

**Cabinet  
Committee on  
Cable  
Communications  
Cable: Report to  
the President**

*Henry has a copy of this.*

THE CABINET COMMITTEE REPORT TO THE PRESIDENT  
ON CABLE COMMUNICATIONS

Leland L. Johnson

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THE CABINET COMMITTEE REPORT TO THE PRESIDENT ON CABLE COMMUNICATIONS\*

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Opportunities created by the growth of cable television demand a coherent national policy, not the patchwork of rules and regulations that threaten the industry in its formative stages. In response, the U. S. Government has recently released a report dealing with a wide range of policy questions about the future of cable. This report, prepared by a seven-member committee chaired by Clay T. Whitehead, Director of the Office of Telecommunications Policy, recommends that:

- o control of cable distribution facilities be separated from control of programming and other services provided over cable systems
- o no restrictions be placed on cross-media ownership or multiple ownership of cable systems
- o telephone companies not be permitted to control or operate cable systems within their own service areas
- o consumers have the opportunity to purchase new television programming and other information services over cable without being impeded by government-established barriers
- o programming and other services not be subject to government regulation of content or prices
- o incentives to create programming for cable be fostered by full applicability of copyright laws to channel users
- o strong legal and technical safeguards be erected to protect individual privacy in cable communications
- o cable services be assured for the poor and for residents of rural areas
- o participation by minority racial and ethnic groups in cable ownership, operation, and programming be facilitated.

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Other recommendations deal with ownership and control of cable network operations and with the institutional and jurisdictional framework for cable regulation, including the appropriate responsibilities of city and state governments. The Committee Report also outlines a suggested demonstration project designed to test the technical and economic feasibility of potentially attractive new services on cable.

Together, these recommendations are aimed at (a) modifying government regulation of the cable industry so that its growth is more determined by free market forces, and (b) enhancing public access to cable channels, thereby encouraging freedom of expression.

In seeking to make useful and practical recommendations, the Committee faced conflicting pressures. On the one hand, it felt strongly that the future of cable should be determined by marketplace forces rather than a panoply of government regulations, restrictions, and subsidies. On the other hand, to gain credibility and acceptance for its recommendations, the Committee felt the need to gain the support of major groups within the industry (such as over-the-air broadcasters, cable operators, and program producers). Thus the Report is a "compromise" document which seeks to balance conflicting pressures in striving for a broad consensus. It does treat major issues meriting public discussion; it does identify possible solutions to further improve the basis for informed public debate; but it also has weaknesses, stemming largely from the pressures of compromise.

As a case in point, the Committee recognizes that adoption of all of its recommendations simultaneously would have a disruptive effect on the struggling and still relatively small cable industry. (Although in the United States there are now about 8 million residential cable subscribers, this comprises only about 12 percent of total households.) Therefore, the Committee proposes a "transition period" during which some recommendations would take effect immediately, some on a phased basis; others--some of the most important--would not take full effect until after the transition period. A major question, then, is how to define the end of the transition period. The Committee suggests that the period be regarded as completed when cable serves 50 percent of all potential subscribers; this may take many years or even decades. While the principle of a transition period is sound, the problem of definition remains.

Cable Ownership and Control

The single most important recommendation in the Report deals with the separation of program content from cable ownership and operation; the owners of cable distribution facilities would be required to offer on a nondiscriminatory basis access to channels leased by outside program suppliers. Under current rules of the Federal Communications Commission a cable operator may himself use access channels to the extent that an independent program distributor does not demand "first-come, nondiscriminatory access." In practice, however, the cable operator could become a monopolist, since access channels are more easily and cheaply available to him than to others, thus deterring potential entry. Under the Cabinet Committee scheme this potential barrier to access would be reduced by prohibiting the cable operator himself (1) from originating programming on the many access channels that may be available on large-capacity cable systems, or (2) from having an ownership interest in those program suppliers seeking access to his system.

However, the fact that the Report is a compromise document is best illustrated by a statement buried in a long footnote asserting that it would "not be inconsistent with the separations principle to allow the system operator to have program control over one or two additional channels" (emphasis added). This clause, obviously included to help gain support from the cable industry, could give the cable operator a good deal of power, depending on the geographical coverage of his system and the financial resources he is willing to devote to programming access channels.

This potential problem of residual monopoly power is troublesome also in light of the Committee's recommendation that cross-ownership of media not be restricted; that is, television broadcasting stations and newspapers would not be prohibited from owning cable systems within their market area. This recommendation makes sense if there is indeed a full split between the owners of the distribution facilities and the producers and suppliers of television programming. With this separation, it makes little difference who owns the physical facilities. But to the extent the separation is not complete, then restrictions against cross-ownership must be considered more thoroughly than they have been in the Report.



The recommendation that telephone companies not be permitted to own or control cable systems within their service areas may seem inconsistent with the preceding recommendation which permits cross-ownership. After all, if the separation between facilities and programming content is complete, it could make no difference whether newspapers, broadcasting stations, or telephone companies were to own cable systems within their own service areas. Moreover, prohibiting telephone companies from owning cable systems could retard the eventual development of unified communications systems involving a mix of television cables and other facilities, including conventional telephone components, which could offer a wide range of television, voice, and data services. The rationale for this recommendation, however, stems from the Committee's desire to promote competition. If telephone companies are permitted to own cable systems in common service areas, the Committee fears that "widespread expansion by telephone companies into the cable business could stifle development of competitive communications service."

#### Payment for Service

Another major recommendation deals with so-called "pay cable," where viewers pay extra (in addition to the ordinary monthly subscription fee for "basic" cable service) for special channels or special programs not otherwise available. For example, some cable operators today offer subscribers (for an additional charge typically of \$5 or so per month) a group of movies that are newer than those shown on commercial advertiser-supported broadcasting stations.

Bitter controversy has arisen in recent years about the extent to which cable subscribers should have the option of enlarging their freedom of choice by paying directly for programs that might not otherwise be available, just as they are permitted to buy magazines, books, and records. One argument is that pay cable will tend to "siphon" away programming from advertiser-supported television; eventually the viewer may have to pay an extra charge for the same programs he sees free today. In response, the Federal Communications Commission has established "anti-siphoning" rules that permit cable operators to offer certain kinds of pay programming, but with restrictions to insure

that siphoning from advertiser-supported television does not become serious. (For example, current FCC rules specify that only movies less than two years old may be shown on pay television, since only movies older than that are typically shown on advertiser-supported broadcasting stations.)

The Committee recommends that after the end of the transition period anti-siphoning rules be eliminated except for certain kinds of sports programming. But here again are elements of compromise: During the transition period the Committee takes a much weaker stand. After reviewing the FCC's current anti-siphoning rules, the Committee merely states: "We do not endorse these particular rules, but we recommend that the FCC have the authority to adopt reasonable anti-siphoning provisions to the changing conditions in the broadcast, cable, and programming industries, selectively lessening the restrictions of the rules." How "reasonable" rules are defined or how they are to be "selectively" lessened are questions left unanswered.

These recommendations regarding pay cable are curious also because freedom from anti-siphoning rules is most needed today, in the early stages of cable growth to permit the industry to expand and, indeed, to reach the 50 percent level that would mark the end of the transition period. But the Committee's recommendations are just the reverse--relatively severe anti-siphoning rules in the early years and only after the cable industry has reached maturity would they be eliminated.

#### Laws and Regulations

Consistent with its goal of facilitating public access to cable channels and promoting freedom of expression, the Committee recommends that the rules commonly applied to television broadcasting not be applied to programs originated on cable channels. In particular, the Fairness Doctrine (under which broadcasting stations must present both sides of important controversial issues) and the equal-time rule (under which broadcasting stations must offer one political candidate an amount of time equal to that purchased by an opposing political candidate) would not be applied to cable channels, where presumably ease of access and a diversity of voices could be assured as it is today in newspapers and



other print media protected by the First Amendment to the U.S. Constitution. Notably, this recommendation is to be put into effect immediately. As the Committee observes, "it is essential from the outset that the use of the cable medium for distributing programs must be free from administrative regulation of content."

Today cable operators are not subject to copyright liability for any of the programs originated on broadcasting stations and carried on cable channels. (The cable operator is, of course, required to pay copyright on programs that he originates, just as broadcasting stations are required to pay copyright for any programs they originate.) Much controversy has arisen about whether copyright should be paid by cable operators on broadcast signals they carry and, if so, how much. Although the Committee recommends that copyright payments be made by "full applicability" of copyright laws, it fails to define clearly what is meant by full applicability, and offers no criteria by which to judge appropriate levels of payments. This is perhaps one of its weakest recommendations. All major industry groups--program suppliers, broadcast station owners, and cable operators--have agreed in principle that copyright payments should be made. The stumbling block is determination of appropriate levels of payment. Here the Report offers little guidance.

The Committee aptly recognizes the problem of protecting individual privacy in light of the many channels and the many new services that eventually could be offered by cable. Although providing no firm and clear-cut answers in this area of great uncertainty, the Committee is nevertheless on firm ground in observing that "cable lends itself to use of technical safeguards, such as scrambling codes and locked channels. The FCC, in conjunction with other government agencies should develop and implement technical standards and requirements necessary to afford added protection of privacy in cable communications."

#### Extension of Service and Participation

It would seem reasonable enough that cable services be assured residents of rural areas and the poor in accordance with the Committee recommendation. However, low-population-density rural areas are very expensive to serve on a per-home basis, and questions arise about the

extent to which subscribers in more densely populated areas should be required to subsidize service to their rural neighbors. This situation is troublesome because in many metropolitan areas low-income groups live in high-density areas relatively inexpensive to cable, while affluent families tend to live in the lower-density suburbs.

It is easy to agree that participation by minority, racial, and ethnic groups should be facilitated. But the Committee does little more than recommend to relevant government agencies that "special attention" be devoted to assure ample employment opportunities for minority group members and that "high priority" be given to such possibilities as loan guarantees to encourage minority ownership and control of cable facilities.

#### The Future Market

It is important to note that the Report does not resolve the many uncertainties that surround the future of cable television in major U.S. cities. Cable has thus far flourished largely in mountainous areas and in smaller cities where over-the-air service is limited or reception poor. Vancouver and Montreal, Canada, have the largest cable systems in the world, each with more than 100,000 subscribers. Their growth has been rapid because signals from U.S. stations close to the Canadian borders can be brought in to enlarge the range of programs available to Canadian viewers. But in most U.S. cities, over-the-air broadcast service is already good. In addition to three advertiser-supported networks, in many areas there are one or more independent commercial broadcasting stations, plus a public television station supported largely by government and private foundation sources. With this relatively rich menu of television programming, serious questions arise about how many people will be willing to pay \$5 or \$6 a month for cable service. Perhaps a market might exist if new services were added on cable in the educational, medical, and other fields. But these services are yet to be perfected. Here the Report is useful in outlining a demonstration project to test the possibilities. But nagging questions remain of whether, under any set of government policies, there will exist a strong market for cable systems in major metropolitan areas.

Finally, we must note that the recommendations of the Committee are not likely to be implemented in the near future. Some would require Congressional action, others changes in FCC rules, and in general, a greater degree of political consensus than exists today. Long delays arose in completion and release of the Report. Only two of the seven Committee members remain in government, and the Report has not yet been endorsed by the President.



# Office of Telecommunications Policy □

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The White House **Office of Telecommunications Policy (OTP)** was established in 1970. In 1978, it was merged, along with the Department of Commerce's Office of Telecommunications (OT), into the newly created National Telecommunications and Information Administration (NTIA). Before this reorganization, the OTP was the principal federal agency involved in issues relating to the impact of increased telecommunications and computerization on personal privacy. OT's primary function was to provide OTP with scientific and engineering support for managing radio frequencies used by federal agencies.

The OTP worked to unfreeze and deregulate the cable industry and implement the "Open Skies" policy, whereby any qualified company could launch a domestic communications satellite, avoiding the monopoly industry structure that existed in international communications.

OTP's two major initiatives concerning cable included the 1971 Cable Copyright Compromise and the 1974 Cabinet Committee on Cable Communications Cable: Report to the President, or "The Whitehead Report."

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Categories: Government entity | Telecommunications



# The Selling of the Cable TV Compromise

*A fair bit has already been written about the broadcaster-cablecaster "compromise" of late 1971 which led to the final issuance of cable television rules and regulations by the Federal Communications Commission early in 1972. On the following pages, Mr. Jassem explores events in the compromise and delineates several key factors instrumental in the agreement being reached. The author, who taught last year at Trenton State College (New Jersey) is presently a teaching assistant while enrolled in the doctoral program at the University of Wisconsin in Madison.*

**A**FTER many years of adversity, representatives of major broadcasting, cable television, and program copyrighters' trade organizations reached a settlement in 1971 which laid out the regulatory status (and thus the growth possibilities) of cable television in America. The agreement was formalized and implemented in the form of the Federal Communications Commission's "Third Report and Order," released in February 1972.<sup>1</sup> An examination of the Third Report and Order reveals that, as is the case with all compromises, the "demands" of the various disputants had been partially met and partially rebuked. The question that arises and that will be the focus of this discussion is why, in November 1971, were the contending parties willing to accept compromises that had previously been unacceptable?

## Background

In order to understand and appreciate the 1971 cable television compromise, a brief historical perspective of cable television's regulation and its relations with the broadcast industry is in order. In its earliest days, CATV (known then as Community Antenna Television) served simply as a master antenna system, bringing television signals to communities that were

<sup>1</sup>JOURNAL OF BROADCASTING, 17:4 (FALL 1973)

- Information
- References
- Citations

**WAPO INTERVIEW W/JUDITH**

**MARTIN**

**(CANDID)**



SUNDAY, JANUARY 9, 1972

H1



By Larry Morris—The Washington Post

Tom Whitehead: "I watch children's television on Saturday mornings. It's some of the most innovative television there is."

## TV (Policy) Repairman

### Trying to Eliminate the Static

By Judith Martin

The broadcasting industry is used to getting static from Federal Communications Commissioner Nicholas Johnson. It tries very hard, though, to dismiss him as one radical young gadfly commissioner.

But what about the noise coming from Clay Thomas Whitehead? He too is young—33—and is also coming up with ideas that challenge broadcasting's status quo. He is a systems analyst who looks like the kind of upcoming conservative whom any corporation executive would be proud to introduce in his club, and it's hard to pass him off as a maverick.

Especially since he also has excellent establishment credentials. He is Mr. Nixon's first director of the Office of Telecommunications Policy, which was established in September, 1970,

when the administration decided it wanted a direct voice in the sensitive issues of commercial and public television.

Licensing, with its questions of merit and fairness, comes from the FCC; commercial regulations are handled by the Federal Trade Commission and Sen. John O. Pastore (D-R.I.), with his Senate Subcommittee on Communications, keeps an unblinking eye on everything including the child parked in a patch of blue-grey light in front of the set.

And now there is Tom Whitehead, who had no particular interest in television until he received it as a White House assignment, and who doesn't expect to make a career out of it. But as a passionless observer of needs and methods, trained at the Rand Corporation where they grind national defense programs into little

pellets of logic, he is coming up with pragmatic solutions to problems which have been around so long they are as boring as old, summer re-runs.

He has a quiet voice, the old utilitarian type eyeglasses and works in a beige-on-beige office where the only ornaments, until he finds time to hang pictures, are two small, colorless elephants on a side table.

But the speeches (and proposals) written there in the last six months have so thoroughly shaken up the industry that broadcasters have come to realize that as long as Whitehead focuses his attention on television, he is going to be an important factor in it.

For five years, broadcasters and cable operators were locked in a stalemate over the importation of television signals into metropolitan areas. Whitehead

See WHITEHEAD, H9, Col. 1



# The President's TV (Policy) Repairman

WHITEHEAD, From H1 stepped in and satisfied them both with a compromise formula which will allow some importation of distant signals.

He stepped into the bitterest controversies about the Fairness Doctrine and about public television, and made judgments that have galvanized persons long mired in discussion. As Whitehead is fond of saying when people take in his conventional good looks and polite manners and mistake him for some kind of intellectual White House social aide, "I'm the one who's against fairness and 'Sesame Street.'"

His solution to the Fairness Doctrine, with its constant battles over how much free time has to be given out in the interest of presenting opposite viewpoints, is to throw it out. Instead, he wants a "paid right of access," enforceable through the courts, with television time available for sale to anyone in much the same way that newspaper advertisements are.

On public television, it isn't 'Sesame Street' he's after, but the kind of national, centralized programming it represents. Whitehead believes that the mandate of public television is to be responsive to regional and community needs, and accuses it of giving that up to "play the ratings game" with a fourth, "quality" network to compete with the commercial ones.

So far his office has not proposed any legislation to implement the speeches. "I'm providing something for everyone to look at," he said. "People think there's a law that there have to be three television networks, and that God ordained that there be 12 channels on a television set."

However, it's not the television medium which fascinates Whitehead; it's the working out of solutions to complex problems which are overlaid with the complications of bureaucracy. Television is only, for the moment, his subject matter.

Even the interior decorations of his office provided that for a short time. Whitehead's interest in furniture seems fairly negligible—he says he prefers Colonial, although somehow his bachelor apartment at Columbia Plaza got to be full of "big comfortable things" instead—but he turned his mind to examining the way GSA planned to furnish his offices.

"They wanted to do it their way. Ugly. But I got them to admit that what

"His solution to the Fairness Doctrine, with its constant battles over how much free time has to be given out in the interest of presenting opposite viewpoints, is to throw it out."

they were really concerned about was money, and I said, "Tell us what it costs your way, and we'll do it cheaper." We did, too. It wasn't their way, but there wasn't much they could say."

Whitehead started out to be a scientist. Born in Neodesha, Kan., the son of a foreman-supervisor in a chemical company, Whitehead says his childhood ambition was "to get out of Kansas. I grew up there, and I'd never seen anything else."

To study science, he went to the Massachusetts Institute of Technology, "shooting all my money on the first year and gambling that the second year I'd get a scholarship." He did, but by then his interests had changed, and he majored in systems engineering, going on at M.I.T. to get his doctorate in management.

When he went from there to the Rand Corporation, his areas were arms control defense, and space. There he was approached by the Humphrey for President campaign, and decided to turn them down and to apply instead to the Nixon campaign.

His political philosophy is, he says, "something fairly ridiculous, like having liberal objectives but conservative approaches in realizing them." As in the matter of the kites.

Whitehead has a cloth, bird-like kite which can fly as high as the Washington Monument, and he was put out as anyone when Washington's old law against kite-flying was enforced. Some people chose to defy the law, and were arrested. Whitehead stopped flying his kite, and started talking to influential people about getting the law changed. "I was the guy who was keeping everyone at the White House on their toes about it. Government has a natural tendency to defend the law, whatever it is, and I had to convince them. I think I'm heavily responsible for getting the law changed."

Kite-flying, going to a ballet, chamber concerts and Blue Grass—which he "didn't think was very swish to like" when he was in school—and the informal gatherings at his Columbia Plaza apartment are shared with young government and professional people, most of

whom are nowhere near him in rank. "We talk about what ought to be done in various departments. It's frustrating."

And occasionally, he even watches television. "I watch children's television on Saturday mornings. It's some of the most innovative television there is. Try watching 'Sesame Street' without the sound—it's moving art."

"I wasn't strongly interested in communications," he says of the time when he was a special assistant to the President, in space, atomic energy, maritime affairs and budgeting, before he was made a liaison to the

FCC. "It wasn't a passion. But it's become a strong interest."

A passion? "No, I'm not a crusader. It's not any particular thing."

"I'm the antithesis of Nick Johnson," he said of the FCC commissioner. "Nick has the luxury of being able to sit on the side and observe what's bad, whether it can be changed or not."

Johnson, who calls Whitehead "a very bright guy," sees it as a matter of different job functions. While he says that Whitehead "scars the holy bejesus out of the industry, because he comes up with ideas, and they're used to operating under a rock," he adds that "his

mandate is to carry out the President's wishes for not too much Goddamn public conflict, and mine is not to hold back my views. If we were colleagues at Rand, we'd probably end up with the same solutions."

"For a long time," says Whitehead, "I had an interest in management. How to get things done and what do you want to get done. I suppose it's the technique—everything from economics to psychology to how to play to the bureaucracy. But I'm interested in it as applied to something. If it were for its own sake, I'd be off teaching."

"The Rand Corporation was a nice halfway house between teaching and here." But he decided he would rather work on domestic problems. "Domestic areas are harder, as opposed to defense. It's relatively easy to figure out how to kill more people, but it's hard to figure out how to keep people from killing each other. What is needed is people who are more active politically, or people who are willing to spend their lives in research. I don't think I see myself going into research."

"Obviously, I could go from here into an interesting position in the communications industry. But I'd like

to go into business for myself."

Some of the areas that he feels are badly handled and that he might want to try his talents on are foreign trade and lobbying. He won't tell his ideas on trade—"Someone might try them first"—but being the object of heavy lobbying has convinced him that there is too much of "pleading the interst of the Zilch Manufacturing Industry" as opposed to doing a public official's homework for him and providing him with pragmatic solutions to his problems.

There seems to be no limit to subject matter, once you get into that rational, statistical approach. Like skydiving, which he doesn't do much any more but used to do regularly.

"I know nobody believes me, but I don't do it for the daredevil aspect. It's an incredibly relaxing sport. I like the quiet, the sense of freedom. It's not a scary thing. If you keep your wits about you and you're careful, there's no particular danger."

"I don't do silly things, like see how close I can get before I pull the ripcord. I had a roman candle once—that's when your pack doesn't open, but eventually mine opened—but I know the statistical chances of that happening are very remote. I'm not a fatalist; on the contrary. Any reasonable person doing the right thing in the right situation is going to do all right in the sky."



**James Naughton,**

**NYT and Pittsburgh Gazette**

**The Transfer of Power from**

**Ford to Nixon**

**(Secret Transition Team, or**

**“Ford Foundation”)**



# Nixon-Ford Transition Was Not Hurried

**EDITOR'S NOTE:** This is the first of two articles on the transition of power from Richard M. Nixon to Gerald R. Ford.

By **JAMES M. NAUGHTON**  
**WASHINGTON** — Planning for the orderly elevation of Gerald R. Ford to the presidency began months before President Nixon decided to resign. The preparations were kept secret from Nixon. And, at first, from Ford.

The transition plans were initiated by Ford's closest friend, Philip W. Buchen, who became convinced in early May that onrushing events would force an untimely end to the term of the 37th president and a hurried beginning for the 38th. A "scenario" for the first days of the Ford administration was drafted with reluctance in June at a dining room table in Georgetown by Nixon's adviser on telecommunications policy, Clay T. Whitehead, and three other young men, one of them an avid Democrat.

And the details of the change in government were settled, 36 hours before the event, by an assortment of political and corporate friends of Ford's who met in the paneled family room at the home of William G. Whyte, a Washington-based Vice President of the United States Steel Corporation.

Behind the stunning events of Aug. 9 — the terse letter of resignation of President Nixon, the succinct swearing in of President Ford — was an intriguing effort to use the traumatic occasion to offer reassurance and calm to the nation.

Much of what has taken place in the 16 days of the Ford administration was a direct consequence of the unusual planning for his unorthodox accession — The tree of his first address, His pledge to consider conditional amnesty for Vietnam-era draft evaders, his meetings with black and women members of Congress, his journeys to Capitol Hill and to the Department of Health, Education and Welfare all were recommended by transition advisers to capitalize on Ford's instinctive goals of uniting the country and leading it in partnership with Congress and the Cabinet.

Even the disclosure of the clandestine planning for the Ford presidency, in interviews with key figures over the last few days, was in marked, and

perhaps deliberate, contrast with the secretiveness of the previous administration.

Here is how it happened:

## THE SECRET

The questions on May 11 could have been anticipated. Two days earlier the House Judiciary Committee had begun formal hearings on the impeachment of Nixon. A day earlier, Nixon had called in Vice President Ford and encouraged him to slow down the pace of his travel, and by inference, the number of occasions around the country for Ford to discuss the Watergate scandals.

Even so, when Ford met with reporters on May 11 in Dallas he was confident of his answers.

Had there been any conversation with Nixon at any time about transfer of power if that should occur?

"None whatsoever," Ford replied firmly.

Or on the part of your staff? Is anyone working on that?

"None whatsoever," Ford repeated. "I understand that there was a story in the Knight newspapers, by Saul Friedman, that somebody on my staff was working on something like that. If they are, they are doing it without my knowledge and without my consent."

Friedman, it turned out, had been right. So, in a way, had Ford. The planning had begun, all right, and it had been prompted by Ford's close

friend, his old law partner from Grand Rapids, Mich., Buchen. But Buchen was not, technically, on the Vice President's staff. He was the director of a Nixon administration study on the right of citizens to privacy, working for an interagency committee chaired by Ford.

More important, although Buchen was the closest thing to a confidant of the Vice President, Buchen had decided not to tell Ford what he was up to.

A few days before the Dallas news conference, Buchen walked the short distance down the hall from his suite in the executive office building to the Office of Telecommunications policy to see Clay T. (Tom) Whitehead. Buchen was troubled.

"Tom," he said, "Jerry needs some kind of planning under way. The President may resign before or after he's impeached. We've got to do some kind of contingency planning."

There were other fears which, Buchen — now the White House legal counsel — recalled last week, he had not put into words. Nixon was preparing a somewhat perilous diplomatic journey to the Middle East. There had been speculation about the President's health.

"I wasn't trying to judge the President (on Watergate)," Buchen said. "But you could

hypothesize illness or something that might happen. It was just that, in the usual situation, the Vice President is expected — like Lyndon Johnson — to carry on the traditions of the man he succeeded. But this was probably a unique situation. If (Nixon) went to the Middle East and something happened, it wouldn't be just a case of stepping in and saying, "Well, Boys, carry on."

So he turned to Whitehead, at 35 one of the young veterans of the Nixon White House. In 1969, Buchen remembered, Whitehead had served on the staff that guided the more normal transition from the Johnson Administration to the Nixon Administration. Their adjacent offices would make it easy for the two men to confer without raising eyebrows. Besides, Whitehead was one of the few Nixon aides Buchen knew well — and thought he could trust with a large secret.

"I really didn't want to do it? Whitehead said of the overture the other day. "I felt it would be fundamentally wrong for the President to be hounded out of office." Later, after Nixon made public edited White House transcripts that showed he had sought to block the Watergate investigation in June, 1972, Whitehead would reflect that resignation was appropriate.

But last May, like others who wanted desperately to believe in Nixon, he flinched at the suggestion that the end of what Nixon had grandiloquently called "The New American Revolution" was a possibility.

Buchen insisted, "Somebody has to do it," he told Whitehead. Reluctantly, Whitehead agreed.

The need for secrecy was evident. Nixon kept insisting that he would never resign. It would not do to have preparations for his resignation linked, even in White House gossip, to Ford. And Ford had been as adamant in private as he was in public about insisting

that he would do nothing to display lack of confidence that Nixon would weather Watergate.

"It wasn't because we felt we were subversive," Buchen said in an interview. "Why put him" — Ford — "on the spot? If he'd asked me, I would have told him. He never asked me."

Indeed, when Ford declared on May 11 that any transition planning would be without his

knowledge and without his consent, Buchen and Whitehead reaffirmed their intentions.

"We decided the statement was an implicit one," said Whitehead: the Vice President "hoped somebody was doing it, but he didn't want to know about it."

"The Ford Foundation" The first problem was to devise a way to keep the venture confidential. Whitehead

decided that any meetings should be held away from the White House. The handiest spot would be his home, an old townhouse in nearby Georgetown, on a corner of 28th and N Streets N.W., across from a synagogue. It would not do to involve other administration figures, increasing the risk of disclosure. Whitehead sought the advice of three acquaintances, all in their thirties, who

were versed in, but not currently a part of, the government.

To this day, Whitehead will not identify the three. He acknowledges, with a rueful grin, however, that one was a staunch Democrat, who "had a rough time when we would sit around and discuss things that Ford could do to strengthen the party" — the Republican Party.

During the early summer, the transition cadre — Buchen, Whitehead and the other three — met four times, usually in late afternoon, at the townhouse. They sat around a circular dining table, coats off, sipping soft drinks in a vain attempt to combat the heat in the unair-conditioned dining room. The room was below grade; through a high window they could see the ankles of passers-by. One member smoked cigars, two had pipes. "It was not a smoke-filled room," Whitehead said wryly.

His wife, Margaret, dubbed the group "The Ford Foundation."

Their discussions ranged widely from the obvious (a ceremony for the assumption of office) to the mechanical (the need for a small transition team to orient Ford to the White House and vice versa) to the sublime (themes and principles that might be enunciated at the outset of a new administration.)

"It was like having a study group meet to discuss policy with Russia," Buchen said later.

"We were not sm much planning that Ford become President," Whitehead recalled. "In fact, I hoped he wouldn't become President, for obvious reasons, particularly in the beginning. But it was only prudent, since the man might become President on very short notice, it was only prudent to develop some material in case he did."

**WEDNESDAY:** Checklist for a presidency.

## BACKWARD GLANCES



IN 1952 Bellaire friends had a party. From left are Lois Pittman, Sandie Pittman, Linda Camden, Kathy Pytlak, Kathy

Lyden, Nancy and Betty Morris, Danny Griffin, Richard and Junior Barber, Dwaine and Gary Gill.

## LETTERS

to the editor

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Many People Participated in Planning Ford's Elevation

# Checklist Irons Out Wrinkles in Presidential Transition

(This is the second of two articles on the transition of power from Richard M. Nixon to Gerald R. Ford.)

By JAMES M. NAUGHTON  
New York Times News Service

WASHINGTON — Not long before President Nixon came to the ineluctable conclusion that he would be impeached by the House and perhaps convicted in a Senate trial if he did not resign, Tom Whitehead reduced the rough plans for a transition program to a single typed page of shorthand notes. He called it the "index." It looked like this:

1. First principles, themes and objectives.
2. The transition team.
3. The "first week"
  - ▶ Assumption of office.
  - ▶ Transition team
  - ▶ Message to the American people.
  - ▶ Cabinet and White House staff resignations.
  - ▶ Congressional leadership meetings.
  - ▶ Cabinet, NSC (National Security Council) and economic policy meetings.
  - ▶ Meetings with national and foreign leaders.
  - ▶ Vice presidential search process.
  - ▶ Personnel decision process.
4. Address to the American people.
5. Assessment of the executive branch.
6. Press and Congress: philosophy and tactics.
7. Background papers: policy and machinery.
  - ▶ Foreign policy and national security.
  - ▶ The economy.
  - ▶ Budget.
  - ▶ Domestic Council.
  - ▶ White House mechanics.
8. Organization of the presidency:
  - ▶ Background.
  - ▶ White House staff and reorganization.
  - ▶ Role of the cabinet.
9. Key personnel actions:
  - ▶ Recruitment process.
  - ▶ Transition of agency heads.
  - ▶ Handling of old White House staff.

The items were not so much recommendations as a checklist of issues that should be considered, quickly. In the event Ford became president overnight. What, if any, "first principles" should he pronounce? Who should he call upon to help, immediately, in the transition? What should he do in the early days of his administration—called, after Genesis, the "first week"—about retaining or dismissing Nixon's advisers and aides or about nominating a new vice president? Should there be a different, and thus more open, attitude toward Congress and the news media?

It would be, Whitehead said, something that Philip W. Buchen, Ford's closest friend and old law partner, could take to Ford and say, "Here, this will get you started."

It was all very informal, Buchen remembered. "We had no notion the thing would come up as soon as it did."

## The Crash Program

The "thing" as Buchen called it, came up on Tuesday, Aug. 6, eight months from the day Ford became vice president. The previous day, Monday, Nixon had made public transcripts of his White House conversations about Watergate on June 23, 1972, and they showed him to be an early active participant in a cover-up attempt. His defense against impeachment lay shattered in the outraged reaction on Capitol Hill. Nixon told his cabinet, and Ford, that Tuesday that he would not resign. The words sounded hollow.

At 10:30 that night, Buchen tracked down Whitehead in a hurry. Whitehead, coincidentally, had given notice that he would resign shortly to resume a private career. He was preparing to leave Washington to join Mrs. Whitehead on a camping trip to Aspen, Colo. The vacation trip was aborted by the telephone call from Buchen. He told Whitehead that Ford had just been alerted, presumably by White House aides, that "the word is, within 72 hours he could be president."

That meant, Buchen quipped, they would have to do the detail work that Theodore H. White, the author who had chronicled each of the presidential election campaigns since 1960, might describe in a new book entitled, "The Making of the President in 72 Hours."

Actually, as it turned out, they had only a little more than 61 hours before Ford would raise his right hand on Aug. 9 to recite the presidential oath of office specified by the Constitution.

The making of the President began in earnest on Wednesday, Aug. 7. Whitehead, clad in cowboy attire—denim and boots—because his wife had most of his clothes in their car in Kansas City, located the transition "index" and pared it down to the immediate essentials, items 2 and 3, as an agenda for the

## Dutch to Launch Satellite in U.S.

VANDENBERG AIR FORCE BASE, Calif. (AP) — A Dutch satellite will be rocketed aloft from the space test center here.

The U.S. Space Agency said the 250-pound spacecraft will be powered into a 300-mile-high orbit today by an American Scout rocket.

It will be The Netherlands' first satellite flight.

The spacecraft, named Astronomical Netherlands Satellite, will carry a Dutch-built telescope that will be used to study ultraviolet light emitted by new stars that are still hot.

More instruments aboard the ANS spacecraft will scan the skies for other celestial objects emitting X-rays.

high-powered private meeting that Buchen was organizing. The transition planning had gone big time. As Whitehead would later describe it to the three friends who had helped him in the townhouse, what they had done was "ponny ante" and now transition had become "a gigantic poker game."

Confidentially still was crucial. In the end, Nixon might not resign. Ford gave Buchen the names of the five friends whose views he wanted to solicit on transition plans. Buchen asked one of the five, William G. Whyte of United States Steel, to volunteer his home on Hookwood Parkway, in a wealthy and thus relatively secluded section of the capital, for a 5 p.m. meeting. Whyte readily consented and dispatched his wife Margaret, to buy seven large steaks.

One of the five friends didn't need to be invited. Former Governor William Scranton of Pennsylvania, who had been a law school classmate of Ford's at Yale University, knew enough about Washington to realize by Wednesday that Ford soon would be president. He called to volunteer his assistance.

The others invited to the meeting were Sen. Robert P. Griffin of Michigan, the Senate Republican Whip; former Rep. John W. Byrnes of Wisconsin; and Bryce N. Harlow, an executive of Prorator Gamble Manufacturing Co. who had been an aide to President Eisenhower and Nixon.

"I was just invited for an important discussion," Harlow recalled the other day. "I wasn't even sure then who Buchen was."

We were all close friends of Jerry's," Byrnes said. "We knew that at some time, maybe sooner than later, he and his people were going to have a hell of a lot of questions that needed to be answered."

From 5 p.m. Wednesday until nearly midnight, the seven men sat in the upholstered chairs and on the two sofas in the paneled family room of the Whyte home. Whyte announced at the outset, "The bar is open, but this is a working session." Most of them eschewed hard drink. The steel company executive kept Mrs. Whyte out of the room—"It was very confidential"—but the Whytes' son, Roger, would pop in from time to time to relay telephone messages, deliver the grilled steaks and provide bulletins from the newscasts.

"We didn't know what the next news bulletin would be," Byrnes said. "We constantly had the question in our mind: How long do we have?"

The atmosphere was sober and restrained. Many of the participants had been close to Nixon. "I don't recall any hilarity," Harlow said.

For hours they discussed a few essential elements of the transition, working from Whitehead's checklist.

The Chief Justice of the United States, Warren E. Burger, should officiate at an inauguration but he was in the Netherlands. Griffin agreed to contact him.

Ford would need the draft of a brief

speech to the American people for use soon after he took office; it was written by Robert T. Hartmann, Ford's vice presidential chief of staff.

The new president would need a replacement for the White House press secretary, Ronald L. Ziegler. Five names were kicked around at length and the next day Ford would agree with the consensus choice, J. F. TerHorst, the Washington correspondent for the Detroit News.

An ongoing transition team would be needed to guide Ford through the first days of his administration and map plans for longer-range changes. Scranton would wind up directing it along with Donald Rumsfeld, the U.S. Ambassador to the North Atlantic Treaty Organization, and Whitehead would serve temporarily as staff secretary.

And there was general agreement that Nixon should not be present when Ford was sworn in; the outgoing president's absence would signify a clean start for his designated successor.

When the meeting was breaking up, and the participants were putting suitcases back on and tightening their ties, the basic question remained, as Byrnes stated it, "when is the word going to come?"

## The Resignation

The word came the next morning, Thursday, Aug. 8, when Nixon summoned Ford to say that he was going to resign. The two men agreed on the timing and circumstances of the "impre-

vented successor. Nixon would announce his decision on television Thursday night and depart for California on Friday, before the formal letter of resignation had been delivered to the secretary of state. Ford would take office at noon Friday.

Thursday afternoon, the transition planners, no longer as concerned about secrecy, met in Whitehead's office. TerHorst joined them for a while. The plans were put on paper, with alternatives. Decision memorandums that Ford would have to sign immediately were drafted and typed. Formal notices of Ford's accession were drafted for the new president's signature and subsequent dispatch to every government department and agency.

There were two breaks in the long transition preparations. One was for cold roast beef sandwiches and soft drinks. The second was to watch Nixon on the television set in the office of the director of telecommunications policy, announcing at 9 p.m. that he would give up the presidency. Many of those in the transition office cried. It was nearly 11 p.m. before they got back to work. At 3 a.m. Friday, the papers formalizing the change in government were completed. Whitehead went home, to the townhouse in Georgetown.

## The Ride

Three hours later, at 6 a.m. Friday, Rep. Byrnes arose at his home in Arlington, Va., to prepare for the day. At 7:15 he went to the Alexandria, Va., home of

Ford to meet Buchen and brief the vice president on the transition plans. "I don't get up that early every day of the year," Byrnes told Ford. "But I'm willing to do it on a day that a good friend is being sworn in as President."

There would be much yet to do after Aug. 9 to solidify Ford's presence in the White House. There would be policy decisions, such as that on amnesty, to try to demonstrate a generosity of spirit. There would be legislative issues, including an early threat to veto a mass transit bill, to try to show firmness of purpose. There would be organizational matters, like the transition group's recommendation that the power of the Office of Management and Budget be reduced to strengthen the role of the Cabinet. There would be personnel choices, among them which of the holdover aides to replace and when. There would be the selection of Nelson A. Rockefeller, the former governor of New York, as the vice presidential nominee and the next potential link in a chain of democratic continuity.

At 7:45 a.m. that Friday, as the White House limousine left Ford's Alexandria home for the short ride across the Potomac River and into the nation's Capital, it was more than merely the last symbolic unpredictable journey of Gerald R. Ford to the presidency. As the long car moved through the morning rush hour, Ford, Buchen and Byrnes were huddled over the documents that would effectuate the change. The transition was occurring.

## W.Va. Hotel Fire Deaths Increase to 11

BERKELEY SPRINGS, W.Va. (AP) — Four more bodies were recovered from the rubble of a downtown hotel yesterday, bringing the number of known dead in Sunday's fire to 11.

The search continued. Authorities believe 13 persons perished in the pre-dawn fire at the four-story Washington House Hotel in this Eastern Panhandle resort town of 244 residents.

R. Randall Hall, assistant state fire marshal, said tentative identifications had been made, but added, "We won't make positive identification until we get them all out."

THE FIRE at the 70-year-old hotel turned the city's old downtown section into an inferno.

Damage to the hotel and four other buildings which burned was estimated at \$1 million, said J. Richard Harpura, Morgan County

## Gimbels introduces new half-size slips from Gossard Artemis



A slip designed just for you: Artemis New Image of cling-free Antlon® III nylon. It's made to fit right—with proportioned length and hip, built-up bodice front and back, midriff gares, and adjustable non-rip strap.

(A) Lace trim at top and hem in white sizes 16" to 24" **7.50**

(B) Semi-tailored with inset trim in white, sizes 14" to 24" **\$5**

Inner Woman Store, Mellon Square, Third, Suburban Stores



"FOR EYES ONLY"

MEMORANDUM FOR

Mr. Chuck Colson  
Mr. John Ehrlichman  
Mr. Peter Flanigan  
Mr. H. R. Haldeman  
Mr. Herb Klein  
Mr. Ronald Ziegler

In a speech delivered last month, I made three related proposals concerning the regulation of broadcasting:

- (1) That the FCC experiment with a plan for deregulation of radio broadcasting;
- (2) That the FCC's procedures for the renewal of TV licenses be altered so as to lengthen the license term, eliminate Federal prescription of program content and give the responsible broadcaster some reasonable assurance that his license will be renewed when faced with a challenge; and
- (3) That the FCC's current procedures for enforcing the obligation of fairness on a case-by-case basis (the so-called "Fairness Doctrine") be abandoned and be enforced, instead, through an overall review of performance at license renewal time, and through creation of a statutory right to purchase advertising time on a nondiscriminatory basis.

I made these proposals because I have become convinced that some fundamental initiatives are necessary to prevent the accelerating drift towards treatment of broadcasting as an arm of the Government, rather than a segment of the free and privately run communications media. I made it clear in the speech that the Administration has no present plans for legislation to implement the last two proposals--none is needed for the first--but indicated that I would press for such legislation if the reaction was favorable. In general, it has been. I propose, therefore, to develop and refine these proposals in the future.

Since any significant initiative with respect to broadcasting regulation has immediate political ramifications, I think it is important that you understand what I am proposing and appreciate its relationship to our political strategy, especially in light of a recent court decision which, in effect, would entitle Democratic Party spokesmen air time to respond to broadcast appearances of the President and his spokesmen.

*Ever  
testimony*



- 2 -

Accordingly, I am attaching as Tab A a description of the devices presently used to achieve balance in political broadcasts. Tab B describes the effect of OTP's Fairness Doctrine proposals upon Republican political broadcasting. Tab C is a detailed description of the past use and net utility of the Fairness Doctrine in promoting Republican interests. Tab D contains several suggestions on the use of the OTP proposals during the coming year.

Clay T. Whitehead

CURRENT FAIRNESS PROVISIONS  
APPLICABLE TO POLITICAL PRESENTATIONS

Access to the broadcast media for political presentations is governed by four major regulatory provisions:

- (1) Section 315 of the Communications Act--The so-called "equal time" provision, which applies only to broadcast appearances of candidates themselves during election campaigns, requires all opposing candidates to be afforded equal time for personal appearances. There is no obligation to give free time if the first candidate paid for his time.
- (2) Editorial endorsement rule--Under FCC rules, when a station editorially endorses (or opposes) a candidate, the opponent of the endorsed candidate (or the opposed candidate) is entitled to respond, personally or through spokesmen.
- (3) The "Zapple" or "quasi-equal opportunities" doctrine--This doctrine, developed in FCC rulings, extends the provisions of Section 315 to persons other than the candidates themselves. It provides "equal time" during campaigns for appearances of supporters and spokesmen of opposing candidates. (As with Section 315, there is no obligation to give free time to the opposing spokesmen if the first spokesman paid for his time.)
- (4) The Fairness Doctrine--The FCC's general, uncodified Fairness Doctrine applies to all broadcasts dealing with controversial issues--including political broadcasts which are not covered by the above three provisions. Positions taken by the President and party spokesmen must be "balanced" by appearances of spokesmen for contrasting viewpoints, often opposing party spokesmen. Paid time must be balanced in paid or free time. That is, if a Republican spokesman makes a paid appearance, a Democratic spokesman can request free time to respond.



EFFECT ON REPUBLICAN INTERESTS

Abandonment of the Fairness Doctrine would not eliminate the general obligation of broadcasters to cover public issues in a fair and balanced manner. OTP suggested that this obligation no longer be enforced in a case-by-case, issue-by-issue manner, but rather that the licensee's efforts to be fair and balanced be judged at renewal time on the "totality" of his service during the preceding license period. OTP also suggested that the present power of individuals to demand time for response on a case-by-case basis be replaced with a general right to purchase advertising time on a nondiscriminatory basis.

OTP proposed this new policy because enforcement of broadcasters' "fairness" obligation has gotten completely out of hand in recent years. Essentially, the FCC itself has lost control of the enforcement procedures, which are now dictated by the D.C. Court of Appeals in response to appeals taken by activist political and social groups. This process is well on the way to destroying the basic premise of our free broadcasting system--which is to place primary responsibility and broad discretion in the hands of the individual broadcaster.\*/ It has already led to rulings by the Court of Appeals which require broadcasters to provide free time to groups opposing the sale of advertised products, and free time to Democrats wishing to respond to nonpartisan appearances of the President and his spokesmen. By eliminating case-by-case enforcement of the fairness obligation, the OTP proposals will deter further erosion of broadcaster discretion, and diminish day-to-day government involvement in the content of the broadcast programs.

The OTP proposals are not only sound public policy, but they benefit conservative philosophy in general and Republican interests in particular. The Fairness Doctrine has been used

\*/ Based as it is upon principles of individual freedom and dispersion of government power, this premise has had the continuing support of the Republican Party. For example, the National Committee opposed Senate Joint Resolution 209, introduced by Senator Fullbright, (which would have required all broadcast stations to provide a "reasonable amount of public service time" four times yearly to Senators and Representatives) on the ground that it would destroy the "free press" discretion of broadcast licensees. Senator Dole also stated that the Resolution "would be a step toward removing the discretion and trust the American system has placed in free, commercial broadcasting."



most successfully by the new left. It inevitably favors those with extreme and populist views. Without the Fairness Doctrine, the traditional main-stream view on a particular issue would still receive substantial coverage in the sum total of TV programs; but the far-out position might not. The Fairness Doctrine assures that extreme views receive not merely equitable coverage but in fact much more attention on the airwaves than they are given in the society at large. It is therefore beneficial to conservatives and moderates to impose upon the broadcaster only the requirement that he demonstrate good faith efforts to present contrasting viewpoints on an overall basis.

The OTP proposals will particularly benefit Republican interests in the following ways:

(1) The courts and the FCC have recently held that broadcasters must, under the Fairness Doctrine, provide free time for refutation of controversial positions presented in paid advertising. These positions are generally put forward in "institutional" ads which make such points as the need for more oil, the care which companies exercise in guarding against pollution, the need for new highways, or even the desirability of the automobile. As matters now stand, all such ads give environmental groups the right to demand free time for reply. Furthermore, the courts have held that ordinary product advertising can raise controversial issues indirectly (e.g., ad for high octane gasoline raises pollution issue), which also calls for free response time from groups with contrasting views.

Under the OTP proposal, advertising time would be entirely insulated from the fairness obligation. In order to give protection for the "otherside" of such issues, advertising time would have to be sold to all who desire it. This requirement, however, has already been effectively imposed by a recent court decision, and will in any event not be as useful to liberal activist groups as the existing enforcement mechanism requiring a free rebuttal. In short, the OTP proposal will enable the private sector to present its views and its products to the public without simultaneously subsidizing rebuttals from opponents. This will further Republican political positions on most points.

(2) While the OTP proposals alone will not undo the recent court decision that the obligation of fairness requires Democratic response time to addresses by the President and his spokesmen, it will at least avoid enforcement of this obligation on a tit-for-tat, case-by-case basis. Such enforcement, which could require time for Democrats each time the President or an Administration official appears, would predictably cause the networks to reduce substantially their coverage of the Administration. Under the OTP proposal, on the other hand, it will suffice if the broadcaster affords opposition spokesmen, on an overall basis, as much time as Republicans--including Republicans speaking in their



leeway and room for broadcaster discretion would minimize the adverse effect of the new decision.

(3) The OTP proposals for changes in broadcast regulation have received widespread support from virtually all segments of the broadcasting industry, including the networks. They have earned substantial amounts of good will for the Administration at a time when we were beginning to feel industry backlash because of "anti-broadcast" actions taken by a Republican FCC. The Administration and the RNC can capitalize on this good will, and can use its continued support of these proposals, to encourage both more contributions and more objective news coverage from broadcasters.

(4) As unfortunate as recent court decisions in the field have been, they may get even worse unless the vehicle which brings them forth--the present case-by-case method of enforcing fairness--is eliminated. It is obvious that court decisions in this field are consistently contrary to Republican interests, and it is therefore desirable to remove as much of the power as possible from the courts and return it to the discretion of the private broadcast licensees, operating under the generalized supervision of the Commission. The OTP proposal achieves this.

The foregoing benefits can be achieved without the loss of any genuinely effective weapon. First, it is almost impossible to use the Fairness Doctrine to compel any network coverage of the Administration point of view. In order to do so, we would have to prove that the Administration was denied a reasonable opportunity to present its position on a particular issue; but network news almost always furnishes this required minimum. Second, for all its weaknesses in methodology, Edith Efron's "News Twisters" book gives clear indication that network coverage does its greatest damage to our interests in the "commentary" remarks of network reporters, and not in the statements of persons covered in the news. This subtle and not-so-subtle news slanting is not reachable under the Fairness Doctrine. The FCC will take action only when there is extrinsic evidence of gross misconduct--i.e., evidence other than the mere content of the program itself. Such evidence (e.g., proof that a news event was "staged") almost never exists.



PRIOR POLITICAL USE OF THE FAIRNESS DOCTRINE

Prior to the 1964 campaign, the FCC rejected the Republican National Committee's request that Senator Goldwater be given "equal time" to respond to a Presidential radio-TV address. It acknowledged, in principle, that the Fairness Doctrine applied to the address, but said that Senator Goldwater's "contrasting" views had been covered adequately in network news and interview shows. In August 1970, the Democratic National Committee and Senators Hughes, McGovern, Hatfield, Goodell, Cranston, Bayh, Church, Eagleton, Gravel, Harris, Hart, Kennedy, Metcalf and Nelson, made good on the principle established by RNC and obtained free network time to "respond" to five Presidential addresses dealing with Vietnam. In order to restore the "balance" of coverage on the Vietnam issue, the FCC dictated the format of the response and required the networks to give uninterrupted blocks of time to DNC, since the President had stated his views in uninterrupted segments.

In the same series of cases, DNC also obtained a declaratory ruling in which the FCC departed from its previous position that station time need not be sold to particular groups. The FCC held that the "public interest" required licensees to sell time to political parties so that they could solicit contributions. Subsequent court decisions have broadened this "right" to include purchases of time for reasons other than fund solicitations.

While the Democrats eventually achieved all of their objectives in the August 1970 cases, we fared very poorly and ultimately lost what it first appeared we had gained. The FCC rejected the complaint against NBC of Senators Dole, Goldwater, Hansen, Gurney, Fannin, Curtis, Griffin, Smith, Allott, Domnick, and Thurmond. The Senators had requested free time to respond to a 30-minute sponsored program which featured Senators in favor of the "Amendment to End the War." The Commission held that NBC's refusal was reasonable because the network had provided adequate time to the Administration viewpoint on the war.

RNC seemed to do better than the 11 Republican Senators when it got the FCC to require CBS to provide time for response to Larry O'Brien's July 7, 1970, program on behalf of DNC. CBS had given DNC this time as part of its "Loyal Opposition" series, so that the Democrats could respond to the President's Vietnam speeches; the network had placed no restrictions on DNC's use of the time, and O'Brien used it to make a partisan attack on the President and the Republican Party in general. In response to the protests of RNC, the FCC established a principle which would have expanded the "Zapple" doctrine and required "equal" time for one party to respond to another party which had been given "response" time with no specification of the issues to be covered. On November 15, 1971, the D.C. Court of Appeals struck down this FCC expansion of the "Zapple" doctrine because it gives the President's party double exposure on the issues. In the future, Democrats



will be able to obtain free time, to respond to Presidential speeches and press conferences, as well as similar appearances by Administration spokesmen. The Court also implied that the networks could not limit in any manner the issues to be covered in this "response" time by the opposition spokesmen.

This latest court decision will also make virtually worthless the small Fairness Doctrine gain RNC achieved in a series of "political broadcast" cases which the FCC decided last August. In this series of cases, the FCC refused DNC's request for network time to respond to three Presidential appearances under the "Zapple" doctrine. It declined to extend that doctrine to Presidential appearances and presentations of other public officials. It also held that the Fairness Doctrine had been satisfied, since the networks had adequately covered views contrasting with those of the President. The August 1970 grant of time to DNC was distinguished on the ground that there the President's appearances dealt only with the Vietnam war, while the 1971 appearances ranged over a variety of issues. DNC has appealed this ruling and the court case has not yet been decided. However, if the D.C. Court of Appeals decision in the RNC case is followed, reversal of these favorable FCC rulings is certain.

To sum up: At the national level, the Republican Party has not benefited from application of the Fairness Doctrine, and has suffered from its application on several occasions. There is no doubt that the Fairness Doctrine is generally detrimental to the part in power and to the party with the money.

POLITICAL USE OF NEW PROPOSALS

(1) The most effective deterrent to slanted news coverage has proven to be public criticism. Criticism by political officials in power is blunted, and perhaps rendered counter-productive, by allegations that it is an attempt to intimidate the government-regulated media. These allegations can be shown to be groundless if the Administration itself--while asserting its right to criticize news bias--actively urges less government regulation and control, especially over program content. The attacks of the Vice President and Bob Dole can be more direct and effective than ever, and other Administration officials might even get away with softer criticism on specific issues.

(2) The broadcaster good will arising from Administration support of these proposals will hopefully, in and of itself, get us more favorable treatment in the '72 campaign, as well as more money.

(3) We can make clear that the price of greater broadcaster freedom is greater broadcaster responsibility. In exchange for active Administration efforts to implement the OTP proposals, we might get local stations to exercise more supervision and control over the balance and fairness of their public affairs coverage--and in particular the network shows they carry. We might urge the network affiliates to establish a "Committee on Network News Balance." This would put both heat and the public eye on the network news organizations in a way that pressure on the network corporate headquarters never can. At best it might lead to some local control over what the networks offer. At the very least, it would destroy the solid front which the industry now presents against any and all criticism of broadcast journalism.

(4) We might use the same argument--that greater freedom requires greater responsibility--with the networks themselves. Network management has increasingly treated their news and public affairs staff as a privileged class, subject to virtually no owner control. This unaccountability is the source of many of our difficulties. We can make it clear to the networks that if they want Administration support for the OTP proposals, they must assume corporate responsibilities for the fairness of their news departments.

(5) We can use support of the proposals to exact concessions from broadcasters in other areas--for example, to obtain their support for the Administration position on long-range cable TV development.

(6) The proposals are not likely to be enacted into law before the next election. Until they are, we should encourage Fairness Doctrine complaints--to embarrass the networks when their news coverage is biased, to keep Democratic spokesmen "honest," and to demonstrate the unworkability of the present system.



OFFICE OF TELECOMMUNICATIONS POLICY  
EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON, D.C. 20504

January 31, 1972

DIRECTOR

MEMORANDUM FOR

Mr. Colson  
Mr. Ehrlichman  
Mr. Flanigan  
Mr. Haldeman

As you know, I am scheduled to appear before the Ervin subcommittee Wednesday, February 2. I have been asked to testify on the First Amendment implications of cable television and public broadcasting.

However, earlier sessions of the hearings have dealt extensively with the Fairness Doctrine and the more general question of access to the broadcast media, and it is probable that there will be questions on these issues. At a minimum, I must discuss the policy considerations surrounding those issues, and there is no graceful way to avoid commenting on my own proposals made last fall. It would be much better to make an affirmative statement of the Administration's position than to waffle. Our image of evasiveness in these highly visible hearings has already given credence to charges of underhanded media intimidation.

I propose, therefore, if there is no objection, to reply to questions with a statement of the Administration's position as shown at Tab A. This is a fairly general and low-key, but positive, position that does ~~not~~ commit us to any specific legislative or regulatory action. It does give us a basis for opposing CPB's involvement in public affairs and for opposing the FTC "counter-advertising" proposals which are derived from the Fairness Doctrine.

After much public and private discussion and reaction, I am more convinced than ever that the more detailed OTP proposals in this area are not only good policy, consistent with our philosophy, but also are good positions politically. We should not press them actively this year, but I do believe we should continue to affirm them in broad form. Properly used, they can insulate the Administration from a lot of

criticism, encourage local broadcaster assistance on the network news problem, and provide a "high-road" cover for our efforts to focus more attention on press objectivity. Because these matters are so important, I think you should understand better what we have proposed and its relationship to our political strategy. I therefore attach at Tab B a series of short memoranda on the proposals, their background, and their political use.

I would appreciate a reaction to Tab A by Tuesday and to Tab B when you have had a chance to review it.



Clay T. Whitehead

Attachments

cc: Mr. MacGregor



SUBSTANCE OF PROPOSED POSITION

Fairness Doctrine

The broadcaster obviously has an obligation of fairness in the presentation of controversial issues. The problem is how Government, with its licensing responsibility, should enforce this obligation of fairness without excessive intervention in the private enterprise system of broadcasting and without damage to the open exchange of ideas so central to our concept of democracy and freedom.

The Administration believes that the current enforcement procedures embodied in the so-called "Fairness Doctrine" in the early 1960's, have proven unworkable and excessively vague and confusing. Although the FCC's rules may have been sound enough in principle, their function has been distorted by the courts, which have repeatedly used the Fairness Doctrine to accommodate the demands of individuals and groups for access to the broadcasting media--a purpose for which it was never intended or designed.

*is a rather important political difference*

Since the obligation of fairness arises from the license process, it should be enforced in that context. We should move towards a return to the FCC's pre-1960 procedures, whereby the Commission would inquire at the end of a licensee's term whether he has, on an overall basis, been fair and responsible; during the license term, ~~only flagrant~~ *serious* abuses would justify intervention by the Government to require that a particular position be presented. It is our hope that the FCC's own inquiry into the Fairness Doctrine problems will cause such necessary changes to be made by the Commission itself.

*principally*

*& weigh that determination heavily in its license renewal decision.*

Access

Our private enterprise broadcasting system, with its dual emphasis on license freedom and licensee responsibility, has as its foundation the licensee's discretion in programming. However, now that television has become so pervasive and important in the commercial and political life of our country, there is growing pressure for a mechanism whereby individuals or groups who do not own a station can be assured the ability to express their point of view. The Administration recognizes the

*concern over this point.*

[desirability of such a mechanism.] We believe, however, that this should be based on the right of individuals or groups to buy time on a non-discriminatory basis, rather than on the judicially-derived extensions of the Fairness Doctrine that are now being used to impose special interest messages on the viewing public without requiring those who use the time to pay for it.]

*We believe, however, that the Fairness Doctrine is both inappropriate & inadequate, & that alternative access mechanisms should be explored.*



TAB B

CURRENT FAIRNESS PROVISIONS  
APPLICABLE TO POLITICAL PRESENTATIONS

Access to the broadcast media for political presentations is governed by four major regulatory provisions:

(1) Section 315 of the Communications Act--The so-called "equal time" provision, which applies only to broadcast appearances of candidates themselves during election campaigns, requires all opposing candidates to be afforded equal time for personal appearances. There is no obligation to give free time if the first candidate paid for his time.

(2) Editorial endorsement rule--Under FCC rules, when a station editorially endorses (or opposes) a candidate, the opponent of the endorsed candidate (or the opposed candidate) is entitled to respond, personally or through spokesmen.

(3) The "Zapple" or "quasi-equal opportunities" doctrine--This doctrine, developed in FCC rulings, extends the provisions of Section 315 to persons other than the candidates themselves. It provides "equal time" during campaigns for appearances of supporters and spokesmen of opposing candidates. (As with Section 315, there is no obligation to give free time to the opposing spokesmen if the first spokesman paid for his time.)

(4) The Fairness Doctrine--The FCC's general, uncodified Fairness Doctrine applies to all broadcasts dealing with controversial issues--including political broadcasts which are not covered by the above three provisions. Positions taken by the President and party spokesmen must be "balanced" by appearances of spokesmen for contrasting viewpoints, often opposing party spokesmen. Paid time must be balanced in paid or free time. That is, if a Republican Spokesman makes a paid appearance, a Democratic spokesman can request free time to respond.

*News?*

## PRIOR POLITICAL USE OF THE FAIRNESS DOCTRINE

Prior to the 1964 campaign, the FCC rejected the Republican National Committee's request that Senator Goldwater be given "equal time" to respond to a Presidential radio-TV address. It acknowledged, in principle, that the Fairness Doctrine applied to the address, but said that Senator Goldwater's "contrasting" views had been covered adequately in network news and interview shows. In August 1970, the Democratic National Committee and Senators Hughes, McGovern, Hatfield, Goodell, Cranston, Bayh, Church, Eagleton, Gravel, Harris, Hart, Kennedy, Metcalf and Nelson, made good on the principle established by RNC and obtained free network time to "respond" to five Presidential addresses dealing with Vietnam. In order to restore the "balance" of coverage on the Vietnam issue, the FCC dictated the format of the response and required the networks to give uninterrupted blocks of time to DNC, since the President had stated his views in uninterrupted segments.

In the same series of cases, DNC also obtained a declaratory ruling in which the FCC departed from its previous position that station time need not be sold to particular groups. The FCC held that the "public interest" required licensees to sell time to political parties so that they could solicit contributions. Subsequent court decisions have broadened this "right" to include purchases of time for reasons other than fund solicitations.

While the Democrats eventually achieved all of their objectives in the August 1970 cases, we fared very poorly and ultimately lost what it first appeared we had gained. The FCC rejected the complaint against NBC of Senators Dole, Goldwater, Hansen, Gurney, Fannin, Curtis, Griffin, Smith, Allott, Dominick, and Thurmond. The Senators had requested free time to respond to a 30-minute sponsored program which featured Senators in favor of the "Amendment to End the War." The Commission held that NBC's refusal was reasonable because the network had provided adequate time to the Administration viewpoint on the war.

RNC seemed to do better than the 11 Republican Senators when it got the FCC to require CBS to provide time for response to Larry O'Brien's July 7, 1970, program on behalf of DNC. CBS had given DNC this time as part of its "Loyal Opposition" series, so that the Democrats could respond to the President's Vietnam speeches; the network had placed no restrictions on DNC's use of the time, and O'Brien used it to make a partisan attack on the President and the Republican Party in general. In response to the protests of RNC, the FCC established a principle which would have expanded the "Zapple" doctrine and required "equal" time for one party to respond to another party which had been given "response" time with no specification of the issues to be covered. On November 15, 1971, the D.C. Court of Appeals struck down this FCC expansion of the "Zapple" doctrine because it gives the President's



party double exposure on the issues. In the future, Democrats will be able to obtain free time, to respond to Presidential speeches and press conferences, as well as similar appearances by Administration spokesmen. The court also implied that the networks could not limit in any manner the issues to be covered in this "response" time by the opposition spokesmen.

This latest court decision will also make virtually worthless the small Fairness Doctrine gain RNC achieved in a series of "political broadcast" cases which the FCC decided last August. In this series of cases, the FCC refused DNC's request for network time to respond to three Presidential appearances under the "Zapple" doctrine. It declined to extend that doctrine to Presidential appearances and presentations of other public officials. It also held that the Fairness Doctrine had been satisfied, since the networks had adequately covered views contrasting with those of the President. The August 1970 grant of time to DNC was distinguished on the ground that there the President's appearances dealt only with the Vietnam war, while the 1971 appearances ranged over a variety of issues. DNC has appealed this ruling and the court case has not yet been decided. However, if the D.C. Court of Appeals decision in the RNC case is followed, reversal of these favorable FCC rulings is certain.

To sum up: At the national level, the Republican Party has not benefited from application of the Fairness Doctrine, and has suffered from its application on several occasions. The small benefit derived from the FCC's compromise approach in August of 1970, trading off the "Loyal Opposition" series for response time to the President's five Vietnam broadcast statements, has been wiped out by subsequent court decisions. There is no doubt that the Fairness Doctrine is generally detrimental to the party in power and to the party with the money.

## POLITICAL USE OF NEW PROPOSALS

(1) The most effective deterrent to slanted news coverage has proven to be public awareness and criticism. Criticism by political officials in power is blunted, and perhaps rendered counter-productive, by allegations that it is an attempt to intimidate the government-regulated media. These allegations can be shown to be groundless if the Administration itself--while asserting its right to criticize news bias--actively urges less government regulation and control, especially over program content. The attacks of the Vice President and Bob Dole can be more direct and effective than ever, and other Administration officials might even get away with softer criticism on specific issues. We are on the side of private enterprise, free and robust press, and responsible journalism--not a bad posture.

(2) Broadcaster good will arising from Administration support of these proposals will hopefully, in and of itself, get us more favorable treatment in the '72 campaign, as well as more money.

(3) We can make clear that the price of greater broadcaster freedom is greater broadcaster responsibility. In exchange for active Administration efforts to implement the OTP proposals, we should get local stations to exercise more supervision and control over the balance of their public affairs coverage. We might urge the network affiliates to establish a "Committee on Network News Balance." This would put both heat and the public eye on the network news organizations in a way that pressure on the network corporate headquarters never can. At best it might lead to some local control over what the networks offer. At the very least, it would destroy the solid front which the industry now presents against any and all criticism of broadcast journalism. But we must realize that the broadcasters need evidence of Administration support for their problems if they are going to help us.

(4) We might use the same argument--that greater freedom requires greater responsibility--with the networks themselves. Network management has increasingly treated their news and public affairs staff as a privileged class, subject to virtually no owner control. This lack of accountability is the source of many of our difficulties. We can make it clear to the networks that if they want Administration support for the OTP proposals, they must assume corporate responsibility for the fairness of their news departments.

(5) We can use our support of the proposals to get broadcaster support in other areas--for example, the Administration position on long-range cable TV development.

(6) The changes OTP proposes cannot be enacted into law this year. Until they are, we should encourage private Fairness Doctrine complaints--to embarrass the networks when their news coverage is biased, to keep Democratic spokesmen "honest," and to demonstrate the unworkability of the present system.



## EFFECT ON REPUBLICAN INTERESTS

OTP proposed its new policies because enforcement of broadcasters' "fairness" obligation has gotten completely out of hand in recent years. Essentially, the FCC itself has lost control of the enforcement procedures, which are now dictated by the D.C. Court of Appeals in response to appeals taken by activist political and social groups. This process is well on the way to destroying the basic premise of our free broadcasting system--which is establishment of primary responsibility and broad discretion in the hands of the individual broadcaster.\*/ It has already led to rulings by the Court of Appeals which require broadcasters to provide free time to groups opposing the sale of advertised products, and free time to Democrats wishing to respond to nonpartisan appearances of the President and his spokesmen. By eliminating case-by-case enforcement of the fairness obligation, the OTP proposals will deter further erosion of broadcaster discretion, and diminish day-to-day government involvement in the content of the broadcast programs (which inevitably works with a liberal bent).

The OTP proposals are not only sound public policy, but they benefit our political philosophy and Republican interests. The Fairness Doctrine has been used most successfully by the New Left and related groups. It inevitably favors those with extreme and populist views. Without the Fairness Doctrine, the traditional main-stream view on a particular issue would still receive substantial coverage in the sum total of TV programs; but the far-out position might not. The Fairness Doctrine assures that extreme views receive not merely equitable coverage, but in fact much more attention on the airwaves than they are given in the society at large. It is therefore beneficial to conservatives and moderates to impose upon the broadcaster only the requirement that he demonstrate good faith efforts to present contrasting viewpoints on an overall basis.

The OTP proposals will particularly benefit Republican interests in the following ways:

(1) The courts and the FCC have recently held that broadcasters must, under the Fairness Doctrine, provide free time

\*/ Based as it is upon principles of individual freedom and dispersion of government power, this premise has had the continuing support of the Republican Party. For example, the National Committee opposed Senate Joint Resolution 209, introduced by Senator Fulbright, (which would have required all broadcast stations to provide a "reasonable amount of public service time" four times yearly to Senators and Representatives) on the ground that it would destroy the "free press" discretion of broadcast licensees. Senator Dole also stated that the Resolution "would be a step toward removing the discretion and trust the American system has placed in free, commercial broadcasting."



for refutation of controversial positions presented in paid advertising. These positions are generally put forward in "institutional" ads which make such points as the need for more oil, the care which companies exercise in guarding against pollution, the need for new highways, or even the desirability of the automobile. As matters now stand, all such ads give environmental groups the right to demand free time for reply. Furthermore, the courts have held that ordinary product advertising can raise controversial issues indirectly (e.g., ad for high octane gasoline raises pollution issue), which also calls for free response time from groups with contrasting views. The recent FTC proposals to the FCC for "counter-advertising" show what can happen when this approach to "fairness" is accepted.

Under the OTP proposal, advertising time would be entirely insulated from the fairness obligation. In order to give protection for the "other side" of such issues, advertising time would have to be sold to all who desire it. This requirement, however, has already been effectively imposed by a recent court decision, and will in any event not be as useful to activist groups as the existing enforcement mechanism requiring a free rebuttal. In short, the OTP proposal will enable the private sector to present its views and its products to the public without simultaneously subsidizing rebuttals from opponents. This will further Republican political positions on most points.

(2) While the OTP proposals alone will not undo the recent court decision that the obligation of fairness requires Democratic response time to addresses by the President and his spokesmen, it will at least avoid enforcement of this obligation on a tit-for-tat, case-by-case basis. Such enforcement, which could require time for Democrats each time the President or an Administration official appears, would predictably cause the networks to reduce substantially their coverage of the Administration. Under the OTP proposal, on the other hand, it will suffice if the broadcaster affords opposition spokesmen, on an overall basis, as much time as Republicans--including Republicans speaking in their official capacity as members of the Administration. The greater leeway and room for broadcaster discretion would minimize the adverse effect of the new court decision.

(3) The OTP proposals for changes in broadcast regulation have received widespread support from virtually all segments of the broadcasting industry, including the networks. They have earned substantial amounts of good will for the Administration at a time when we were beginning to feel industry backlash because of "anti-broadcast" actions taken by a Republican



FCC. The Administration and the RNC can capitalize on this good will, and can use their continued support of these proposals, to encourage both more contributions and more objective news coverage from broadcasters.

(4) As unfortunate as recent court decisions in the field have been, they may get even worse unless the vehicle which brings them forth--the present case-by-case method of enforcing fairness--is eliminated. It is obvious that court decisions in this field are consistently contrary to Republican interests, and it is therefore desirable to remove as much of the power as possible from the courts and return it to the discretion of the private broadcast licensees. It is unlikely that the courts will allow this short of legislation. The OTP proposal achieves this.

The foregoing benefits can be achieved without the loss of any genuinely effective weapon. First, it is almost impossible for us to use the Fairness Doctrine to compel any network coverage of the Administration point of view. In order to do so, we would have to prove that the Administration was denied a reasonable opportunity to present its position on a particular issue; but network news almost always furnishes this required minimum. Second, for all its weaknesses in methodology, Edith Efron's "News Twisters" book gives clear indication that network coverage does its greatest damage to our interests in the "commentary" remarks of network reporters, and not in the statements of persons covered in the news. This subtle and not-so-subtle news slanting is not reachable under the Fairness Doctrine. The FCC will take action only when there is extrinsic evidence of gross misconduct--i.e., evidence other than the mere content of the program itself. Such evidence (e.g., proof that a news event was "staged") almost never exists.

1. "The Fairness Doctrine is necessary to protect the President's rights to use TV."

No President has, on any occasion, ever made use of the Fairness Doctrine to obtain television time, in the sense of winning a formal, legal victory before the FCC or the courts. The reason is obvious: it is never possible to make a credible case that the Chief Executive's viewpoint has not been given reasonable exposure.

Since the Fairness Doctrine is not legally useable for this purpose, the threat of its use is similarly ineffective. To the extent that the networks listen to the President's complaints, and request for time, their compliance is obviously attributable to something else. To be sure, the existence of a public obligation to provide "reasonable balance" enables the President to make his demands gracefully, so that they do not appear as mere manifestations of power. But that <sup>convenient public</sup> obligation will continue undiminished under our proposal.

2. "The Fairness Doctrine is our only check against the networks."

It is true that §315 and the Fairness Doctrine are among the few broadcaster obligations enforced directly against the networks. This has been largely a matter of convenience



for the FCC, since case-by-case enforcement is very difficult to do station by station. But if enforcement were performed, generally speaking, on a license-renewal basis, the networks would be affected just as directly as the individual stations-- in fact, perhaps more directly, since a third of their affiliates will be up for ~~removal~~<sup>renewal</sup> every year so that their programming will be constantly under the gun.

Contrary to what Mr. Colson suggests, I thought it was commonly agreed that the only way really to control the networks is to do it through the affiliates. Nothing would enhance that ability more than our proposal.

5<sup>prop</sup> in 6 wha  
3+2

polit.

DNC - Econ program cool  
Tomorrow

OFFICE OF TELECOMMUNICATIONS POLICY  
WASHINGTON

- legal enforcement vs. obligation or lever
- ~~Not~~ useful to Admin or RNC legally
- attack at LR time much more serious threat to affils (Ys)  
to O&O (at least one each year)

→ ~~Offer~~ Offer of OTP proposal big lever w/BC  
Dems do use it effectively against us  
High road/low road strategy  
much more effective  
than public attacks of Repub's  
working through "their" FCC.

to

Ted Pierson

DB → { Bias/cover 3 News distortions  
Column likes call Stanton



We have no quarrel with the access statement. Statement of Fairness Doctrine as administrative policy would be very bad catastrophe. We see nothing wrong with the Fairness Doctrine statement on merits become patchwork quilt. An essential point is that this has succeeded in protecting the President's rights to use TV

This is about the only check we have on the networks. If we do not have this club to wield, God help us.

The Fairness Doctrine has been the basis on which insists on balance of network presentation. The problem is not with individual statement but with networks which have such enormous power. Statement will have very great impact on FCC.

Availing ourselves of protection of Fairness Doctrine which the Democratic networks would like to get rid of..... later privately announcing opposition to it. Statement limits the life expectancy from that point forward by dependence on networks.

OFFICE OF TELECOMMUNICATIONS POLICY  
WASHINGTON

AG  
PMF  
CC  
HRH

merits right  
protects IT rights ←  
only check  
club to wield  
If Rep out of power, God help us.  
lover to ~~my~~ get balance.  
but for it, Demo programme.  
one check we have.  
import of stunt on FCC.



OFFICE OF TELECOMMUNICATIONS POLICY  
EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON, D.C. 20504

January 31, 1972

DIRECTOR

MEMORANDUM FOR -

Mr. Colson  
Mr. Ehrlichman  
Mr. Flanigan  
Mr. Haldeman

As you know, I am scheduled to appear before the Ervin subcommittee Wednesday, February 2. I have been asked to testify on the First Amendment implications of cable television and public broadcasting.

However, earlier sessions of the hearings have dealt extensively with the Fairness Doctrine and the more general question of access to the broadcast media, and it is probable that there will be questions on these issues. At a minimum, I must discuss the policy considerations surrounding those issues, and there is no graceful way to avoid commenting on my own proposals made last fall. It would be much better to make an affirmative statement of the Administration's position than to waffle. Our image of evasiveness in these highly visible hearings has already given credence to charges of underhanded media intimidation.

I propose, therefore, if there is no objection, to reply to questions with a statement of the Administration's position as shown at Tab A. This is a fairly general and low-key, but positive, position that does not commit us to any specific legislative or regulatory action. It does not give us a basis for opposing CPB's involvement in public affairs and for opposing the FTC "counter-advertising" proposals which are derived from the Fairness Doctrine.

After much public and private discussion and reaction, I am more convinced than ever that the more detailed OTP proposals in this area are not only good policy, consistent with our philosophy, but also are good positions politically. We should not press them actively this year, but I do believe we should continue to affirm them in broad form. Properly used, they can insulate the Administration from a lot of

criticism, encourage local broadcaster assistance on the network news problem, and provide a "high-road" cover for our efforts to focus more attention on press objectivity. Because these matters are so important, I think you should understand better what we have proposed and its relationship to our political strategy. I therefore attach at Tab B a series of short memoranda on the proposals, their background, and their political use.

I would appreciate a reaction to Tab A by Tuesday and to Tab B when you have had a chance to review it.



Clay T. Whitehead

Attachments

cc: Mr. MacGregor



## SUBSTANCE OF PROPOSED POSITION

Fairness Doctrine

The broadcaster obviously has an obligation of fairness in the presentation of controversial issues. The problem is how Government, with its licensing responsibility, should enforce this obligation of fairness without excessive intervention in the private enterprise system of broadcasting and without damage to the open exchange of ideas so central to our concept of democracy and freedom.

The Administration believes that the current enforcement procedures embodied in the so-called "Fairness Doctrine" in the early 1960's, have proven unworkable and excessively vague and confusing. Although the FCC's rules may have been sound enough in principle, their function has been distorted by the courts, which have repeatedly used the Fairness Doctrine to accommodate the demands of individuals and groups for access to the broadcasting media--a purpose for which it was never intended or designed.

Since the obligation of fairness arises from the license process, it should be enforced in that context. We should move towards a return to the FCC's pre-1960 procedures, whereby the Commission would inquire at the end of a licensee's term whether he has, on an overall basis, been fair and responsible; during the license term, only flagrant abuses would justify intervention by the Government to require that a particular position be presented. It is our hope that the FCC's own inquiry into the Fairness Doctrine problems will cause such necessary changes to be made by the Commission itself.

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desirability of such a mechanism. We believe, however, that this should be based on the right of individuals or groups to buy time on a non-discriminatory basis, rather than on the judicially-derived extensions of the Fairness Doctrine that are now being used to impose special interest messages on the viewing public without requiring those who use the time to pay for it.



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(1) The courts and the FCC have recently held that broadcasters must, under the Fairness Doctrine, provide free time

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\*/ Based as it is upon principles of individual freedom and dispersion of government power, this premise has had the continuing support of the Republican Party. For example, the National Committee opposed Senate Joint Resolution 209, introduced by Senator Fulbright, (which would have required all broadcast stations to provide a "reasonable amount of public service time" four times yearly to Senators and Representatives) on the ground that it would destroy the "free press" discretion of broadcast licensees. Senator Dole also stated that the Resolution "would be a step toward removing the discretion and trust the American system has placed in free, commercial broadcasting."

for refutation of controversial positions presented in paid advertising. These positions are generally put forward in "institutional" ads which make such points as the need for more oil, the care which companies exercise in guarding against pollution, the need for new highways, or even the desirability of the automobile. As matters now stand, all such ads give environmental groups the right to demand free time for reply. Furthermore, the courts have held that ordinary product advertising can raise controversial issues indirectly (e.g., ad for high octane gasoline raises pollution issue), which also calls for free response time from groups with contrasting views. The recent FTC proposals to the FCC for "counter-advertising" show what can happen when this approach to "fairness" is accepted.

Under the OTP proposal, advertising time would be entirely insulated from the fairness obligation. In order to give protection for the "other side" of such issues, advertising time would have to be sold to all who desire it. This requirement, however, has already been effectively imposed by a recent court decision, and will in any event not be as useful to activist groups as the existing enforcement mechanism requiring a free rebuttal. In short, the OTP proposal will enable the private sector to present its views and its products to the public without simultaneously subsidizing rebuttals from opponents. This will further Republican political positions on most points.

(2) While the OTP proposals alone will not undo the recent court decision that the obligation of fairness requires Democratic response time to addresses by the President and his spokesmen, it will at least avoid enforcement of this obligation on a tit-for-tat, case-by-case basis. Such enforcement, which could require time for Democrats each time the President or an Administration official appears, would predictably cause the networks to reduce substantially their coverage of the Administration. Under the OTP proposal, on the other hand, it will suffice if the broadcaster affords opposition spokesmen, on an overall basis, as much time as Republicans--including Republicans speaking in their official capacity as members of the Administration. The greater leeway and room for broadcaster discretion would minimize the adverse effect of the new court decision.

(3) The OTP proposals for changes in broadcast regulation have received widespread support from virtually all segments of the broadcasting industry, including the networks. They have earned substantial amounts of good will for the Administration at a time when we were beginning to feel industry backlash because of "anti-broadcast" actions taken by a Republican



FCC. The Administration and the RNC can capitalize on this good will, and can use their continued support of these proposals, to encourage both more contributions and more objective news coverage from broadcasters.

(4) As unfortunate as recent court decisions in the field have been, they may get even worse unless the vehicle which brings them forth--the present case-by-case method of enforcing fairness--is eliminated. It is obvious that court decisions in this field are consistently contrary to Republican interests, and it is therefore desirable to remove as much of the power as possible from the courts and return it to the discretion of the private broadcast licensees. It is unlikely that the courts will allow this sort of legislation. The OTP proposal achieves this.

The foregoing benefits can be achieved without the loss of any genuinely effective weapon. First, it is almost impossible for us to use the Fairness Doctrine to compel any network coverage of the Administration point of view. In order to do so, we would have to prove that the Administration was denied a reasonable opportunity to present its position on a particular issue; but network news almost always furnishes this required minimum. Second, for all its weaknesses in methodology, Edith Efron's "News Twisters" book gives clear indication that network coverage does its greatest damage to our interests in the "commentary" remarks of network reporters, and not in the statements of persons covered in the news. This subtle and not-so-subtle news slanting is not reachable under the Fairness Doctrine. The FCC will take action only when there is extrinsic evidence of gross misconduct--i.e., evidence other than the mere content of the program itself. Such evidence (e.g., proof that a news event was "staged") almost never exists.

EYES

July 9, 1971

MEMORANDUM FOR: H. R. HALDEMAN  
FROM: CHARLES COLSON *ur*  
SUBJECT: Public TV

Peter Flanigan, Al Snyder, Tom Whitehead and I met today to discuss our future strategy with respect to public TV. For your information we agreed on four essential points:

1. Funds for the Corporation for Public Broadcasting should be cut significantly on the theory that it need no longer give extensive support to local stations and instructional programming thanks to direct Federal Assistance. Funds to these outlets would be increased to bolster local programming, thereby making stations less dependent on the network product. In addition, new legislation would require the Public Broadcasting Service to sell programs to local stations, which currently receive them free of charge. This would put the screws on PBS to provide programming acceptable to grass-roots stations, which generally are more conservative in outlook. Local stations, therefore, would have a stronger voice as to what comes down the network line. The net result would still be an increase in overall Federal support for public broadcasting. This will be a plus for us on the Hill where there is bi-partisan support for educational TV, and among segments of the public which consider PTV a sacred cow.
2. Remove Macy as head of CPB, and cut funding of NET, the largest of the production centers, to near zero. Flanigan will meet with Cole and Rather of CPB to sell them on this, in exchange for Administration support of the new bill.

*This looks like the same stuff over & over. Is this what P. approved at your mtg?*



the Public Broadcasting Service. Macy hired the President of PBS, Hartford Gunn. Gunn and his General Manager, who is Friendly's protégé from The Ford Foundation, should be replaced with professionals who reflect our thinking. PBS is the distributor of network programs, and has overall authority as to what goes out to local stations.

4. As funding for NET is cut, money should be directed to another production center that would be created to reflect objectively on subjects relating to the Administration. This would replace NET as a major producer and would create an important alternate source of network programming. The other major production centers in Boston, Los Angeles, San Francisco and Pittsburgh are equally as biased as NET. New PBS management would help remedy this, and a new program source would be a major factor in the overall network product.

# **Nixon Transition**

## **1968-1969**

(CTW had been asked to head of the Humphrey campaign's financial operations, but he refused because he was a Republican. After that he offered himself to do this job to the Nixon campaign. he was working on budget. He, Alan Greenspan, John Deutch, and Jim Woolsey spent all of their days after the campaign and prior to the Inauguration in an attic on Jackson Square doing policy planning.



Ex Con

November 19, 1968

Memo: Budget Analysis Opportunities  
To: Bob Haldeman  
From: Tom Whitehead

There are opportunities for budget analysis that we should take advantage of as soon as possible. A low-level effort now of the right kind would have significant payoffs in a month or two when strategy for the State of the Union and Budget Messages must be decided and when new departmental Secretaries take office.

What should be done now is the preliminary work of:

(1) Pulling together, assessing the quality, and reconciling the scattered government information on programs and budget options.

(2) Analyzing this and other information so that it can be related to the major policy issues likely to be raised by the new Administration.

It is important to realize that this is not systematically done in the Budget Bureau or elsewhere. The "Transition Papers" will be useful primarily as background for the incoming Administration officials--not for defining issues or for analyzing decision options.

I have been doing much of this on my own and have received reports prepared at my suggestion (on a very personal basis) within the Budget Bureau and the Defense Department. The need to be so very discreet, however, puts very real limits on this mode of operation.

Although there are many other pressing problems right now, I suggest that I and perhaps one or two others be authorized official access to the Budget Bureau and the Defense Department specifically to extend this preliminary work. There is enough important information there and nowhere else that I think such a move is justified at this time. Some relevant points are:

(1) It is possible in the next few months to make significant improvements in the kind of information available to the White House staff and the President for major program decisions and overall budget strategy; and to do much of it in time for the State of the Union and Budget Messages.

(2) This can be done on a staff-to-staff basis without making it a formal liaison function and gets useful work started before the Budget Director and departmental Secretaries are selected and start functioning.

(3) It buys time for those key appointments and will help us to help them when they are appointed.

(4) It can be done with or without public announcement, although it seems useful to announce what is going on without naming who is doing it.

(5) It gets substantive work started and involves no post-inaugural commitments on positions. It can be made believably clear that this staff does not speak for the new Administration on policy, but is there only to do preliminary staff work.




(6) It would ease the apprehension in Washington about why Mr. Nixon is taking so long to begin substantive contact and help convey a sense of initiative and competence.

(7) The work can be limited to the Budget Bureau and the Defense Department since the Bureau has good enough information on all agencies except Defense. I know a number of officials and can function well (and quietly) in both places.

(8) These are very busy times in the Executive Branch, so it is important to get the information and get the work done with burdens on the agency people and false starts held to a minimum.

(9) All that appears to be required is certification through the Frank Lincoln-George Murphy channel that I am authorized to undertake this project and what the ground rules are to be. The Budget Bureau is prepared to talk about everything except major policy decisions for the Johnson FY70 budget once they are given the O.K. through that channel.



APPENDIX "B"  
Attendance confirmed  
All present

MEETING WITH THE DOMESTIC COUNCIL COMMITTEE ON PRIVACY  
Cabinet Room, White House  
February 26, 1974

President Nixon  
Vice President Gerald R. Ford  
George P. Shultz, Secretary of the Treasury  
William B. Saxbe, Attorney General  
Frederick B. Dent, Secretary of Commerce  
Peter J. Brennan, Secretary of Labor  
Frank C. Carlucci, Under Secretary of HEW  
Roy L. Ash, Director of the OMB  
Clay T. Whitehead, Director, Office of Telecommunications Policy  
Robert E. Hampton, Chairman, Civil Service Commission  
Thomas C. Reed, Director of Telecommunications, Command and Control  
Systems, Department of Defense

Kenneth R. Cole, Jr., Executive Director of the Domestic Council  
Geoffrey C. Shepard, Associate Director of the Domestic Council  
Henry Goldberg, General Counsel, Office of Telecommunications Policy  
Robert T. Hartmann, Assistant to Vice President Ford  
William Casselman, Legal Counsel to Vice President Ford  
Robert H. Marik, Assistant Secretary of Administration and Management,  
OMB  
Virginia H. Knauer, Special Assistant to the President for Consumer  
Affairs