

## FIRST AMENDMENT, SWORD OR SHIELD?

### IS A MEDIA SYSTEM BASED ON PRIVATE PROFIT CONSTITUTIONAL?

Peter Franck

#### Introduction

The following is a speech presented at on August 18, 1991 at Media Alliance, a major professional organization for Bay Area journalists in San Francisco. The focus of the meeting was The Media and Democracy. It was lead by Janet Kobren who formed the SF DSA Media Project in the Spring of '91.

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#### Text of Speech

This topic is a very broad, important, and a complex one. I think that DSA is already doing the most important thing, something some of us have been trying to help bring about for years now: just putting the issue of the media on the agenda.

The problem of the impact of the mass media has been notably absent from the public agenda over the years, and I think there are reasons for that. One of the major reasons is what I would call the ACLU view of the First Amendment. Their analysis has colluded with certain forces in society to keep the issue off the agenda.

The issue of the media and democracy has been played out at various times in our postwar history. We don't know very much about it because we live behind a media blackout. The media doesn't talk about attempts to improve the media. For example, the nature and responsibility of the media is an issue which has been played out as a major international struggle over the last thirty years, yet I doubt very much if many of us in this room know that the First Amendment is the reason the Reagan Administration gave for withdrawing from UNESCO. Every time I leave the country I am reminded (by getting outside) of the media screen around this country. Even for those of us who are progressive and think we know how to read between the lines, and look at alternative media, what we don't know about what's going on in the rest of the world is enormous.

Janet talked about her disgust with the media coverage of the Gulf war. For all of us it was even more blatant than the usual kinds of things that go on, with the media toeing the government line. At the end of the Gulf War there was a farewell ceremony at which the information officer in Saudi Arabia said goodbye to some of the pool reporters. He gave them little flag medals and said, "You too are warriors." And the reporters accepted the medals. That's the kind of problem you deal with.

The conglomeratization of the media in recent years is a qualitative change in how bad the situation has become, how much control there is. At a recent Lawyers Guild convention we put on a workshop on the issue of Pentagon censorship of the Gulf War and the rules that reporters couldn't show bodies, couldn't go anywhere the military didn't want them to go, etc. I knew about it, I'd read about it. But hearing from the lawyer who handled that case, the details of Pentagon policy, and the way the press caved in to it -- just said to me that we're in a qualitative shift in how much control of information this government is willing to try to exercise and how successful it's being and how complacent, and compliant the media is about it.

A couple of years ago the Nation magazine published -- "The Lords of the Global Village" by Ben Bagdikian, recently retired dean of the UC School of Journalism. Basically it documents how six individuals and conglomerates have bought up the world's media. He analyzes this development and then he says,

"This does not bode well for McLuhan's 'universal understanding.' The lords of the global village have their own political agenda. All resist economic changes that do not support their own financial interests. Together, they exert a homogenizing power over ideas, culture and commerce that affects

populations larger than any in history. Neither Caesar nor Hitler, Franklin Roosevelt nor any Pope, has commanded as much power to shape the information on which so many people depend to make decisions about everything from whom to vote for to what to eat." (My emphasis.)

That's chilling. And it's more than whom to vote for and what to eat. It's values, it's attitudes, it's world views.

Most of us have a view -- I call it the ACLU view of the First Amendment, -- which says the government cannot do anything about issues of the media's behavior that deal with the content of the media, it would be considered censorship. I think I can give you a several examples of how that plays out.

Ed Markey is the congressman from Massachusetts, a pretty progressive guy, the chair of the House Telecommunications Subcommittee. A few years ago when GE bought NBC and there were mergers in the networks and cut backs in national news staffs, he ordered hearings held on the impact on network news of the consolidation of networks' ownership and shrinking of staffs, -- and the networks screamed "Foul! First Amendment! Congress can't investigate this because Congress can't do anything about it." Why? "It violates our First Amendment rights if Congress considers the question of the impact on the news of these mergers..."

Action for Children's Television, led by Peggy Charons for years has been campaigning to do something about the horrible nature, in particular, of the Saturday morning children's cartoons, the violence, the sexism, the racism, the commercialism, and so on. In other words, what's fed into our kids 7 hours a day. Same thing! when she proposes limits on commercialization, limits on violence and so on, the networks say, "First Amendment. It violates our freedom of speech for Congress to tell us what we can broadcast on Saturday morning."

Most of us know what access channels are on cable systems. You may think it's a First Amendment idea for the cable company that mints money by bringing television into our homes has to set aside one or two channels for locally produced non-commercial programming of community concern: access. Some years ago the city of Palo Alto, as many cities, required as a condition of the franchise (the contract between the cable system and the cable company) that there be at least one community access channel. The cable company went to court and said, "That's a violation of our freedom of speech. We're a broadcaster. You can't tell us what to broadcast on our cable system."

The Ninth Circuit Court of Appeals, which still today is among the more liberal federal courts, said, "Yes, that's right." The case is before the Supreme Court now and it's probably going to go the same way. I could give you other examples, but those are some examples of the use of a mechanistic analysis of the First Amendment against more democracy in the media.

In the Markey case and the Action for Children's Television case, we know there is something wrong with the media position that the First Amendment says you can't question what the media does. But the Left hasn't developed an adequate answer. We haven't developed in the Left a different way of looking at the First Amendment, so we're disarmed by this argument. We're put on the defensive. We say, "That's not quite right! We've got to do something about it!" But we don't really have an answer that we feel grounded in, that we feel really moves us forward.

I first saw this dynamic during the time that I was president of Pacifica Radio. Some of you may know about the Carlin case. In a broadcast on WBAI, the N.Y. Pacifica station at 2 pm in the afternoon, the comedian George Carlin was talking about the use of language. In talking about the use of language he used seven words you can't say on television! ^ Third World countries due to the end of the cold war (Third World countries had some clout because of the interplay between the U.S. and Soviet block), this movement has shifted from a governmentally based movement to what is called an N.G.O.(non-government organization)-based movement. There was a seminal document in the New World Information Order, the MacBride report. This was the report of a commission appointed by UNESCO and chaired by Sean MacBride, the Irish statesman. There have been a series of what's called MacBride roundtables bringing together international organizations trying to figure out what to do about this. The first one was held two years ago, at which I represented the Guild in Harare, the capital of Zimbabwe. The last one was held just a couple of months ago in Istanbul, Turkey.

In statements issued by the Roundtables we have tried to analyze the problem and suggest some directions of action. The Istanbul meeting looked at the principles of media democracy set out in the MacBride report, which is now 11 years old, and looked at whether things have moved forward in the direction envisaged there or backwards. They concluded that things have been moving backwards, because of the

"virtual monopoly of global conglomerates over the selection, production, and marketing of information and entertainment products, including crucial scientific and technical data and informational rights; by the transnational industrial-media complex under its American military protectorate; and by the weakening of multilateral relations in international organizations."

"We are confronted, therefore, with media coalescing into a centrally manufactured symbolic and cultural environment. That environment permeates every home in an ever growing number of countries. It is displacing parents, schools, communities, publics and even nations as the originator of messages and images that define our lives and our relationships with each other. It serves marketing strategies and government priorities that are increasingly beyond the reach of democratic policy making."

"The challenge before us is to build new peoples' coalitions and constituencies that can help regain a significant measure of participation in cultural policy-making, nationally and internationally."

"The coalitions should include a broad range of public groups, social movements, and organizations. They should enlist media professionals, citizen activists, consumer groups, women's, minorities, religious, labour, environmental and other organizations in the new cultural struggles."

"The new frontier for the advancement of human values and rights is the cultural frontier. It is there that the principles of the MacBride Report have to be recognized as more essential than ever."

Here in the United States George Gerbner has been organizing something called the Cultural Environment Movement. George Gerbner is the former dean of the Annenberg School of Broadcasting, a major institution for training people in the media. He is pushing development of the cultural environment movement in the United States. In a draft statement of principles his group says ...

"For the first time in human history our children are born into a home whose everyday culture does not originate with the family, the school, the church, the neighborhood, and often even their native country. Learning about the world is increasingly a byproduct of the mass marketing. Three out of four American kids grow up today in a home without a full-time parent but with television an average of seven hours a day. Most of the stories about life and values are told not by parents, grandparents, teachers, clergy or others with their own stories to tell but by a handful of distant conglomerates with something to sell."

"Furthermore, the money added to the price of goods buys more than ads and commercials. It buys culture-power. It buys the ability to tell stories and sell values to hold in common. It buys the cultural marketplace in which we are worth what we can spend. And it buys the right to structure the public agenda."

I think Gerbner has done a good thing by shifting the language of discussion to the language of "culture" and "environment". The issue is not just the media's distortion of, for example, how many people were at a demonstration; the problem is bigger and more pervasive than that. Gerbner says,

"For advertisers, this is 'free speech' and a tax-deductible business expense. (The cultural clout of a tobacco-money driven food and drink conglomerate, the largest single influence over commercial media, is supported by the public treasury in a self-serving interpretation of the First Amendment.) But for citizens it is taxation without representation. And for society it is a way of preempting alternatives, limiting freedom of press to those who own it, divorcing payment from choice, and denying the public participation in media decision-making."

"The new globalized and centralized cultural environment demands a new approach. Working separately on individual issues, rallying to meet each individual crisis, while necessary, are not sufficient. Dealing with systematic connections requires coordination organization. Individual effort, local action, national constituencies acting in concert can, together, help to begin that long, slow and difficult task."

We're talking here about a path DSA is approaching.

The Cultural Environment Movement paper suggests a number of lines of action including

"\* Building a new coalition involving media councils in U.S. and abroad..."   "\* Opposing domination and working to abolish existing concentrations of ownership and censorship (both of and by the media), public or private. That includes exposing use of the First Amendment as a shield for power and privilege..."

(That's a different way of looking at the whole censorship and First Amendment issue.)

"\* Extending cultural liberation to other countries by seeking out and cooperating with national and regional groups working for the integrity and independence of their own decision-making and against cultural domination and invasion..."   "\* Supporting journalists, artists, writers, actors, directors, and other creative workers struggling for more freedom from having to present life as a commodity designed for a market of consumers..."

That's an important one. There's a real problem when we attack how the media is covering things. Media Alliance put on several meetings at which we all felt a lot of frustration--because all we had up there was journalists. Journalists received the attack for what the papers were doing. It wasn't an accident we got journalists on these panels. We invited management and at the last minute they sent line journalists instead. I think they knew exactly what they were doing. That dynamic slowed Media Alliance in its response to war/media issues because a major part of its constituency is journalists. There are a lot of good journalists, and we must create more space for them. There are serious limits to what they can do but we can create more space for them if we carefully concentrate on what newspapers and other media do as institutions and don't get journalists on the defensive. Supporting journalists in these ways is an important thing to do.

Gerbner says, "Promoting media literacy, media awareness, critical viewing and reading, and other media education efforts as a fresh approach to the liberal arts and an essential educational objective on every level."

Placing cultural policy issues on the socio-political agenda may be the way that this coalition and national movement can come together.

We have been looking at the macro level. We also need to look at the micro level, the grass roots level. A good example is the case of Black Liberation Radio: micro-radio. This is the case of a young, blind, unemployed, black man in a housing project in Springfield, Illinois who, with \$500 dollars, bought two black boxes from a radio catalogue, connected them with a wire, plugged a microphone in one, threw a wire out the window, turned on the power and was on the air. With one watt he reaches the whole housing project and basically the whole African American community in Springfield. He broadcast community news information, music, rap for two years totally without a license from the FCC. He was left alone --- until the housing project police beat up some kids in the project. He had the kids on the air. He attacked the police for brutality, and the next week there was a knock on his door. There were representatives from the FCC, backed by 6 local police. They were there to take him off the air. He was off the air for a few days and then went back on the air. The FCC brought an action against him in federal court, a civil action for a fine. He said, "Appoint me a lawyer. I can't afford lawyers, but you have a phalanx of lawyers." They wouldn't appoint him a lawyer so he did not appear in court, and was fined \$750 for broadcasting without a license.

That was more than a year and a half ago and he's still broadcasting. Two weeks ago he was served with an eviction notice by the housing authority for illegal activity in the apartment -- presumably the illegal activity is the radio station. The following week a bullet came through his window and missed him by less

than an inch (He told me he felt it go by his head). It looks like they were trying their version of direct action.

We are taking the position that the law which says you must have a license to broadcast and we (the FCC) will not consider an application for a license with less than 100 watts of power, is unconstitutional and violates international law. 100 watts is a whole different level of technology. 100 watts of power gets you a big distance and costs \$50,000 to \$100,000 for the hardware and probably three times that in fees and expenses connected with the FCC's regulatory process.

The traditional First Amendment analysis, the position of the ACLU is that the government only has the right to regulate time and place and manner of use of a public forum, not to ban people from the park because their soap box is too small. We're arguing that the broadcast spectrum is a public forum. The key is our concept that micro-radio, this kind of low technology media, is the leaflet of the nineties and the twenty-first century. In an age when people don't read a lot, electronics is the leaflet, the garage printing press of the modern age.

We believe, first of all, that he's got a right to do this, and that it's economic discrimination against the poor to say you have to have one hundred watts to go on the air. We are going further than that -- we believe that he's got a right to broadcast without a license on this low level community basis. The government can punish him if he interferes on somebody else's frequency, but it's prior restraint and a damper on freedom of speech to insist that someone go through the regulatory nightmare in order to exercise his basic right to communicate. This movement is growing, around the country; there's a station in Venice, California which is just about to be prosecuted.

I think there's a macrolevel where we have to be working on coalitions and, a microlevel of supporting this kind of local effort. We have to continue supporting and I say even critiquing because they're not perfect, the independent media (I think it's important to talk about independent and not alternative media because the term "alternative" doesn't take it seriously -- NBC is alternative to Pacific Radio, not the other way around.). It's important for us to support and critique the independent media when it's necessary.

We can't accept the media environment we live in. We must challenge the very system we function in. I think that's key. We've got to raise basic fundamental questions, -- (this is the Democratic Socialists of America, it's not the Democratic Liberals of America, after all). Reform movements are important, reforming this and that part of the media system is important, but we have to break open the whole question of the structure of the media at the same time. We have to break up the assumption that this is and always has to be this way.

The beauty of making this challenge is that as soon as we do it, it is successful. As soon as you challenge the media system, people look at the media differently. You haven't changed anything; you haven't changed CBS; you haven't got a micro-radio in your community, but as soon as you've raised the issue, the impact of the commercial media, their ability to brainwash people is less, because people start thinking about it. So in the very raising of the issue you've already taken the first step to diminish their power. The challenge starts to destroy the cultural and intellectual power of the media environment and from there we can go on to build program coalitions locally and nationally and to make real changes.