

REPORT FROM THE CEM CONFERENCE ON MEDIA ANTITRUST
January 23-24, 1998
Sugarloaf Conference Center of Temple University, Philadelphia PA

On January 23 and 24, 1997, the Cultural Environment Movement (CEM) brought together 22 people with the goal of combining their knowledge to discover if antitrust legislation against the current media monopoly is viable at this time, and if not, what legal challenges to the media monopoly do exist. The idea for the conference originated at the CEM Founding Convention, and was approved as a priority by the CEM Board of Directors in May of 1997. Conference participants included antitrust and first amendment attorneys; professors, students and researchers; economists; labor representatives; and democratic-media advocates. They were welcomed to Sugarloaf Conference Center in Philadelphia, Pennsylvania by George Gerbner, founder and Chairman of the Board of CEM. All proceedings were moderated by Mark Crispin Miller, Director of the Project on Media Ownership.

Two introductory speakers opened the conference on Friday evening to lay the groundwork for discussing antitrust law and tradition as it relates to media deconcentration. Antitrust attorney Carl E. Person gave examples of the profound length and cost of an antitrust lawsuit, in the event that such a case would be heard by the court. He offered that government involvement in antitrust laws is in fact a deterrent to their enforcement, as it leads people to believe that antitrust law is in effect, when in fact it has fallen by the wayside in recent years. This is partially due to antitrust regulations being under the jurisdiction of the Federal Trade Commission, Person said. He stressed the importance of using the internet as our own medium to dispense information.

Bob McChesney of the University of Wisconsin painted an equally dismal picture of current media concentration trends, using Ben Bagdikian's *The Media Monopoly* as a standard. In the book's 1984 edition, Bagdikian counted 50 dominating companies in the industry; by 1997 the number was 15. This makes the industry uncompetitive by even oligopolistic standards, said McChesney, who stated that this concentration is simply good business. Owning multiple media outlets and other businesses allows for product branding and increased loyalty; for example, ESPN now prints "ESPN Magazine" and serves food and cable at "ESPN Grill." McChesney cited several recent statistics to demonstrate the lack of government regulation: Since the 1996 Telecommunications Act, 4,000 of 11,000 existing radio stations have changed hands. In 1998, the FCC will review television station ownership rules and possibly relax them as well. Since the mid-1980's, there has been a 50 percent increase in television advertising, and a sharp decline in public service in broadcast media. McChesney offered a different view of the internet, saying that we need to think of it as part of the corporate media.

Subsequent conversation among the group concluded that, when discussing antitrust law in relation to media, we must think of it not only as the restraint of trade, but

the restraint of content and ideas. It was also pointed out that monopolies especially have public service obligations to diversify their programming.

The two antitrust laws that might apply to media (Section 2 of the Sherman Act, Section 7 of the Clayton Act) have not been enforced. Three possibilities for solutions were discussed: Observing the regulations of other countries, where in some cases the concentration is even worse; designing new and creative legislation in lieu of attempting to fit into old antitrust laws; and fostering a popular movement to support the democratization of media. The group adjourned until Saturday morning.

Upon reconvening on Saturday, the moderator suggested splitting into three groups, the better to include more voices in the discussion. Concluding from the previous evening's tone that antitrust law was not the best solution to media concentration, each group was assigned the same question: What might adequate legislation look like? Groups were instructed to look for adventurous solutions, not necessarily restricted to regulation. A few recommendations were made by participants before the groups split up:

1. Perhaps local government entities would be more responsible to the public interest than federal ones. Are state branches of the FCC in order?
2. Although it is tempting to think in terms of FCC rules and regulations, they are only partially relevant, having no control over billboards and magazines, for example.
3. Before we can consider what adequate legislation would look like, we first need to imagine what the ideal landscape would look like, and then figure out what regulations would create the landscape.

Individuals were divided into three groups by the moderator:

Group A

Ed Baker
Gene Boggs
Joan Greenspan
Janine Jaquet
Susan Kahlenberg
Mark Konrad
Bob McChesney
Peter Wirth

Group B

Nolan Bowie
Michael Einhorn
George Gerbner
Audrey Krause
Carl Person

Group C

Kate Duncan
Mark Fenster
Paulina Gonzales
Norman Handy
Ed Herman
Mark Lloyd
Mark Crispin Miller
Nandini Sen

The three groups met separately for two hours, then reconvened to report their conclusions. Each group's report had several points in common, including proposed laws for simplification of media ownership; plans for subsidization of independent, non-profit, community programming, especially news and children's' features; and placing information efficiency over economic efficiency when considering media antitrust. Individual reports were as follows:

Group A (Bob McChesney reporting)

Group A agreed on two main goals of legislation or regulation: To reduce the amount of corporate power and to reduce the amount of non-corporate special-interest power in mass media. The group decided not to rule out antitrust legislation as a means, and said it should still be considered with three questions: 1) Can something viable be drafted? 2) Could it be passed? and 3) Would the benefits be worth the cost carrying out the first two questions? The group concluded such legislation should stress not economic efficiency, but information efficiency, and that diversity and democracy should be the principles of media antitrust judgment. They also said the legislation should be written to prohibit media entities to merge with or be sold to non-media entities, instead encouraging internal growth.

Group A also discussed solutions outside of regulating ownership. Subsidized non-profit community media would proliferate diverse programming, if not ownership. The group also suggested organizing to maintain pressure on broadcast media and government regulators to improve the public interest standards of commercial broadcast media.

Group B (Audrey Krause reporting)

Group B likewise proposed a law requiring simplification of media ownership, suggesting that the Robinson-Patman Act, which addresses price-fixing in book selling, might apply to the specific problem of media antitrust.

In addition, Group B discussed digital technology and the broadcast spectrum giveaway. They said that leasing the spectrum would net funding for diverse local programming, and suggested using the argument that the broadcast spectrum is no longer a scarce resource with the advent of high-density television, or HDTV, which has the capability of splitting one frequency into six. However, they pointed out that the same argument was used about cable, but diversity of ownership or channels does not ensure diversity of content. Group B thus recommends using rulemaking to promote diversity in content.

Group C (Mark Crispin Miller reporting)

Group C decided that the immediate goal of legislation should be maximum feasible limitation of further concentration, with the ideal goal being deconcentration. However, their report focused on changing the system with modest means. They stressed an emphasis on radio, since it has recently been the area of most prominent concentration. The group also urged the divestment of news divisions by media companies, to allow news and information to be not-for-profit.

To fund such endeavors as not-for-profit news, the group conceived a fund of monies diverted from the corporate media sector and funneled to the public sector. Money would come from a 5 percent tax on advertising; decreasing the amount of tax-

deduction from advertising and earmarking the increase in revenue; and fining media companies for failing to satisfy the public interest.

The fund would support local, independent, non-profit, non-commercial media production, especially news and children's programs. It would also subsidize community monitoring of local broadcast media to decide if media are serving their public interest. Community monitoring groups would report to the FCC. Shortening the term for which licenses are issued would empower the communities to have more weight in licensing decisions.

The group also proposed strengthening the public sector by ensuring space for it in developing technologies, such as satellite communication.

After taking a break for lunch, the same three groups met separately in the afternoon to discuss particular recommendations of legal challenges or solutions to media concentration. The groups reconvened after a three-hour meeting to report their conclusions. Common points included encouraging independent ownership and production; staging media events from marches to press conferences to create public awareness; and reaching out to and organizing with sympathetic constituencies to create a public demand for deconcentration and diverse programming.

Group A (Bob McChesney reporting)

Group A recommended pluralism and diversity as principles of antitrust law in relation to mass media. Split content production and distribution is a mandatory component to diverse programming, and subsequent mergers and buy-outs should be prevented, with internal growth encouraged instead. A question remained about how to regulate mergers between information companies of different media, for example, preventing the merge of a film and an internet company.

As well as encouraging deconcentration of corporations, group A said funding of already independent production is a priority, with emphasis on radio and building up the strength of public broadcasting. One of the more important aspects of building their strength is funding, which could come from leasing the broadcast spectrum, sales taxes and taxes on advertising (with no conclusion on to what extent ads would be taxed).

Group B (Audrey Krause reporting)

Group B reported seven points of an action plan:

1. Use the FCC's existing rulemaking process to raise policy issues regarding content. With four new commissioners, we have an opportunity to revisit past policy decisions.
2. Stage media events, such as marches on Washington, to create public awareness of the results of media concentration.

3. Host professional conferences with lawmakers and policy makers present. One such conference already scheduled, in which we might participate, is the Telecommunications Policy Research Conference, sponsored by the Markle Foundation, coming up in Washington DC. (For more information on the conference and submitting papers, call Dawn Higgins at 202-223-4700).
4. Form alliances with the Right around our mutual concerns of media content, and meet with media executives. Once possible alliance is with the American Enterprise Institute.
5. Lobby Al Gore and his staff, as the likely next U.S. President. Also identify and lobby likely Republican presidential candidates.
6. Identify and organize constituencies upset over high cable rates, and educate them about HDTV costs. This group might be hard to reach but the results would be worth the effort.
7. Use the Freedom of Information Act to get information on the results of past policy decisions, such as media deregulation in 1991, and the cancellation of the Fairness Doctrine in 1996.

Group C (Mark Crispin Miller reporting)

Group C discussed the importance of the Vice President's Committee on Public Interest Obligations of Digital Television Broadcasters (the Gore Commission), and possible ways to influence their recommendations to the Vice President, some of which are already in preparation separate from the antitrust conference. A special issue of The Nation magazine in May of 1998 will feature a television ownership chart and the results of a public poll about their expectations of television programming. Through organizations like CEM, the chart could be distributed to a mass audience complete with a reform movement statement and a letter of agreement to sign and send to the Gore Commission and legislators. To further reach the public and pressure the Gore Commission, a media event could be staged with the results of the poll and the reform movement statement.

This group also discussed their conclusions on the feasibility of antitrust regulation: Antitrust laws should be revisited, placing limits on cross-ownership, market share, absolute size, and foreign ownership of media enterprises (admitting that placing limits on foreign ownership is a contentious issue). Radio is a particular concern, and should be deconcentrated by restoring market limits, increasing the diversity of non-commercial stations, reinstating licenses for low-watt radio, and increasing community control of local media.

A public fund for independent, local production, distribution and monitoring could be established by taxing advertising, requiring user fees, and reducing the tax-deductibility of advertising. Distribution could be aided by reserving space in all media for non-profit groups. Community groups would be funded to monitor local broadcasting at open meetings, with the help of media literacy educators. The groups would report to

the FCC on the broadcasters' public interest service. Group C also proposed a ban on advertising to children.

Although the 22 people who CEM brought together were sometimes in disagreement about what legal challenges, if any, are possible to rectify the concentration of global media, each group brought back similar reports to the conveners. The specific methods, plans already being carried out, and general ideas for future working groups to construct that resulted from the antitrust conference are complementary, creative, and possible, if not a draft of antitrust legislation. The objective that clearly emerged from the conference is diversity of media ownership, employment, and representation, which is, of course, the principal aim of CEM.