (NAB), the network's own production code or any general guidelines set down by the Federal Communications Commission. Much to the dismay of the lawmakers at the hearings, they found that many programs were aired without alteration despite the suggestions of a network's own content review. If this was indicative of the effectiveness of self-regulation, they felt, it appeared that something needed to be done.

As broadcasters and networks grew in power during the late 1950s and especially into the 1960s, they felt less compulsion to adjust their programming. Success, it has

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[39] Dodd 1965 hearings, 3730-3731.

been said, breeds contempt, and it was this development that led networks to feel somewhat beyond the government's control when it came to the threat of external regulation. As such, increasing government pressure to address executives' programming content was often outweighed by the even greater increase in network power and profits.[40]

The first network executive to be grilled on the matter was ABC president Thomas Moore. Very quickly in his interrogation of Mr. Moore, senator Dodd produced a memo advocating the use of "terror" in a particular ABC program. The original name for the show was *Please Stand By* but it would be renamed and become successful as *The Outer Limits*, a science fiction / fantasy program in the tradition of *The Twilight Zone*. In fact, *The Outer Limits* ran for two seasons from 1963 to 1965, briefly competing with *The Twilight Zone* at the end of its run on CBS. But, while *The Twilight Zone* relied upon irony and plot twists to resolve its stories, *The Outer Limits* often tended toward action and stylized violence as well as frequently introducing somewhat gruesome looking aliens as antagonists. It was these aspects of the show that raised the concern of lawmakers.

Dodd pointed out that the memo repeatedly promoted the use of "'the delicious and consciously desired element of terror.'" The memo went on to say that the terror included in the show must, however, be "'tolerable.'"[41] Dodd rightly interpreted this to be "in direct violation" of ABC's own production code which expressly forbade such

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[40] Mary Ann Watson, *Defining Visions: Television and the American Experience Since 1945* (New York: Harcourt Brace College Publishers, 1998).
[41] Dodd 1965 hearings, 3781.

material. If ABC admitted, as Dodd said they did, that television programming "need[ed] … [and] … ought to be improved," such a memo seemed to contradict that interpretation in the most blatant way possible and in spite of public, scientific and governmental admonitions against such programming. Moore responded that the document in question was created by the show's producer who had come from a motion picture background and had never created for television. It was, Moore admitted, a "very unfortunate selection of words." However, ABC had created a separate policy for *The Outer Limits* which no where indicated a reliance on terror or violence, rather emphasizing the connection the show had to the "'classic tradition'" of science fiction in the canon of world literature.[42]

Although Moore was able to defend his network from this particular attack by producing a memo of his own repudiating or trumping the producer's description, a more troublesome problem emerged when the subcommittee revealed internal correspondence from ABC's continuity department regarding one particular episode of *The Outer Limits*. The document outlined parts of eight scenes that, upon review, seemed to demand some sort of alteration before the show should be aired. Though one caution was against showing the title of a magazine in a particular shot, the others warned against making the sight and sound of a monster's eating too repulsive. One suggestion was that the body of one victim as shown was "'too grotesque and unsightly for living room viewing.'" Other admonitions similarly addressed the visual or aural presentation of violence or its aftermath. Interestingly, the violence shown rarely was explicit and almost never

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[42] *Ibid*., 3783, 3778.

involved scenes showing actual killing or maiming. Often the scenes in question tended to indicate to the viewer that something violent was taking place through the use of skillful editing and off-screen sound effects. Any actual bloodshed was usually left to the viewer's imagination.

Carl Perian asked the network president whether the continuity department's suggestions were implemented in the final version of the show that was aired. Perian described that, despite all the suggestions of the continuity acceptance department, none of the objections "were taken care of." In essence, "the codes [were] being violated." Moore seemed unable to formulate a counterargument and instead praised the system, somewhat feebly, as being "indicative of the very points" he tried to make about industry self-control. The continuity review process displayed "the checks and the balances that [ABC] had to place against" a fantasy show like *The Outer Limits*. He and chairman Dodd went back and forth in their interpretation of the continuity report, Moore defending it as evidence of self-regulation and checks and balances at work, and Dodd pointing out that, if none of the suggestions were implemented to bring a show in line with self-regulatory codes, the codes themselves were meaningless.[43]

Part of the sparring between the two men boiled down to what constituted acceptable levels of violence and terror. As this was largely a matter of personal interpretation and taste, it was difficult to get any final decision from either Moore or Dodd. In addition, there was something of a circular nature to the discussion of whether or not the finished film that was eventually broadcast met the network's production code.

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[43] *Ibid*., 3785.

Moore repeatedly assured the subcommittee that any show that passed continuity must necessarily fit within the standards of the production code, apparently regardless of whether or not the continuity department's suggestions were implemented. Moreover, in the case of *The Outer Limits*, the show itself was never intended to be realistic and so any violence or terror must be seen as part of a fantastical world. Moore apparently believed that this would mitigate whatever violent images were shown in the program.[44]

There was also some question over whether the show was actually changed between the time the continuity department passed along its recommendations for script improvement and when the filmed program was reviewed and aired. If the scene shown in the conference room was the final, approved form, Dodd wondered if the original form might have been "much worse." Moore, however, did not know whether the finished product represented an improvement over the initial concept. Regardless, he said, the program must have been approved by the continuity department or it would never have been permitted to air. This was because the continuity acceptance department was autonomous and did not report to the television network. Instead, they reported to the heads of the company – directly to ABC-Paramount Theaters. As such, they had complete authority to eliminate anything from a particular show. Moore argued that the reports on *The Outer Limits* as a whole would show that the continuity department "did exercise a great deal of veto and restraint … to bring the overall series under the policy" he outlined earlier in his testimony.[45]

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[44] *Ibid*., 3786.
[45] *Ibid*., 3787, 3786.

The subcommittee soon turned its attention to another ABC program, *Combat*, to determine how well the continuity department functioned.[46] It is ironic that lawmakers chose to consider a show like *Combat* for its violence given the growing media presence of the Vietnam war. Though it was not the first conflict to be delivered to American families with the immediacy of mass communications (World War II was reported over the radio)[47] Vietnam was the first instance in modern history where families saw the bloodshed and devastation first hand. Television programs like *Combat* and *The Rat Patrol* portrayed violence, but they often could not compare to the graphic nature of news reports coming out of Vietnam. In a way, television programming, like Hollywood, chose to address the war indirectly via metaphor or by sanitizing military service through the portrayal of heroic veterans serving during the last just war.[48] It seems incongruous to criticize fictional shows for their "excessive" violence while ignoring the increasing footage of actual violence in Vietnam. It should be emphasized, however, that congressmen during the hearings were concerned with a narrow spectrum of violence on television, namely, how such images would affect young people. To put it another way, lawmakers during the juvenile delinquency hearings were not concerned with violence on television, per se. Rather, they were concerned with T.V. violence's impact on juvenile

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[46] *Combat* ran on ABC from 1962-1967 but only appeared in the top 25 in ratings in 1964, curiously almost simultaneous with Dodd's consideration of the program in his hearings.

[47] J. Fred MacDonald, *Don't Touch That Dial!: Radio Programming in American Life, 1920-1960* (Chicago: Nelson-Hall, 1979), 62. Though heavily regulated and often subject to government propaganda inserts, broadcasts nevertheless brought the war "directly into the living rooms of the American people."

[48] Rick Berg, "Losing Vietnam: Covering the War in an Age of Technology" *The United States and the Vietnam War* ed. Walter Hixson (New York: Garland Publishing, Inc., 2000), 99. Daniel C. Hallin, *The "Uncensored War:" the Media and Vietnam* (New York: Oxford University Press, 1986). Michael J. Arlen, *Living-Room War* (New York: Viking Press, 1969). Arlen's work is a collection of essays originally written for *The New Yorker* magazine in which he describes how the war, even when not the explicit topic of coverage on television, was always a presence in broadcast media.

crime. Even so, one wonders why none of the senators pointed out the potential damage done to young psyches by real combat presented on the nightly news.

Again, Dodd and the senators questioned how scenes from *Combat* were aired that seemed to have been rejected by the continuity reviewers. And again, they used internal network correspondence to make their case. According to the memo, the program had been approved "'subject to the deletion of the German tankman burning and writhing on the ground; and minimizing the bloody hand footage.'" After having viewed an excerpt of the episode, Sen. Dodd was convinced that neither of these requirements had been met prior to the show's airing on ABC. A soldier's mangled hand could still be seen reaching from the top of a destroyed tank. How did it happen, he asked, that ABC's own mechanism of review provided suggestions on how to bring programming in line with the various self-regulatory codes and yet, the network went ahead and aired the show apparently without any attempt to implement those recommendations? Moore's only answer was that he had no involvement with the continuity department, could not address the specifics of its operation, and reminded the subcommittee that any program that made it to the air must have received a pass from the continuity review. As if to reassure the lawmakers, Moore declared that he had never interfered with the operations of the continuity department. Nor did he ever ask them to adjust their decisions in an effort to protect ratings by including salacious or violent imagery. He went on to point out that shows such as *Combat* were almost always viewed and approved by members of

the Department of Defense. He trotted out an approving letter from the Assistant Secretary of the Army to demonstrate just how well-received the war series was.[49]

Despite such a blue-ribbon endorsement, Dodd was not satisfied with the reliability of the review process Moore described. He quite reasonably pointed out that self-regulation would succeed only if the broadcasters were bound to the decisions of the continuity department or any other mechanism of self-regulation the network employed. "Do you honestly think," he asked:

> that the industry can regulate itself – when it has become apparent, I think, to many of us that you are not even complying with your own code, much less the NAB code. What hope is there if a company setting up its own branch to look out for this sort of thing, then ignores the recommendations and objections of that branch, and goes right ahead with this brutal stuff. In addition there is the industrywide code and its prohibitions against this sort of thing. Yet those responsible go right ahead and do it …[50]

Much like the implicit concern within the quiz show hearings of several years earlier, Dodd seemed to worry that self-regulation was often problematic because it was like putting the fox in charge of the henhouse. Not surprisingly, Moore confidently announced that the industry could and did and would continue to police itself. Interestingly, he also said that the work of Dodd's subcommittee and others helped focus "more intense attention" on the problems discussed. Similar to Kefauver and Dodd's belief that one of the benefits of congressional hearings was their ability to open the public's eyes to issues, Moore's comment recognized the strangely symbiotic relationship

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[49] Dodd 1965 hearings, 3798-3799.
On the relationship between the media and the military during the Vietnam conflict, see William M. Hammond, *Reporting Vietnam: Media and Military at War* (Lawrence, KS: The University Press of Kansas, 1998).
[50] *Ibid*., 3802.

between congressional investigations and the ongoing worries generated by mass media.[51] In one instance, however, the media fulfilled senators' hopes that the hearings would expose problems to the American public. *U.S. News & World Report*'s November 1964 article about the subcommittee's investigations quoted extensively from its report to congress. In this case, then, it would seem that the Dodd and Kefauver's hopes that congressional hearings would shine the light on industry failings came to fruition.[52]

In fact, Senator Kefauver, still a member of the subcommittee but more involved with consumer affairs issues in the senate during the 1960s, spoke briefly during the first series of Dodd's hearings and complimented the Connecticut Democrat for continuing to shine a light on problems in the television industry. During one exchange the current and former chair mutually congratulated each other for keeping the issue of television violence before the public. In every instance, Kefauver said, network officials promised congress that they would "do better," yet they always "lapsed into their old practice." It seemed that "as soon as the hearing" ended, people forgot about it and "[got] back to the same old practice again." Dodd agreed. Five years before Dodd opened his first hearings into television, Kefauver had held his own investigation. Though Kefauver's were "of great value," it was a

> sad fact … that, indeed, the industry and so many people involved in the field, one after another, promised us that the shows would be cleaned up, yet it is at least three times worse now than it was at the time they promised to clean it up. So now I [chairman Dodd] don't know how far the public's patience is supposed to go. But on all sides it seems to me there is a demand that this be cleaned up.

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[51] *Ibid*.
[52] "Crime Shows on TV – A Federal Crackdown Coming?," *U.S. News & World Report*, 9 November 1964.

> I am not prepared to say what the subcommittee will recommend, but I will frankly say for myself that I think the Federal Communications Commission ought to get power for more regulation. I am out of patience, and I think we have waited long enough, 5 years with promises of improvement, and, instead of improvement we got deterioration. I don't know what we will do after this.[53]

Clearly Senator Dodd was thoroughly disgusted with the network's failure to address the problems his subcommittee and others saw with television. A short time later, Dodd reopened hearings into television violence in the hopes that another hiatus would reveal some sort of improvement.

Discussion during these later hearings quickly turned to the complexities of how a licensee received programs and then decided whether to air them. Again, the affiliate had the final say in whether or not to carry any show (although testimony during the earlier monopoly hearings seemed to indicate that many affiliates had little freedom of choice when it came to network programming.) Moore described the review process at the station level. Rather than getting each individual program prior to airing and reviewing it for content, affiliates received the scripts of shows or plot synopses for review. Occasionally, a closed-circuit system was set up and stations could view representative episodes of a particular series. Rarely were affiliates able to evaluate each episode of a series. As such, they were at the mercy of the networks which produced and distributed the program since the network was responsible for choosing which episodes to provide for review by the licensee. If a show was not approved and thus lost the right to include the National Association of Broadcasters' seal of approval, there was still no requirement

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[53] Dodd 1961/2 hearings, 2347.

that the show not be aired. Either the station would decide whether to broadcast the program or, if the NAB pulled its approval in time, the program would be returned to the network for correction.[54]

As far as the ABC executive knew, no program had ever lost the seal of approval. In every instance of disagreement between a producer and the NAB, the show was altered to bring it in line with the NAB code. This would seem to suggest that self-regulation did operate according to design at least some of the time. However, the complex implementation of the various codes and self-regulatory mechanisms made success difficult to measure. Senator Dodd suggested that the industry work to give its self-regulation some teeth. As it existed, it was all "just a friendly arrangement." The NAB could not do anything serious about violations, the networks did no have to "pay attention" to NAB decisions and "the whole situation indicate[d] that it would be better if [the industry] consent[ed] to having some really responsible authority" in the field. Moore answered that the industry was still young and he was confident that, as time went on, "the organization of the industry" would grow in strength.[55]

Unfortunately, the situation was exacerbated by the fact that even the regulation imposed by the Federal Communications Commission was too "mild," at least as far as chairman Dodd was concerned. Violations of FCC regulations and complaints received would most likely have to be substantial or involve "something very obscene or outrageously vulgar" before the commission would act. Even then, there was little the FCC could do except to take such violations into consideration at the time of the station's

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[54] Dodd 1965 hearings, 3807.
[55] *Ibid*., 3809.

next license review hearing.[56] Although not stated during the Dodd hearings it was suggested during other hearings that a station's need to maintain audience share meant that programming decisions would ultimately be affected more by profit than by altruism.

Dodd did not limit his attack to ABC's continuity department. He aimed his criticism against NBC's executive vice-president, Walter Scott, as well making many of the same arguments that the network repeatedly aired shows without implementing the corrections advocated by its internal reviewers. As far as Dodd could tell, nearly every program shown to the subcommittee had received specific warnings from the broadcast standards department. All of these warnings had been ignored. Did this indicate a "breakdown" in the process, he asked. The only answer he could come to was that someone had "change[d] the view" of the broadcast standards department, presumably to ensure that the violence of titillation necessary to secure large ratings would stay in the program. Scott, like Moore, described that the original continuity suggestions were based on nothing but the script.[57] The creative talent behind the show that reached the air could adjust things to meet their own needs. At this point, the standards review department could recommend alterations based on the film. Logic would indicate, however, that alterations after the film had been completed would meet with more resistance than changing the script before taping began.

The flexibility of NBC's continuity review was indicated by the header that opened each memo from the broadcast standards department, though. Referring to any approval the department bestowed upon a particular program, the document made clear

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[56] *Ibid*., 3819.
[57] *Ibid*., 3827-3828

that "'This "clearance" [did] not cover subsequent changes made in script nor [did] it extend to any recording of the material on film or tape.'" This would seem encouraging as it mandated that script clearance did not translate into automatic clearance for the filmed material. The header went on to say, however, that the report did not "'constitute program department approval and [was] not binding on NBC which reserve[d] the continuing right to reject or to require further editing or modification.'"[58] Despite the NBC vice-president's rosy view of the continuity system, there was no ironclad requirement that the network abide by the decisions of its own broadcast standards department. Self-regulation would seem to be nothing more than self-suggestion. Curiously, despite the legal background of many of the legislators on the subcommittee, none of them pointed out the clear loophole such a document presented.

The debate again passed into areas of interpretation when the chairman pointed to internal documents showing that complaints from NBC's continuity department about excessive violence in networks shows had doubled. To Dodd this showed that producers and creative talent were failing to limit such scenes despite pressure from the public, civic groups and the government. Scott, on the other hand, chose to see the figures as proof that the system worked. Every time the continuity department expressed concern about a program was a time that self-regulation was functioning properly.[59]

The subcommittee seemed more favorable towards CBS than to the other major networks, congratulating it for reducing the amount of violence in its programs. Dodd then asked whether this reduction in violence had resulted in any decline in "audience

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[58] *Ibid*., 3830.
[59] *Ibid*., 3839.

appeal" or ratings or whether the network had received complaints from either the public or advertisers about the reduced violence. To each question the president of the CBS network, James Aubrey answered no.[60] This was an interesting approach as it seemed to undercut the argument by many in the culture industry that they were simply providing what the audience wanted. As the audience wanted more violence or more sex, that was what they received. Here was a leading figure in that industry suggesting that the audience would remain despite a decline in violence.[61] This would certainly have given hope to lawmakers who debated the creation of public broadcasting three years later.

[60] *Ibid*., 3851.
[61] This interpretation also includes a sinister undertone, however. It would seem to show that the majority of viewers would watch television merely because it was on without any strong feelings towards content.

CHAPTER 8

PUBLIC BROADCASTING: THE MAGIC SOLUTION…?

Though they do not represent the final time congress looked into mass culture, the hearings into the public television act in 1967 neatly tie up many of the threads we see developed throughout the investigations described here. As was the case in earlier hearings into television, films and comics, the debates surrounding public television centered on issues of competition and the economic impact of government regulation in private entertainment. Legislators consistently described their belief that a combination of industry self-policing and free market forces would regulate cultural quality. While they may not have realized it, much of this approach fell in line with a distinctly American regulatory tradition dating to Progressive era creations like the Federal Trade Commission. In essence, congressmen believed that any government involvement in cultural matters should be handled under the auspices of regulatory or oversight agencies rather than any kind of direct control.

Worried about the dangers of direct government involvement in and control over a broadcast system, lawmakers chose to create a largely independent corporation funded with public money. This Corporation for Public Broadcasting (CPB), then, would distribute funds throughout the public broadcasting system to pay for programming, talent contracts, facility management and other expenses stations would incur during normal operation. Legislators hoped that such a structure would mitigate the chances of public broadcasting turning into a tool of propaganda, if not eliminate such chances entirely. Congressmen's fear of government controlled broadcasting was only a part of

their worry over the creation of a public television system, however. Evident in the hearings as well was a deep seated concern over how such a public network might affect the free market economy representatives saw as perhaps the ultimate guarantor of consumer choice as well as product quality. Many of these debates have gone largely unnoticed in the wealth of writing on PBS's creation.

Foundations and philanthropic organizations in the creation of PBS

During the 1950s and 1960s private philanthropic foundations grew into significant catalysts for affecting political policy in America.[1] Massively capitalized groups like the Carnegie Corporation and the Ford Foundation translated their monetary support for philanthropic endeavors into studies into governmental policy and eventually into even more direct ties to the halls of power.[2] One of the clearest examples of this development was in the area of public broadcasting. Although there were numerous foundations throwing money at social problems throughout the nation during the rise of television, the Ford Foundation and the Carnegie Corporation took the lead in drawing

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[1] This is not meant to imply that the work of foundations and philanthropic organizations was completely without criticism during the post-war years. A number of congressional committees investigated the actions of such groups from various perspectives. For a review of the negative attitudes towards philanthropic foundations, see: Merrimon Cuninggim, *Private Money and Public Service: The Role of Foundations in American Society* (New York: McGraw-Hill Book Company, 1972). and Peter Dobkin Hall, "Inventing the Nonprofit Sector, 1950-1990," in *The Nature of the Nonprofit Sector*, ed. J. Steven Ott (Boulder, CO: Westview Press, 2001).

[2] Louis Galambos, "Nonprofit Organizations and the Emergence of America's Corporate Commonwealth in the Twentieth Century," in *Nonprofit Organizations in a Market Economy: Understanding New Roles, Issues and Trends*, eds. David C. Hammack & Dennis R. Young (San Francisco: Jossey-Bass Publishers, 1993), 92-93. Galambos describes how nonprofit organizations often attached themselves to government agencies working for change. Networks grew between the organizations and the administrative state as nonprofits began instigating policy as well as providing many of the experts that would staff government agencies.

the federal government into committing to long-term support for public broadcasting. In the final analysis, "foundations made their greatest impact … not simply through grants, but by connecting with and helping to organize key groups of leaders."[3] The issue of public television was an attractive, non-partisan matter as it seemed to satisfy the concerns of both conservatives and liberals regarding the dangers of censorship and regulation.[4] It is no surprise, then, that many of the witnesses appearing before the congressmen debating the creation of the Corporation for Public Broadcasting (CPB) were connected to these organizations. Even Secretary of Health, Education and Welfare John Gardner, whose department would be responsible for overseeing the CPB, had served as executive director of the Carnegie Corporation and had been instrumental in the foundation's studies into and support for public broadcasting.

In 1963, nearly all the funding for the arts came from private foundations like the Rockefeller and Ford Foundations. By the early 1980s, however, federal and state money accounted for more than 30% of all support for the arts, an increase of 25%.[5] This fell neatly in line with the expectation held by foundations that they would start the process of developing public broadcasting – or any other philanthropic endeavor – only to turn the responsibility for funding it to the government. Though not reluctant to continue

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[3] David C. Hammack, "Foundations in the American Polity, 1900-1950," *Philanthropic Foundations: New Scholarship, New Possibilities*, ed. Ellen Condliffe Lagemann, (Bloomington, IN: Indiana University Press, 1999), 59.

[4] Ellen Condliffe Lagemann, *The Politics of Knowledge: The Carnegie Corporation, Philanthropy, and Public Policy* (Middletown, CT: Wesleyan University Press, 1989), 222-223. It should be noted that both president Kennedy and president Johnson repeatedly stated their support for public broadcasting as well as a broader federal role in cultural affairs. President Johnson and his VP, Hubert Humphrey, both voiced their general support of television as a medium, as well. As such, the 1960s were an ideal time for the confluence of these foundations and a relatively amenable government.

[5] Kenneth Goody, "Arts Funding: Growth and Change Between 1963 and 1983," *Annals of the American Academy of Political and Social Science* vol. 471 (Jan. 1984): 149.

supporting such activities, the leadership of these groups knew that the government would be a much more stable and reliable source of revenue. In an effort to mobilize government action along these lines, the Ford Foundation and Carnegie Corporation created policy statements outlining their recommendations for public broadcasting.[6]

Initially, the Ford Foundation attempted to sponsor and produce high quality cultural programming.[7] Between 1952 and 1956 the Foundation created *Omnibus*, a weekly show that included musical, theatrical, historical and artistic programming. Though *Omnibus* originated on CBS, it passed to ABC for its final season. It was overseen by the Radio-Television Workshop, a group set-up and financed by the Ford Foundation and, although it was open to sponsorship, the Foundation retained creative control and covered production costs over and above those paid for by advertising revenue. By the end of the show's existence, however, it was clear that such cultural programming could not compete with commercial television for audience share. *Omnibus* was qualitatively successful but was a commercial failure. Competition between the networks to gain "larger Sunday audiences and higher advertising revenues" relegated the show to the dust-bin. The lesson learned by the Foundation was that "commercial television did not provide a dependable vehicle for high-quality cultural and

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[6] Gilbert Seldes, *The Public Arts* (New York: Simon & Schuster, 1956), 243, 278-279. Interestingly, former CBS executive Gilbert Seldes worried about the power of influential quasi-public groups which might be able to convince Congress to take action based simply on the group's recommendations. Seldes also believed strongly that variety was more important than excellence. In a way, the creation of a public television system would almost certainly increase the variety of programs available to the public; however, Seldes was not convinced that it was the government's responsibility to involve itself in mandating or overseeing cultural matters

[7] Richard Magat, *The Ford Foundation at Work: Philanthropic Choices, Methods, and Styles* (New York: Plenum Press, 1979). Though relatively comprehensive as a history of Ford Foundation activities in public welfare programs, Magat's book is fairly self-aggrandizing as the author was on the Foundation's staff for more than 20 years.

informational programming on a continuing basis."[8] This seems somewhat ironic given lawmakers' repeated statements expressing their belief that cultural programming on the networks would provide the type of competition necessary to improve the quality of all shows on commercial television.

The above interpretation, voiced by the leadership of the Ford Foundation twenty years after *Omnibus* left the air, also stands in sharp contrast to the views of Dwight Macdonald who blasted the show's programming. Writing in 1955, Macdonald believed that *Omnibus* was designed to attract sponsors and only sought genuine cultural improvement as an afterthought. Even the cultural programming included on *Omnibus,* he said, was "the kind of mélange that our middle-brow cultural entrepreneurs have found to be commercially profitable."[9]

The Foundation thus turned its attention to the potentialities within a non-commercial broadcasting system. Included in its response to a Federal Communications Commission inquiry about domestic satellite communications in 1965 the Foundation declared its support of the Carnegie Corporation's upcoming report on educational television. The Carnegie report was soon translated into policy through the Public Broadcasting Act of 1967. Even before this, though, the Ford Foundation had announced

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[8] "Ford Foundation Activities in Noncommercial Broadcasting, 1951-1976," (New York: Ford Foundation, 1976), 3.

[9] Dwight Macdonald, *The Ford Foundation: the Men and the Millions* (New Brunswick, NJ: Transaction Publishers, 1989), 87-94. As might be expected, Macdonald was generally dismissive of the cultural programming *Omnibus* produced. William S. Schlamm, "Arts and Manners: Elvis Presley and the Mozart Year," *National Review*, 11 July 1956, 17. Schlamm goes even beyond Macdonald's criticism of television, suggesting that a sort of liberal conspiracy was responsible for the poor quality of television programming. Whether through bias in news programs (led by respected journalist Edward R. Murrow) or the egalitarian desire to appeal to the masses as evidenced by network choices, liberal intellectuals had "taken over" broadcasting, dragging down quality.

a $10 million appropriation for an experiment to "demonstrate what public television might achieve with adequate programming funds." This experiment, known as the Public Broadcasting Laboratory (PBL) drew talent into the nascent public broadcasting system and helped establish a standard of quality. This basis helped to provide a solid bedrock upon which the Corporation for Public Broadcasting could be built. Once the CPB had grown into a stable entity, the Foundation gradually reduced its funding of noncommercial television. By the time the Foundation ended its major grants to noncommercial TV, it had contributed nearly $290 million. Of this, $170 million was disbursed after the creation of the CPB.[10]

Despite the significant contributions made by the Ford Foundation, it was the Carnegie Corporation and its 1967 report "Public Television: A Program for Action" that was instrumental in spurring congressional legislation. The spark for the study had come from a conference held by the National Association of Educational Broadcasters in 1964. When comparing the content of the report and the comments of lawmakers and witnesses during the congressional hearings, one is struck by the similar tone. As commercial television sought to capture the largest audience possible, it relied on the public's desire to relax and be entertained. Public television, then, should include "all that [was] of human interest and importance which [was] not at the moment appropriate or available for support by advertising." Moreover, if the "full needs" of the American public were to be best served, the medium must include cultural and educational programming. Because of the limits of the network system, however, one of the only options available was the

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[10] *Ibid*., 13, 1.

creation of a noncommercial, public broadcasting system. This did not absolve the responsibility of the networks to meet the public interest mandates included in their FCC licenses, though. Certainly there was no reason that "commercial television should decrease its efforts to provide excellent programs of cultural and public affairs for the mass audience."[11]

Evidence of the importance placed on the Commission's report can be found in the preface written by none other than President Lyndon Johnson. His endorsement of the study's findings was filled with hopes that it would foster the "communication of many ideas" through the creation of different channels. Improving America's cultural landscape could help serve a larger purpose, as well. In a statement pregnant with the Cold War concerns of the day, Johnson felt that a stable public broadcasting system could not help but enhance the "security" of the nation through the "enlightenment of our people."[12]

It is no surprise that President Johnson supported the Carnegie Commission's proposed public broadcasting system given his role in the creation of the first permanent government-supported arts program, the National Endowment for the Arts (NEA). Though not the first time the government became involved in funding the arts, Johnson's creation was certainly the broadest in scope. Partly in an effort to connect his presidency

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[11] Carnegie Commission on Educational Television, "Public Television: A Program for Action," (New York: Harper & Row, 1967), 1-16.
[12] *Ibid*., vii.
Lagemann, *Politics of Knowledge*, 224-5. Because of the first lady's ownership of several broadcasting properties, Johnson avoided empanelling a presidential commission. As such, he looked to his friend and advisor John Gardner to engage the Carnegie Corporation. Thus, the Carnegie Commision on Educational Television had the endorsement of the president even before it issued its report. Lagemann notes the "close collaboration between the White House and the Carnegie Corporation" and points out that the issue of public broadcasting likely already had the support needed to become legislation.

to the legacy of John Kennedy, LBJ made arts funding a central plank of his 1964 campaign.[13] Arthur Schlesinger, Jr. had advised JFK to expand the government's involvement in cultural affairs and he pressed Johnson to use a strong cultural policy to attract and build a constituency within the intellectual and art community.[14] The president also benefited in the mid-1960s from Americans' growing recognition during the post-war years of the importance of the arts in their own right as well as their role in providing a clear counterpoint to the propaganda of totalitarian states like the Soviet Union.[15] Perhaps most significant to the debates around public broadcasting was the fact that the NEA was set up in 1965 as a quasi-public agency in the same mold as the CPB.

Though not stated explicitly, it was clear that PBS was also a weapon to be used in Johnson's War on Poverty. While the bulk of Great Society reforms were directed at health care and living conditions, public broadcasting could potentially improve the welfare of the nation's poor by providing them access to education and cultural programming they would never receive otherwise. Indeed, Laurie Ouellette argues that

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[13] Milton Cummings, Jr., "Government and the Arts: An Overview," in *Public Money and the Muse: Essays on Government Funding for the Arts* ed. Stephen Benedict (New York: W.W. Norton & Co., 1991). John Wesley Zeigler, *Arts in Crisis: The National Endowment for the Arts Versus America* (Chicago: A Capella Books, 1994), 17. Irving Bernstein, *Guns or Butter: The Presidency of Lyndon Johnson* (New York: Oxford University Press, 1996), 439-444.

[14] Arthur Schlesinger, Jr., "Notes on a National Cultural Policy," in *The Politics of Hope* (Boston: The Houghton Mifflin Co., 1963).
Gary Larson, *The Reluctant Patron: The United States Government and the Arts, 1943-1965* (Philadelphia: University of Pennsylvania Press, 1983), 181.

[15] Fannie Taylor & Anthony L. Barresi, *The Arts at a New Frontier: The National Endowment for the Arts* (New York: Plenum Press, 1984), 18-19. Alan Howard Levy, *Government and the Arts: Debates Over Federal Support of the Arts in America from George Washington to Jesse Helms* (Lanham, MD: University Press of America, 1997), 93. Yale Richmond, *Cultural Exchange & the Cold War: Raising the Iron Curtain* (University Park, PA: The Pennsylvania State University Press, 2003). Richmond argues that American culture was perhaps one of the most important, and most overlooked factors in the collapse of Soviet communism in the 1980s and 1990s. Through an open policy of cultural exchange, the United States influenced the Russian intelligentsia, leading them to push for internal policies like glasnost and perestroika.

one of the primary motivations behind public television was a slightly paternalistic desire among elites to bring the blessings of culture and enlightenment to the underprivileged.[16]

Here is an interesting corollary to economist John Kenneth Galbraith's ideas regarding the damage rampant consumerism was doing to America's civic development. Long critical of the public's reliance on credit spending, Galbraith worried about the broader impact of the U.S. emphasis on acquisition as opposed to public improvements. He advocated a qualitative liberalism. Galbraith argued that, like many economies throughout history, America tended to afford more prestige to privately produced goods and shunned or rejected public services as evidence of state interference. As such, America suffers from a lack of government-funded public utilities, welfare and education. Such a disparity between the affluence of debt-driven private consumption and "niggardly" spending on public services, Galbraith says, is a cause of "social discomfort and social unhealth."[17]

Increased spending on education and welfare systems in the United States would not only have the obvious benefit of improving the conditions of life for many; Galbraith posits that better education could limit the damaging effects of mass media. In a statement that would likely be embraced by many lawmakers investigating juvenile delinquency and mass culture, Galbraith declares that a society with equal spending on private and public goods would provide sufficient diversion to potential delinquents. When looked at from this perspective, PBS more than matches the economist's hope for a

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[16] Laurie Ouellette, *Viewers Like You?: How Public TV Failed the People* (New York: Columbia University Press, 2002).
[17] John Kenneth Galbraith, *The Affluent Society* (New York: New American Library, 1969), 197.

decreased emphasis on acquisition. Public broadcasting would use arguably the most powerful tool in the consumer society to improve the public welfare by presenting culture, education and information as counterpoints to the damaging mass culture displayed in the "violent mores" of motion pictures and advertising.[18]

Moreover, a successful public broadcasting system might limit one of the more insidious aspects of commercial television. Galbraith argues that the paucity of spending on education helped perpetuate the mass audience necessary for effective market manipulation. The simple mind, he suggests, is arguably the easiest to manage. It thus works to the advantage of the culture industry and the capitalist system to maintain mass appeal. Education can help bring the tastes of large numbers of people up toward fine arts, but this also serves to undermine the "want-creating power" of advertising which is critical to the success of the modern consumer society. This has the tinge of a conspiracy theory to it, but Galbraith never suggests that the system is designed purposely to keep the masses ignorant so that producers can maintain their profit margins. The process is fundamental to much of the history of the capitalist economy, he says.[19]

The nature of broadcasting in America

One of the most abstract problems faced by some committee members was the distinction that should be drawn between public broadcasting and private broadcasting. To Massachusetts representative Torbert MacDonald's mind, all broadcasting in America

[18] *Ibid*., 201.
[19] *Ibid*., 217.

was actually public. The fact that the federal government licensed and oversaw the activities of network affiliates meant that broadcasting was a public enterprise regardless the profit motive of the operating networks. Moreover, the Communications Act of 1934 created the Federal Communications Commission specifically to serve the public interest. This further solidified the government's role in the airwaves even before a widespread public broadcasting system was created.

Among the first witnesses before the committee was the Secretary of Health, Education and Welfare, John Gardner. Gardner was a rarity in cabinet-level politics, a Republican serving in a Democratic administration. Given the importance of HEW in Johnson's Great Society, Gardner was a close confidant of the president and went on to develop a number of public service and political action groups (most notably Common Cause) after his departure from Johnson's administration. Gardner's department would have been responsible for overseeing the distribution of funds to the CPB. As such, and because of his role in the Carnegie Commission's instrumental study on PBS, he was seen as an expert on the proposed legislation. MacDonald asked the secretary about the nomenclature of the legislation. He would repeat his question to several subsequent witnesses, often with the same result.

Since "the Government just gave, as a public service, certain rights to certain people to carry in certain areas of the spectrum what programs they [felt were] necessary and entertaining," was it not reasonable to state that all broadcasting was public, MacDonald asked. By calling the proposed system public television, the congressman worried that the resultant "inversion of reasoning" made TV and radio as it existed sound

private. Gardner answered that the language made little difference. The title of the bill and the agency it created would not create hard and fast categories, and it should not result in any confusion within the broadcast community about the difference between publicly and privately run television.[20]

Though he had earlier admitted that his distinction between public and private television could be construed as "picayunish," MacDonald persisted in his attempt to get at the difference between the two. There was, in fact, no such thing as private television, he asserted. Whoever chose the name for the bill and for the "company" that it would form was "ill advised." Combined with his next statement, MacDonald's choice of terms for the CPB is notable. The lawmaker expressed his confidence that the name for the bill certainly did not "come from Madison Avenue."[21] It would appear that the representative's concern over the title was rooted in a deeper worry over the corporate nature of broadcasting in the U.S. Although he never said so explicitly, MacDonald's worry could have been that, should the bill go through, the networks and their corporate sponsors might further avoid their responsibility to the public interest. The existing profit-driven media enterprises could excuse their reluctance to air educational or public service programming by pointing to the existence of a system specifically designated "public."

MacDonald's final word on the subject came when he was interrogating Fred Friendly, who had been president of CBS from 1964 to 1966 and thereafter served as the

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[20] House Committee on Interstate and Foreign Commerce, *Public Television Act of 1967: Hearings before the Committee on Interstate and Foreign Commerce*, 90th Cong., 1st sess., July 1967, 43. [hereafter PBS hearings]
[21] *Ibid*., 106.

television consultant for the Ford Foundation. Friendly had resigned from CBS when the network chose to run an *I Love Lucy* rerun in early 1966 rather than air Senate hearings into the Vietnam War. MacDonald explained that a self-styled distinction between public and private broadcasting suggested that there was some difference in the level of governmental involvement in regulating the airwaves. There was no confusion, he said in who owned the airwaves. In a bit of an exaggeration, MacDonald argued that the federal government in fact owned the broadcasting franchises and simply leased them out "for a certain period of time."[22] Here was a much stricter interpretation of government oversight than most would accept. While there was little doubt that the government, through the FCC, oversaw station operation and licensed network affiliates, few would go so far as to say, as MacDonald did, that the government actually owned the stations themselves.

Education vs. entertainment in public television

There was never any definite solution reached in MacDonald's repeated worry about public versus private broadcasting. Once it became clear that most witnesses (and apparently the other representatives) were not terribly worried about the title of the bill, most of the debate centered on other concerns. One of the more common discussions tried to get at the root of whether PBS broadcasts would be strictly educational or if they would include entertainment. More often than not the existing educational broadcasting

[22] *Ibid*., 669.

system was run by public universities and was designed to bring vocational training and general education to local populations.

Writing for the *National Review* in 1967, C. H. Simonds looked to this history of educational television and predicted only dull, dry programming on public broadcasting. In the caustic language typical of most *National Review* contributors, Simonds's article "Turn On, Tune In, Yawn" criticized the government's use of public funds to pay for a media outlet that would almost certainly only appeal to liberals hoping to improve the world. These "Uplifters" would likely end up disappointed, though. This was because the "daring, innovative" nature of public television would be blunted by the fact that senators and representatives would be in the audience. Coming from a relatively elite class with traditional cultural values, these men would not brook the sorts of avant garde or experimental programming public broadcasting was in a position to produce.[23]

Early in the hearings Secretary Gardner lamented the failure of American broadcasting to live up to the possibilities of television as a medium for education and cultural enhancement. The creation of the Corporation for Public Broadcasting, he said, would help improve programming and aid educational television. This was seen by many people as necessary because the networks had failed to develop television sufficiently to meet the mandate of public service. Perhaps worse, Gardner implied that the government had missed its chance to compel networks to improve their record. During the roughly fifteen years of network dominance, the government had done "very little to explore or to

[23] C.H. Simonds, "Turn On, Tune In, Yawn," *National Review*, 17 October 1967, 1128.

exploit the educational possibilities of [the] medium."[24] Certainly Gardner here has much in common with the final chairman of the Senate juvenile delinquency committee, Thomas Dodd, who regularly blasted network witnesses for their failure to improve their programming despite the government's repeated investigations and the public's apparent concern.

Despite the fact that all sides were in agreement about the need for improved educational television, the question still remained over what constituted education and what would be more properly termed entertainment. The networks primarily aired shows that had little or no educational content, thereby grabbing the lion's share of audience ratings through entertainment. What networks failed to realize, according to Massachusetts representative Hastings Keith, was that the television audience was growing more sophisticated and better educated. In light of this, networks should be adjusting their programming to appeal to the more savvy viewer and should be "vying with each other" to reach this audience.[25] Not stated explicitly in his comments, this would also serve to increase competition thereby leading to improved program quality. Gardner agreed and went on to suggest that a successful public broadcast system could improve the cultural taste of the nation.

Though he could not predict exactly what form such improvement might take, he speculated that the audience "for good theater," for example, could become "very wide, indeed," if it were "properly presented" by the CPB. Such a development had recently occurred in the market for classical records, he explained. The new audience carried with

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[24] PBS hearings, 79.
[25] *Ibid*., 92.

it "very lively commercial consequences." Utilized well, public broadcasting could "develop and demonstrate the popularity of the kind of educational and cultural programs" that were not already recognized by the big networks. Secretary Gardner was indirectly championing the possibility that public broadcasting might assist the profit-making potential of cultural improvement. If it had worked with classical music, one could reasonably expect a similar development in other bastions of High Culture. Ultimately, then, public television might open new markets for previously ignored or marginalized consumer tastes. Gardner expected that, with the proper application of funding and talent, the very small public television audience would "be substantially increased" and bring the benefits of nonprofit broadcasting to many more people.[26]

The Nation's John Horn hoped that public television would finally allow the medium to serve the public in its entirety: "in all its diversity and individuality." Using phrases that seemed calculated to reflect the terminology of the Vietnam War, Horn blasted commercial television. Networks needed to use the air waves granted them "in more qualitative ways than that determined by body count." And, given our failure to live up to the standard set by England's television system established thirty years before, America's "communications gap [was] as scandalous as [its] credibility gap." Only recently, Horn said, had the government and the public come to realize the use of planning in media matters.[27] One concern he overlooked, however, was the very real possibility that appealing to all the diversity and individuality of the American viewing audience would lead to the atomization of both the audience and PBS programming.

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[26] *Ibid*., 92-95
[27] John Horn, "Television," *The Nation*, 25 December 1967, 702.

This occurred to several witnesses and lawmakers during the hearings and they had a difficult time coming to any clear solutions.

North Carolina's James Broyhill worried that the language of the witnesses and the bill itself pointed to the likelihood that PBS would become an entertainment medium as opposed to an educational one. He expressed concern that the public understanding of the bill was for the creation of an educational broadcast system. When the public thought of such a system, they likely thought of "instructional TV as in the instruction of schoolchildren." However, such an approach was "only a small part" of the existing bill.[28] Broyhill seemed concerned that a public broadcasting system that included too much entertainment might face a backlash from people expecting more educational or instructional programming. It should be made clear, then, that PBS would include certain types of entertainment.

Later in the proceedings Torbert MacDonald, serving as chairman, returned to the matter while questioning Dr. James Killian, Jr., chairman of the Carnegie Commission on Educational Television, one of the primary private organizations in the development of the CPB. He was "very surprised" that Secretary Gardner had earlier characterized public television as "an entertainment type of TV." Dr. Killian assured the lawmaker that entertainment in the sense of the bill was not the same type of entertainment found on network programs. The entertainment they hoped for was that which would appeal "to the bright young youngster who [was] looking for things that delight[ed] him, to make him responsive to new skills." In a more limited sense, public television should have

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[28] PBS hearings, 97.

"elements of entertainment, but … would not stress" that sort of programming in the way that commercial stations "quite understandably" did.[29]

Although MacDonald's lack of time limited his chance to pursue the matter, it resurfaced later in the hearings. Representatives grilled Dr. Killian on how public television would balance education and cultural advancement with the need to retain viewership by making such programming at least moderately entertaining. Entertainment was not enough, though. Joseph Morgenstern, *Newsweek*'s movies editor, was no fan of commercial television and called it "appalling" in a June 1967 article for the magazine. However, he also admitted that educational television of the sort in existence prior to PBS's creation was "a virtuous bore." Morgenstern recounted a list of missed opportunities, dry, featureless programming and pretentious, uninformative discussion shows. Because of this, networks had little to fear in "their purse of purses" and could "quietly rejoice" in the security of their market share. When put up against adventure programs like the African drama *Daktari* or Westerns like *Bonanza*, which never fell below fourth in the ratings in the six years before the PBS hearings, it's no surprise that educational television came in a distant second (or worse). With public television's change in approach from simple education to cultural and informational programming, Morgenstern anticipated a significant improvement in the quality of noncommercial broadcasting. PBS, he said, should be "free to find its own style, to sweep away the conventions as if television had just been invented." Since American audiences had been weaned on a television diet filled with entertainment, they would likely shift their

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[29] *Ibid*., 130-131.

viewing habits only if something appealed to them beyond Killian's rather idealistic hopes. The doctor had eloquently stated that PBS would appeal "to the curiosity, to the wonder, to the imagination of our people and [would give] them a feeling that something can be improved." That too, could be entertainment. Should PBS succeed in this vein, Morgenstern and Killian's idealism might be justified.[30]

Even more problematic for public television was the fact that much of the programming was meant to be broadcast during prime time and would compete directly with the powerhouses of network shows. Florida's Paul Rogers wondered how noncommercial stations would gear their programs. Would they be geared to "a medium of … audience level, age, education?"[31] Many critics lamented that mass culture was a creation designed to appeal to the lowest common denominator in order to ensure maximum profits. A corollary to this was the danger that public broadcast programming that failed to reach a wide audience would limit the implementation of its high-minded purpose. It was entirely possible that public broadcasting would simply be preaching to the converted if PBS planners were unable to draw sufficient viewers to achieve its stated goal of improving the cultural taste of the American public. And since much of the CPB's funding was reliant on public donations, a small audience might jeopardize the system's financial stability. Debates over the potential and anticipated size of PBS's audience would resurface during the hearings.

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[30] Joseph Morgenstern, "Public TV: A Power Struggle," *Newsweek*, 5 June 1967, 90-95A. PBS hearings, 130.
[31] *Ibid*., 143.

One benefit of public broadcasting as opposed to commercial stations would be PBS's ability to experiment and innovate new programming in ways that networks, because they must bring in the largest possible audience, could not, Killian proposed. It was this experimental aspect of public television that *The Nation* hoped would distinguish it from network programming. American viewers needed programming alternatives that were "more than a reflection of the … mainstream." But, would congress be willing to authorize and fund a system that was mandated to express dissent? Moreover, would local stations be "sufficiently bold in the face of community pressure to present the controversial idea?" Though the Corporation for Public Broadcasting would help secure noncommercial television from the first concern, the second was a paradox given the repeated hope that PBS would benefit from being so closely tied to local audiences.[32]

MacDonald agreed that there could be legitimate benefits to public television. There were, though, very good programs put on by the networks. And, if PBS would be going into the field of entertainment television, why should the federal government sponsor a commercial enterprise? This was a crucial aspect of the hearings. If the government went ahead with supporting a media outlet, even in the indirect way proposed by the Carnegie Commission, how close was it to the sorts of state-run media popular in authoritarian states? Perhaps more important, government involvement in the market seemed to put the lie to lawmakers and witnesses' repeated comments about the power of the competitive market to positively affect cultural quality. Killian responded that public television would not compete with the networks per se but would instead

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[32] "Public Television," *The Nation*, 13 February 1967, 197.

provide the audience with even more choice. In the end, he suggested, networks were simply unable to include in their schedules the sort of educational or cultural programs that they might like.[33] This was probably a somewhat optimistic view of commercial television's decision making. There was no indication that the networks had any intention of expanding the amount of cultural or educational programming in their schedules. Indeed, much of the debate during the senate's earlier juvenile delinquency hearings had dispiritedly pointed out the lack of non-entertainment shows on the networks. The senators had even criticized network executives for canceling cultural programming like *Playhouse 90* and *Studio One* in favor of flimsier yet more profitable fare.[34]

Life magazine's editorial of February 1967 excused networks for the lack of cultural fare on their schedules. "Networks [were] both the creators and the victims of the pressure for uniformity." Although they could do a "magnificent job," networks were bound to the commercial system of American broadcasting with its need to secure maximum audiences and the sponsorship that went with them. The only "escape from the pressure of commercial uniformity" was noncommercial stations. Public television could "experiment without fear of the Nielsen ratings and aim for an interested, not a

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[33] *Ibid*., 147-148.

[34] Charles Siepmann, "Moral Aspects of Television," *The Public Opinion Quarterly* vol. 24, No. 1 (Spring 1960). Siepmann also emphasizes the role of mass media in creating a literate and intellectually sophisticated public necessary for democracy in the nuclear age. As commercialism grew in television, the medium's earlier reliance on educational and public service programming took a back seat to entertainment. Robert E. Summers & Harrison B. Summers, *Broadcasting and the Public* (Belmont, CA: Wadsworth Publishing Co., 1966), 25. Summers and Summers argued that the power of public demand meant that television provided less cultural product and more entertainment.

passive audience." The programming universe for public television was thus potentially boundless.[35]

In a way, it was left to McGeorge Bundy, former national security advisor turned president of the Ford Foundation, to make clear the distinction between entertainment and education in public broadcasting.[36] Late in the hearings, Bundy read a prepared statement in which he tried to define how PBS would provide entertaining programming without pandering to the lowest tastes of the viewing audience. Of course public television would have entertainment, he declared. There was a vast difference between "entertainment and amusement," however. Bundy told the committee that public TV "must not be permitted to become a honky-tonk midway of action games, violent fantasies, and contrived farces with fake laughter and applause, designed to appeal to the lowest common denominator all of the time."[37] Obviously a backhanded slap at commercial broadcasting, Bundy's statement failed to describe how such a grotesquery could definitively be avoided. As we shall see, Bundy and others repeatedly expressed their confidence that good men of high character and morals would lead the CPB in the right direction. Legislatively, though, there was little or nothing congress could lawfully do to mandate the inclusion or prevention of certain programming. Such behavior would certainly cross the line into a priori censorship.

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[35] "Public TV: a Wasteland Oasis," *Life*, 17 February 1967, 4

[36] In the twilight of Bundy's career, he also served as a resident scholar in the Carnegie Corporation. Though his service in foundations came after his government service, Bundy, like John Gardner, represents another example of the connections between philanthropic organizations and government.

[37] PBS hearings, 378.

Continuing his statement, Bundy provided a rather curious list of individuals who had straddled the line between education and entertainment. Men like Shakespeare and Arthur Miller, Bundy argued, were admittedly great entertainers. They were also great teachers. Inversely, master teachers had often provided distraction of a sort. Here Bundy's list seems somewhat contrived. According to Bundy, Galileo, John Glenn and even Abraham Lincoln were "shining examples of absorbing entertainment."[38] It is difficult to see just where Bundy was going with such a characterization. Certainly the biographies of those he named would be engaging and insightful for a receptive audience. Few would argue, though, that folksy humorist Will Rogers and news guru Edward R. Murrow (both of whom Bundy included on his list) were entertaining in the same way. Bundy's statements did echo some contemporary culture critics who championed "classics" as a way to provide the psychic release people often received from mass culture. Though originally intended to benefit adolescents, the arguments in favor of what traditionalists might deem "high culture" could apply to all ages equally.[39]

Government involvement in broadcasting

Bundy's canon notwithstanding, the committee's repeated attempts at distinguishing education from entertainment did have a significant undercurrent.

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[38] *Ibid*.
[39] John Springhall, *Youth, Popular Culture and Moral Panics: Penny Gaffs to Gangsta Rap, 1830-1996* (New York: St. Martin's Press, 1998), 156.

Related to the debate over whether PBS should be educational or entertaining was the possibility that government subsidies for broadcasting would interfere with that chimera of regulation: free market competition. In many ways the hearings centered on the question of whether it was appropriate for the government to sponsor or subsidize a network or chain of stations that would stand in direct competition with commercial television? This would seem to involve lawmakers in a private enterprise and, though the phrase was never uttered, would be all too similar to the state run media of fascist, communist and other totalitarian regimes. This was strikingly similar to debates that emerged during hearings into network monopolies nearly a decade earlier.

One of the first witnesses to be confronted with the issue was HEW secretary John Gardner. Among the earliest expressions of congressional concern with interference in a predominantly competitive marketplace came in the question of staffing PBS stations. Samuel Devine of Ohio noted that program production was an expensive undertaking in any instance. In order to ensure audiences would watch public television, it was only reasonable that PBS shows would have to "approach the production standards established" by commercial television. This indicated the necessity for "Congress to give economic support to these 'creative people'" in order to draw them out of commercial television. In other words, men and women likely to enter the commercial side of broadcasting would need at least an equal incentive to draw them into noncommercial television. Granted a small number would choose public television out of a sense of civic duty or personal preference. For the most part, however, Devine and Gardner agreed that financial enticements would work better than relying on public spiritedness. "[Would]

this not," Devine asked pointedly, "put the Federal Government in the general overall category of being in direct competition with the free enterprise system?"[40]

In addition, the spiraling costs of Johnson's Great Society programs and military expenditures surrounding the Vietnam conflict almost certainly weighed on the minds of lawmakers considering yet another drain on the treasury. Though there was debate over just how much of an initial investment congress should provide as CPB seed-money, surprisingly little was said about the stresses support for public broadcasting would place on the budget. Certainly the fact that most of the system's financial support was supposed to come from the viewing audience ameliorated some financial concerns.

Secretary Gardner assured the congressman that an element of competition existed in "all of our publicly supported cultural efforts" from libraries to universities. It should be noted, though, that the level of competition was modest. The various interests were competing over a "rather small segment of the audience" and not over the audience as a whole. Devine conceded that, in light of the fact that the networks had already contributed a million dollars to the formation of the CPB, commercial television must not have feared the competition posed by public broadcasting too much. If public television became at least equal to the standards of commercial TV, it was possible that some advertisers "who support[ed] commercial television would probably be less inclined to do so" if audiences defected to public television. Devine clearly worried that, in this instance, sponsors would lose potential consumers and the result could be detrimental to networks. Although Gardner, at the prompting of chairman MacDonald, assured the

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[40] PBS hearings, 80.

committee that there would be no commercial sponsorship of public television, there would certainly be competition over audience viewership. Since audience share drove much of the decision making process for potential sponsors, commercial stations would feel the impact. Devine pointed this out, saying that public television "would attract attention from those who would support the commercials from the commercial television." Unfortunately, however, Devine's time expired and, at least for the moment, the matter was dropped.[41]

Among the most common statements about the impact of choice on commercial television was the belief by both the congressmen and the witnesses before the committee that the competition provided by PBS would lead to improved quality on network television. Hastings Keith of Massachusetts[42] asked Secretary Gardner whether government sponsorship of a "rival service" would adversely affect the interests of existing commercial stations and networks. Gardner responded once more that the competition would be extremely limited in scope and would be focused on providing programming of interest to a specific audience segment. Gardner and many on the committee seemed to interpret much of the debate in terms of public service. In other words, networks could meet their mandate to serve the public interest by providing enough quality alternatives that audiences could choose from a variety of cultural, instructional, informative or entertainment programs. Though network executives had made this argument during earlier hearings, this is one of the few times that a government

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[41] *Ibid*., 80-81.

[42] Unlike most congressmen, Republican Hastings Keith came from a business rather than a legal background. After rising to the rank of colonel in the U.S. Army Reserve, Keith was district manager for Equitable Life Assurance Society in Boston. He served six terms in congress from 1959-1973.

official seemed to support the idea. This is not to say, however, that market questions did not regularly enter the picture.[43]

Immediately following the above exchange, Keith described a specific instance where direct competition might exist between commercial and noncommercial television. Recent United Nations sessions had been covered by both educational television and the networks. In cases such as these, he wondered, was there not an "incentive" for networks to stop covering such material since public television would take up the slack? Gardner seemed to miss the point of the question. "The longrun consequence of an effective educational TV element within the broadcast community," he replied, would be "to heighten incentives." Clearly Keith was not advocating such a result, but Gardner's answer failed to address this fact. Keith continued in the same vein by pointing out that, if networks were unable or unmotivated to compete over public service programs because of "Government sponsorship" of such programs, they might "seek to offer contrast and appeal to a different segment of our society." Obviously assuming that such alternate programming would pander to prurient or otherwise low tastes, Keith viewed such a move as unhealthy.[44] In addition, though neither man admitted as much, this desertion of such public service and information programming would likely skirt the very edge of violating the FCC's mandate for networks to meet public interest.

Keith dogged the secretary over the likelihood that competition could be a double-edged sword yielding negative as well as positive effects. The secretary, though, repeatedly assured the committee that no data existed to lend credence to such concerns.

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[43] *Ibid*., 93.
[44] *Ibid*.

Gardner explained his interpretation of how public broadcasting would affect the market. It was important to realize, he argued, that the audience was not a monolithic mass that could "only be divided by those who [were] present." There were many who could watch programming, but chose not to do so because they disliked the shows available to them. Many others who watched the networks would have preferred more refined fare but suffered from a lack of alternatives. As Gardner saw it, public television could appeal to these people by catering to their interests. Since commercial television focused on programs designed to draw in the largest possible audience for corporate sponsors, they marginalized the very legitimate interests of these smaller groups. Gardner implied that at least a portion of the audience who would tune in to public broadcasting was unlikely to be watching the networks in the first place. As such, they would not represent a decline in network audience numbers per se. Rep. Keith agreed that, "left to their own devices" networks would probably just vie for markets that would be "more lucrative but less beneficial in the long run." If public television could open the way for improved programs, it would certainly be worth the expenditure.[45]

One witness looked at the financial discrepancy between network and noncommercial television to describe the difference between the two. Dean Coston, deputy undersecretary in HEW, described the average operating cost of an educational television station as being around $400,000 a year. This was less than a network would invest in a single, hour-long program during prime time. Clearly, then, public

[45] *Ibid*., 95.

broadcasting was "a long way" from being a legitimate threat to "an institution and organization the size of commercial broadcasting."[46]

Subsequent testimony by CBS's president Frank Stanton reinforced this interpretation. Rep. Clarence Brown of Ohio and California's Lionel van Deerlin[47] had already debated over the potential size of the audience public television would serve. Brown speculated that commercial broadcasters would not be too concerned over the loss of one percent of their audience. To this, van Deerlin responded that if PBS was only designed to appeal to one percent of television viewers, it was not really a worthwhile expenditure.[48]

Stanton's testimony agreed with much that the lawmakers had discussed. He believed that there was a minority within the television audience which would be "available to public television" and not to commercial television because the programming the networks offered did not appeal to their interests. Since CBS "[had] to serve the greatest number of people in order to do [their] job," they could not meet every special audience interest. Public stations, localized and independent as they were, could more effectively gauge and meet local audience tastes. In addition, they would likely

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[46] *Ibid*., 96.

[47] A staunch conservative, Republican Clarence Brown served in the House from 1939 until 1965 and opposed Truman's Fair Deal as well as the liberal policies of Presidents Kennedy and Johnson. Democrat Lionel van Deerlin had experience in broadcasting and journalism, working as City Editor of the San Diego *Journal* and later as news director of both the ABC and NBC affiliates in San Diego. He served from 1962-1980.

[48] *Ibid*.

Ouellette, *Viewers Like You*, 5, 25. Ouellette describes how PBS has painted itself into a corner with its metaphor of being an oasis in the wasteland of television because it caused public broadcasting to institutionalize a tension between improving the masses and the assumption that mass culture is inherently poor. She also sees a fundamental contradiction within PBS between its stated democratic and egalitarian purpose and the small, often upper-class audience that views and supports CPB programming.

cover stories of local interest in more depth. As an example, Stanton mentioned the student protests that had occurred on college campuses a few years earlier. Whereas the average network viewer was not interested in the sit-ins to any great extent, he declared, public television's appeal to "academic circles" would likely make such a story more reasonable.[49] Stanton's example is startling. Few would doubt the importance of the Free Speech Movement at Berkeley in 1964 and 1965, the Columbia University lock-ins in 1968 or any of the other student demonstrations over civil rights, the Vietnam war or general dissatisfaction with socio-political conditions during the 1960s. Such coverage was almost certainly not of interest to a limited, localized audience but the CBS head's argument seems to clearly indicate the generation gap many commentators saw between youth and the adult "Establishment."

It is interesting to note, however, that not everyone was convinced PBS' localized and specialized appeal was for the best. Brian Wenham of *The New Republic* speculated that public television could easily get too insular, choosing to service "the minority" audience which was "deeply dissatisfied" with existing commercial programming. Bluntly stated, "the stress on local freedom of choice" advocated by the Carnegie Commission and others "carrie[d] the danger of programming that [was] well-meaning but not well-made." It was not enough for public television to become the "playpen for transient professors." One way to avoid this was for noncommercial stations to judge themselves against the best of the networks' schedule and to take a lesson from those

[49] PBS hearings, 244-245.

shows that managed to be informative or culturally uplifting while still remaining broadly popular and entertaining.[50]

Ultimately, Stanton expressed a healthy confidence that the networks would be able to meet the challenge faced by public television. To van Deerlin's question whether the audience for public broadcasting would be "newly developed" or would "come as a slice off the existing network commercial audience," Stanton answered that it would likely be a little of both. He went on to state bluntly that the networks would have competition from PBS. The networks would, however, be "ingenious enough, skillful enough, and creative enough" to meet the competition.[51] Though he never stated as much, Stanton was likely not too worried about the dangers posed by PBS. In light of the length of time networks had had to build their audiences and their success at developing their craft and their sponsorship, commercial broadcasting probably had little to fear from the upstart public broadcasting system that would come out of the congressional hearings.

Committee members then pressed the CBS head whether the proposed noncommercial system would lead networks to improve the quality of their programs. MacDonald cited the experience of British audiences faced with state-sponsored BBC

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[50] Brian Wenham, "Public TV and the Networks," *The New Republic*, 13 May 1967, 20.
[51] PBS hearings, 251.
Senate Committee on Commerce, *The Public Television Act of 1967: Hearings before the Subcommittee on Communications*, 90th Cong., 1st sess., 1967, 21. [hereafter Senate PBS hearings] Claude Pepper's statement before the senate's PBS hearings, like most witnesses', largely restated his appearance before the house. He believed that network television would be forced to adjust their programming in light of the competition provided by PBS. Since viewers would not tune in for the commercials alone, in order to ensure a steady audience (and thus healthy advertising revenues) networks needed to improve programming.

programming.[52] Once those programs were supplemented by a second network, "the result was better TV in England." Might American audiences expect a similar development, MacDonald queried. Would the competition by educational TV "help upgrade" the "programming structure of the networks?" Defending his programming as well as that of the other networks, Stanton responded that the emergence of noncommercial television would likely result in "different programming" but not necessarily "better programming." Obviously Stanton would not admit that the change would result in better programming since such a comment would be akin to admitting that CBS's shows were in some way subpar. If, because of "experimentation in public television" networks discovered there was "an audience for something [they] had overlooked" they would certainly take a "serious look" to see whether it fit their schedule. Stanton nevertheless repeated his belief in competition. It was competition that had made television "strong" in the United States and one could expect that further competition would only help matters.[53]

Stanton's counterpart at NBC, Julian Goodman, pointed out in his opening statement before the committee that, until the proposed legislation, television had not lived up to its potential to improve the cultural life of American audiences. The reason for this was that noncommercial television had been "seriously undernourished in funds, staff, facilities, and other resources." It is telling that neither Stanton nor Goodman chose to defend his network's record of cultural programming. Nor did they suggest that

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[52] Morgenstern, "Public TV: A Power Struggle," 95A. Morgenstern also noted the emergence of commercial alternatives in Britain as having improved the quality of programming on the government-run BBC as well.
[53] PBS hearings, 252.

commercial television had failed to live up to its public service responsibilities. Instead, they lamented the lack of support for noncommercial television throughout the medium's existence.

Goodman went on to admit the scarcity of creative talent and worry that noncommercial stations would face a tough time in the highly competitive world of television broadcasting. The NBC chief also assured lawmakers that public television's role in information and cultural programming would not cause his network to shirk its responsibility to carry such shows. Instead, commercial television might devote itself even more to carrying them since they can potentially "reach audience segments that are important to an overall service." As he said, network involvement in a broad range of programs would help keep commercial television connected to "programming and creative sources that could expand with changes in our society." Moreover, it would enable networks to appeal to advertisers because it would offer "access to the whole spectrum of the consumer market."[54] In essence, savvy network executives could use public television's numbers as a sort of market research to guide any moves toward programming educational or cultural fare.

Goodman also took the position that public television would have more freedom to experiment in its programming since it was not beholden to advertising revenue and mass audiences for support. As such, it would supplement commercial stations without replacing them. In essence, public television could fill in the gaps left by the networks' need to garner the largest possible audience at all times. Mindful of his position at the

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[54] *Ibid*., 279.

head of a profit-making enterprise, Goodman declared that one system was not superior to the other. Noncommercial television was not inherently better than commercial broadcasting. In a democracy, he said, the ability and need to "engage and attract [the] most people" was a strength and not a weakness. As many had said throughout the hearings, the mass media was a powerful tool for the enlightenment and education of the American public.[55] Goodman also saw commercial television as a way to introduce a mass audience to "new interests." He recognized, however, that commercial television could get too far ahead of audiences, leaving only a few to "listen and watch." This would "abdicate its function."[56]

Like CBS head Frank Stanton, Julian Goodman seemed confident in his network's ability to withstand any competition posed by PBS. It was, he said, an "added competition." But such competition was "the source of great power in American television."[57] Goodman clearly meant that competition had worked well to motivate television's expansion both in scope and in programming content. In light of other hearings discussed here, however, his phrase carries with it a double significance. The profit motive within broadcasting had certainly given to commercial television a great power of its own. The ability to help shape purchasing trends within the largest economy

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[55] *Broadcasting and the Government: Regulation in a Free Society. An Occasional Paper on the Role of the Mass Media in a Free Society* (Santa Barbara, CA: Center for the Study of Democratic Institutions, 1959), 14. The authors suggest that television is crucial in creating an educated and informed populace and that such a populace is essential in developing a stable democracy.
[56] PBS hearings, 279-280.
[57] *Ibid*., 282.
Senate PBS hearings, 468. Goodman reiterated before the senators his belief that noncommercial television would certainly provide competition for the networks. This competition would be healthy for both, however, and would not cause NBC or the other networks to shirk their responsibilities to provide quality informative or educational programming.

in the world was no small thing for television advertisers. Since television and radio had both been created as free systems funded by the sale of airtime to advertisers, competition over scarce broadcast frequencies, advertising sponsorship and creative talent had driven American broadcasting for decades. Looked at in this way, then, the addition of another (albeit noncommercial) competitor would be little different than previous adjustments in the broadcasting world.

The television consultant for the Ford Foundation, Fred Friendly, agreed in principle with the network executives questioned before the committee. He speculated that competition would spur networks to improve their content, especially in the much-maligned areas of information and cultural programming.[58] Again lawmakers worried that a noncommercial system that emphasized such programs could cause networks to shirk their responsibility to carry them. "Should we have some kind of maintenance-of-effort clause" in the legislation to assure that commercial stations "[didn't] give up this field entirely," asked New York's Richard Ottinger. Friendly replied that at least the "present generation of broadcaster" would not allow that to happen. The future was less certain, although he never explained why the potential change might come about. To his mind, though, competition from noncommercial television would present a challenge to networks. Sensitive to public and journalistic opinion, as well as to congressional pressures, commercial broadcasters would likely react positively to increased competition

[58] William Hoynes, *Public Television for Sale: Media, the Market and the Public Sphere* (Boulder, CO: Westview Press, 1994).

and would try to meet the "benchmark" set by public television. The "great network" would work hard to match their noncommercial competitors.[59]

At this point the committee returned to the potential problems with government financial support for public television. They questioned McGeorge Bundy, who appeared with Friendly, about the likelihood that private donors or philanthropic organizations would reduce their contributions in light of increased government sponsorship. Though he hoped to aid public television for many years to come, Bundy admitted that private foundations could not provide the same stable source of funding that state and local governments could. Realistically, the Ford Foundation, like others, got into "where the new action" was with large sums of money. Once the public was mobilized to contribute the foundation backed off.[60]

Committee members also raised the possibility of other publicly supported cultural sources. Rep. Clarence Brown wondered why the government chose television as the most appropriate medium for such legislation. Why not public theater or a public publisher so the audience could "get a different kind of thing in the public domain" than existed at the time? HEW secretary Gardner pointed out that publishers and bookstores were not limited by scarce broadcast frequencies in their decision to print or stock certain titles. They could shelve a wide variety of items whereas broadcast networks were restricted to a small range of frequencies. In addition, commercial broadcasting, largely because of this scarcity, had to appeal to the widest possible audience at all times in order to make the most money. Publishers and theater operators could cater to more specific

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[59] PBS hearings, 405.
[60] *Ibid*.

audiences because of the variety of products or performances they had. Once public television raised the bar, Gardner guessed that commercial broadcasters would "take considerable pains not to be outdone" and risk losing any market share to noncommercial stations. Congressman Brown queried the secretary further about government sponsorship of motion pictures. Although both men agreed that federal agencies had gotten directly involved in supporting films, they had not set up anything similar to the proposed Corporation for Public Broadcasting. In addition, films, like books and plays, did not suffer from the same sorts of spectrum limitations affecting television and radio broadcasting.[61]

Florida representative Claude Pepper synthesized many of the concerns he and others had when he appeared before the committee. Like many lawmakers serving at the time, Pepper had entered politics during the 1930s and was a solid New Dealer during the Roosevelt administration.[62] No doubt his experiences with New Deal legislation influenced his belief in responsible competition. In addition, Pepper's reputation for social reform shines through in his advocacy of PBS as a system to improve the educational and cultural life of American television audiences. Because of the commercial nature of television, the "profitmaking motive" had long since outweighed the "quality motive" in big business broadcasting. When looking at the top 25 rated shows for each year of the 1960s, one is struck by the dominance of comedies and Westerns. Programs like *The Andy Griffith Show* and *The Dick van Dyke Show* held top

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[61] *Ibid*., 105-106
[62] Claude Denson Pepper with Hays Gorey, *Pepper: Eyewitness To a Century* (San Diego: Harcourt Brace Jovanovich, 1987).

spots year in and year out. Perhaps worse for lawmakers critical of less-than-enlightening television, *The Beverly Hillbillies* was the number one program twice and regularly settled within the top twelve.[63]

Pepper pointed out that, by virtue of the FCC's regulation of scarce broadcast frequencies, the government had the right and the duty to establish certain terms and conditions requiring broadcasters to "perform a sufficient amount of public service or present shows of artistic taste." Any sampling of TV, though, gave witness to the fact that networks were failing horribly to meet those standards. Something was needed to rectify the situation. In Pepper's mind, the PBS system would "establish television for an audience of people who function[ed] more than merely as buyers or sellers." The most important things in life, Pepper declared, could not be priced. Things such as education and "artistic creation" would only flourish if they were not "wholly controlled by the profitmakers."[64] *U.S. News & World Report* seemed to agree with Pepper's point of view when it described public television as aiming "for an elite group of people – numbering in the millions – with higher incomes, better education and wider interests."[65] These viewers had apparently been left out of the decision-making of network executives desperate for advertising revenue.

Pepper admitted that competition and the consumer market were essential parts of American life. "Incentive and profit," he announced, were even the "great driving forces" behind America's economic and social success. As such, they must always be

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[63] http://fiftiesweb.com/tv-ratings-60s.htm 5/4/08.
[64] PBS hearings, 110.
[65] "'Public TV' Around the Corner?" *U.S. News & World Report*, 13 March 1967, 91.

"protected and supported." But they must not be allowed to dominate nor be the "main stimuli" to cultural flowering and dissemination.[66] One wonders whether Pepper's admonition would have been as strongly worded had commercial television functioned as a better disseminator of "high quality" culture. Given his verbal support for capitalism, he may have preferred leaving all aspects of broadcasting in the hands of commercial television if it had lived up to his and others' expectations.

Since such a solution was apparently outside the realm of possibility, Pepper declared the creation of the Corporation for Public Broadcasting to be the most practical method to ensure cultural quality while limiting government involvement. The CPB would establish a public television and radio system that would supplement the programming of the commercial networks. Although he had just condemned nearly all of commercial TV's output, Pepper assured the committee that he in no way intended to "disparage," "discount," or "in any way to minimize or to reduce or impair" the "splendid private" broadcasting system in America. He simply hoped to provide an alternative for culture and information, thereby laying a solid groundwork "for a more informed, culturally enriched American population."[67]

It is clear when reviewing the hearings that legislators had largely decided to support public television. The problem they then faced was how to ensure that public television would be independent of government control or influence. Always concerned with the potential for government censorship in any cultural regulation, lawmakers spent

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[66] PBS hearings, 111.
[67] *Ibid*.

a good deal of time debating precisely how they would protect public broadcasting from undue government pressure.

The solution to avoid PBS becoming a tool of government propaganda

As the lawmakers saw it, the most likely method to allow for the creation of a public television system while limiting the threat of outside (i.e. government) influence was to establish an intermediary.[68] This intermediary, the Corporation for Public Broadcasting, had been suggested in the Carnegie Commission's original report to President Johnson in 1967. It would serve as a sort of financial clearing house receiving funding both from the congress and from private donations and then distributing that money to independent stations within the public television system. As was made clear by both witnesses and legislators during the congressional hearings, there was never any intention of setting up a public television network. Unlike commercial broadcasting, there would be no network programming that an affiliate station was expected to air. Instead, each community's station would be independent and free to choose whatever programming it felt was most appealing to its audience. The station could create its own shows or it could select from a catalog of programs produced by other PBS stations out of

[68] "Art and Government: Report to the President by the Commission of Fine Arts on Activities of the Federal Government in the Field of Art." (Washington, D.C.: Government Printing Office, 1953) The need for some distance between the government and the cultural world had been recognized for some time before discussion began on public television. In a report commissioned by president Eisenhower, the group rejected any legislation that might put it under the supervision of a government agency. One member, George Biddle, also suggested using a body of experts to guide policy because of the government's lack of knowledge on the subject. Both of these ideas would be incorporated in modified ways into the structure of the CPB.

CPB funds. In essence, PBS would exist as a sort of informal media confederation. By removing individual stations from government involvement as much as possible, lawmakers hoped to limit any potential that public television would be abused.

At times it seemed as though congressmen asked questions to which they already knew the answer in order to get the information into the record. Along these lines, Chairman MacDonald asked Secretary Gardner why congress needed to develop the private corporation advocated in the proposed legislation. Gardner replied that the public interest would be best served by "an instrumentality" which was insulated "from the Federal Government and from the normal push and pull of political affairs." Public television, in essence, should have at least the capacity to function "independently of any Federal control." The suggested corporation was a very practical and sensible way to provide such insulation.[69] It would certainly not be foolproof, however.

Later in his testimony, Gardner answered questions regarding the ability for congressional wishes to be translated through the proposed system by virtue of federal control of funding and appointment of CPB directors. Rep. Springer noted that the corporation could be controlled through the appointment of its directors and that even something as basic as partisanship within the corporation could potentially affect programming. Gardner admitted that there was a chance for bias in nearly any such process. The "character of the directors" would determine to a great extent the nature of the corporation. He also surmised that congress's control over the corporation's funding

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[69] PBS hearings, 31.
Senate PBS hearings, 187. Education television executive John Kiermaier answered similar concerns in his testimony before the senate, suggesting that the CPB's organizational autonomy protected it from the threat of government interference.

could serve as a check against abuses by the CPB's directors. If congress disapproved of directors' decisions or with the operation of the corporation as a whole, they could express their displeasure through reduced funding.[70] Lost in Springer's portrayal, however, was the very real possibility that partisanship within congress itself could influence the House of Representatives' funding decisions.[71]

Interestingly, Springer wondered whether partisanship could be used for the benefit of the corporation. In commissions administered by his committee, Springer said, the membership had been divided carefully between parties so that there would always be one party checking the other. The result was that "the majority never took advantage of the minority, or tried to make a partisan political issue out of the problem." Springer suggested that a similar approach might "have merit" when organizing the proposed CPB. The structure of the CPB as outlined by the proposed Senate version of the bill would establish a board of fifteen directors. Of these, nine would be chosen by the president with the remaining six places filled by those nine selectors. If spaces were filled along straight party lines it was possible that the six unfilled slots could be determined by a simple majority of five presidential appointees. Though he never proposed a specific alternative, Springer appeared to support a more divisive partisan

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[70] *Ibid*., 77.

[71] Marilyn Lashley, *Public Television: Panacea, Pork Barrel, or Public Trust?* (Westport, CT: Greenwood Press, 1992), 64-66. Lashley argues that this possibility, overlooked during the congressional hearings, actually developed during the 1970s and 1980s so that the CPB became very closely tied to each new administration's policies regarding public broadcasting.

organization in order to separate interests and ensure that no single point of view dominated another.[72]

Later in the hearings, Springer confronted another witness about the benefits of partisanship within the CPB. Questioning Dr. James Killian, Jr. of the Carnegie Commission, Springer repeated his belief that the minority in such circumstances could work to keep the majority in check. He pointed to the example of the Federal Communications Commission which could operate as a nonpolitical commission "largely because they have had the majority of only one." If the president could appoint members who could then appoint the remaining members, there was a very real chance that all fifteen directors could be tied to a political party. Again, Springer failed to suggest an alternate way to appoint CPB directors. Killian, in response, assumed that the appointments would undergo rigorous Senate review. Most likely the Senate would be "much tougher and more careful in its confirmation procedures" for such a corporation than it "might normally be," especially given the stakes.[73]

Later testimony by FCC chairman Rosel Hyde agreed that bipartisanship was useful for his and other federal agencies. When it came to a quasi-public corporation like the CPB, though, the directors would be chosen based on their qualifications, their abilities, their prestige and their standing in the national community. They would thus serve as "very useful protections against the establishment of a politically oriented organization."[74] Even more important, Hyde explained, was that the corporation was not

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[72] PBS hearings, 78.
[73] *Ibid*., 137.
[74] *Ibid*., 192.

involved in any way with selecting programming that would be shown on any station. It was merely a financing system. The stations would have final say over what would be broadcast.[75]

Rep. Rogers wondered whether a simple solution might be to separate the part of the CPB responsible for funding from that which dealt with programming. To this suggestion John Kiermaier, president of the Eastern Education Network, responded that the corporation would most likely develop a "program philosophy" to guide its decision making. This merely worried the congressman even more. Was this role in programming not just a form of control, he asked. Moreover, the CPB would not have to distribute funds except to those stations which supported its program philosophy. Kiermaier replied that the complaints that would flood the CPB and the congressional appropriations committees would work as a self-correcting measure. Rogers was not so optimistic and cut the debate short saying that his experience with federal programs had caused him to be more cynical about the prospects for civic-mindedness and cultural federalism to protect public broadcasting.[76]

Ancher Nelsen of Minnesota[77] also worried about the danger in relying too much on the character of the CPB directors. He feared that any time the government became involved in aid to education or cultural support there was a very real possibility that the program might be directed towards reflecting "a philosophy or a thinking of the administration in power at the time." Beyond this, Nelsen pointed out that attempts by

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[75] *Ibid*., 220-221.
[76] *Ibid*., 354-355.
[77] Republican Ancher Nelsen served as administrator of the Rural Electrification Administration Program in the mid-1950s and served from 1959-1974 as a member of the House of Representatives.

the federal government to limit or regulate the political activity of its employees had become increasingly ineffective.[78]

Michigan's James Harvey[79] expressed even greater concern with the dangers of government influence. In the end, he said, the CPB was not merely involved in distributing funds to PBS stations. There was a chain of influence, indirect and tenuous though it may be, leading from congressional appropriations through the CPB disbursement to the individual stations. Seen in this way, then, there was still a very real possibility that stations could operate to "mold public opinion and mold public education." Although Killian protested that the corporation had "no right" to do those things, he did not argue that it was incapable of doing them. Harvey admitted that his language might have been excessive. Even if PBS was not intended to mold opinion, television as a medium had shown tremendous ability to influence and shape public attitudes and beliefs about a wide range of subjects. Rep. Harvey hoped that something similar to the FCC's Fairness Doctrine might be mandated for PBS as it was for commercial television.[80]

James Harvey was not the only one worried about the possibility of government influence on broadcast content. In one of the few articles to be broadly critical of public

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[78] *Ibid*., 87-88. The Hatch Act had been passed in 1939 to prohibit federal employees from campaigning or becoming involved directly in any partisan activity. In reference to the law, Nelsen described that there was a trend "among some in leadership positions of Government to encourage violation" of the Hatch Act. In light of this, Nelsen argued that it was unlikely that congress could restrict what any commission or corporation might do.

[79] After a career as a city councilman and county supervisor in Michigan, Republican James Harvey served as a member of the House from 1960-1974. He resigned in order to serve as a judge for the U.S. District Court and later as U.S. Senior District Judge.

[80] The Fairness Doctrine was an FCC mandate requiring that equal time be given to all sides of any political debate. The subject of a number of congressional hearings over its efficacy, the Fairness Doctrine was seen as a way to ensure public interest was met.

broadcasting, David Lawrence of *U.S. News & World Report* saw danger in the federal government funding a media outlet. If congress supported public television in an effort to raise the cultural and educational level of the American public, Lawrence feared they may expand their efforts to include newspapers or other informational outlets. In addition, there would be a powerful temptation for the administration to use PBS to influence public opinion. Presaging perhaps the most common criticism of public broadcasting over the next forty years, Lawrence pointed out the "many better ways to spend money for the good of America." Public funds, he argued, should be spent not on "luxuries" like television but on "actual necessities," especially when the government was supposed to be "waging 'a war on poverty.'"[81]

David Henry of the Carnegie Commission tried to assuage Rep. Harvey's concerns by reminding the lawmaker of the extra level of oversight provided by station ownership and management. Despite the funding provided by the CPB, individual stations were still able to operate largely independent of nearly all external influence. As Henry and Killian saw things, PBS stations would only feel pressure from their local audiences to broadcast programming of interest to them.[82]

Conclusion

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[81] David Lawrence, "Public Television Now – 'Public' Newspapers Later?" *U.S. News & World Report*, 27 November 1967, 116.
[82] PBS hearings, 161.

Overlooked in the hearings about public television was the possibility that audiences simply preferred the programming on commercial television to the sort that would likely be offered by public television. None of the lawmakers seemed willing to admit the chance that network broadcasts failed to include cultural content because the American public simply did not want it. The question of cultural supply and demand has much of a "chicken or the egg" aspect to it. The culture industry repeatedly answers charges of dumbing down the public by saying it merely provides what the audience wants. Critics say that the public cannot get what they are not provided. If cultural outlets do not offer anything but poor quality programming, the audience has little chance to experience genuine choice. Many in congress, as we have seen, hoped that the creation of a public, noncommercial broadcast system would at least allow the audience more choice.[83] At best it would goad networks into improving their own programming to secure their market share.

As was the case in nearly all of the hearings discussed here, lawmakers saw competition as central to assisting in cultural regulation. However, competition also carried with it the problem of government involvement in private industry. The committee's discussion over the dangers government sponsored broadcasting posed to the arena of competitive broadcasting indicate a more complex view of public television than many have thus far supposed. It was not created simply in the midst of debates over the quality of programming on network television. Certainly, representatives and witnesses

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[83] Lashley, *Public Television*, 108. Interestingly, Lashley points out that PBS began working very much like commercial television. Because of limited budgets that were still dependent on public support (and thereby still reliant on audience numbers), PBS tended to limit the variety of programming on its stations. Ultimately, stations hoped to appeal to the interests of those who would support public broadcasting.

before the committee included regular statements lamenting the poor cultural or educational value of commercial TV. And they often expressed hope that a public television system might lead commercial networks to improve their programming to compete. They also worried about the damage such competition might do to the existing networks, however.

In some ways lawmakers seemed almost naïve about the potential threat noncommercial television posed to network survival. Their repeated expressions of concern that public broadcasting might endanger the welfare of commercial broadcasting seem unrealistic. Perhaps they had too rosy a view of America's unquenched thirst for cultural programming. The paucity of cultural programming on networks in 1967 and the earlier failure of the few highly-regarded shows that did produce and broadcast culturally significant shows seems to indicate that the American viewing audience simply was not interested in such programming. Ironically, competition in the 1950s and early 1960s had driven *Playhouse 90* and *Studio One* off the air. Given the chance to choose original drama over other programs, viewers had made their decision. Ultimately they were as much to blame for network content as were advertisers and network executives.

In the final analysis it was a statement made by FCC chairman Rosel Hyde that in many ways encapsulated not only the rationale behind public television but, along with a belief in industry self-regulation, an idea that was a major aspect of nearly every one of the hearings into mass culture described here. "The principle of competition …," he said, "the principle of diversity, … the principle of having alternate choices available to the public [would] provide a stimulant for better programming in both areas." In fact, Hyde

had “always thought that you would get better programming by having competition, by providing a setup that gives diversity as against anything that could be done in terms of trying to regulate programs.”[84]

[84] PBS hearings, 193.

CONCLUSION

WHY CAN'T WE FINALLY GET THIS RIGHT?

> We have a moral obligation to tackle television violence and arm our parents with the tools to make their children safer. Children's behavior is becoming more aggressive and at times crude or explicit, and any number of studies has shown that television is certainly to blame. Instead of addressing the problem … the industry seeks to hide behind ineffective band aids of voluntary action and providing parents more 'tools.' To be blunt, the big media companies have placed a greater emphasis on their corporate short term profits than on long term health and well being of our children. I believe that television can and should be a positive force.[1]

Although these words could have been stated during any one of the television hearings described here, they were, in fact, part of a press release by West Virginia Democratic senator Jay Rockefeller in June 2007 announcing his intention to reintroduce legislation intended to give the Federal Communications Commission the authority to regulate television programming.

Others on Rockefeller's Commerce, Science and Transportation Committee expressed doubts with the proposal. Like their historical predecessors they worried that any such legislation would overstep First Amendment freedoms and would involve the government in laws that would ultimately be invalidated in court. Moreover, witnesses for the television industry returned to the argument that there was no clear causal link between television violence and youth behavior. In the absence of such incontrovertible evidence, it would be inappropriate to establish limits on media content. Instead of

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[1] Jay Rockefeller, "Rockefeller Holds Hearing on Efforts to Reduce TV Violence," U.S. Senator Jay Rockefeller, June 26, 2007, http://rockefeller.senate.gov/press/record.cfm?id=281724 (accessed May 4, 2008).

government intervention, parents should be the first line of defense in regulating what children see on television.[2]

The thorny relationship between congress and the government regulatory agencies established to oversee cultural matters also remained more than forty years after the lawmakers first investigated the media's impact on children. Though Rockefeller was generally critical of television's content prior to its release, it was the publication of the FCC's 2007 report on broadcast violence that sparked his call for hearings into the matter. Echoing the debates between the FCC and congressmen in the quiz show hearings and during the juvenile delinquency hearings under Sens. Hendrickson and Kefauver, the FCC's 2007 report admitted the agency could do little with current guidelines. Though the FCC declared that congress could help the commission regulate violent television, commissioners left it up to legislators to determine what, precisely, should be regulated. Missing from their recommendation was any clear definition of what constituted "excessively violent" programming. Instead, it was up to lawmakers to establish the criteria for regulation and thereby give teeth to the FCC's requested oversight capacity.[3] It would seem that the reluctance to take the lead in regulation expressed by chairmen Rosel Hyde and John Doerfer in the 1950s and 1960s was still felt powerfully by FCC commissioners in the 2000s.

Clearly, the hearings discussed throughout this work established the precedent for much of the cultural debate of the past half-century. The foundation for nearly every

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[2] John Dunbar, "Rockefeller Works to Limit TV Violence," *Associated Press*, June 26, 2007. http://abcnews.go.com/Politics/WireStory?id=3317736&page=1 (accessed May 4, 2008).
[3] *Ibid*.

significant aspect of recent discussions into violence in media, government regulatory approaches and the role of self-regulation and competition in the culture industry was laid during hearings into television violence, network monopolies, payola and public broadcasting decades earlier. A clearer understanding of the framework congressmen used in these early hearings can help explain why lawmakers repeatedly seem compelled to initiate similar investigations. And why nearly every investigation and hearing congressmen undertake founders without reaching any apparent solution.

The attitudes regarding regulation and the market men like Estes Kefauver, Oren Harris and Thomas Dodd brought to their approach to cultural regulation in many ways essentially pre-limited the solutions available to them. Even Thomas Dodd, so aggressive in his criticisms of the television industry in the early 1960s, failed to institute direct government oversight of networks or their programming. Instead, he chose to allow industry executives to police themselves. In other instances, such as when deciding upon a public broadcasting system, congressmen returned to a traditional American belief that relatively unfettered competition within the market would serve to improve the quality of product in general. In this case, the product was television programs, music recordings and motion pictures rather than refrigerators, cars and shaving cream.

Since they continually emphasized industry self-regulation as preferable to government intervention, senators and representatives, alike, established a precedent of congressional non-involvement that has been difficult for subsequent legislators to overcome. Senator Rockefeller, for instance, has been the inheritor of Thomas Dodd's confrontational relationship with television leaders as well as of Dodd's problematic

relationship with the market as a regulatory tool. "'Obviously, the preference would be to have the industry police itself,'" Rockefeller said, but, if that fails to yield results, government action would be necessary.[4] Here the West Virginia senator mimics his Connecticut predecessor. While Rockefeller – like Dodd – supported a more direct government role in limiting violent TV shows, FCC commissioner Robert McDowell argued in favor of market forces to correct the problem. "In the long run," McDowell argued, "technology and competition are going to solve this issue for parents."[5]

This precedent has been further solidified by traditional American concerns over the dangers of censorship and the primacy of First Amendment freedoms. Even with these obvious concerns, it was the emphasis on self-regulation and competition that seemed to drive much of the hearings discussed here. Nearly every investigation into mass culture that congress has undertaken since the 1960s has built upon the foundations lain during the debates over network monopolies, juvenile delinquency, the quiz and payola scandals and public broadcasting. Even when they do not deal with television, recent congressional forays into mass culture have clear ties to these earlier hearings. For instance, lawmakers in the 1980s and 1990s, sparked by the civic agitation of groups like the Parents Music Resource Center, investigated violent and sexually suggestive imagery in popular music. The PMRC's pressure on congress was similar to that of organizations like the National Association for Better Radio and Television (NAFBRAT) and others

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[4] Jim Puzzanghera, "Washington May Take Up TV Violence," *Los Angeles Times*, January 22, 2007. http://www.commercialalert.org/issues/culture/media-violence/washington-may-take-up-tv-violence (accessed May 4, 2008).
[5] Ted Hearn, "Rockefeller: TV Industry Isn't Policing Violence," *Multichannel News*, March 5, 2007, http://www.multichannel.com/article/CA6421743.html (accessed May 4, 2008).

that pushed for action regarding television programming and comic books. Commentators have noted that senators and representatives often initiate hearings more as a reaction to constituent or popular pressure than on their own personal political agenda.

Moreover, many during the hearings discussed here – Estes Kefauver perhaps most notably – believed that one of the primary duties of congressional investigators was to expose problems to the public so that consumers could affect change with letter-writing campaigns, product boycotts or other grassroots activism. This, too, is demonstrated in quotes by recent FCC commissioners and congressmen who suggest that parents are most responsible for controlling the cultural products their children are exposed to. Certainly, in this interpretation it is up to congress to bring the culture industry to task for their failings, expose industry leaders to public scrutiny and provide an engaged public with the evidence it needs to successfully pressure executives towards corrective measures.

The hearings in the 1950s and 1960s established the rhetorical framework for nearly all of congress's subsequent investigations into mass culture. By relying upon industry self-regulation and market forces to correct the problems of the culture industry, lawmakers like Thomas Dodd, Estes Kefauver and Oren Harris served in many ways to define how later congressional leaders would choose to deal with similar problems. While the issues of network monopoly have lessened somewhat with the emergence of satellite and cable broadcasting in the 1970s and 1980s, general concerns with ratings, profit motivations vs. public interest and the ability for media to manufacture false

demands and popularity have remained at the forefront of many debates over mass culture. As such, the ways the first debates into such matters were framed has much to say about how recent debates will likely play out.

Without intending to argue a deterministic approach to the regulatory process, it seems entirely likely that American legislators will probably never satisfactorily solve the problems they see with mass culture because they have predetermined the solutions available to them. In other words, since the 1950s, congressmen have chosen to rely on self-regulation and competition to correct cultural matters. The reasons for this have not changed to the present and so any subsequent attempts to "correct" similar problems will likely follow the same paths of debate.

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