

public relations men, variously asking them to change their stories and make inquiries for ITT with regard to stories by other reporters, and to use their influence as members of the press to obtain for ITT confidential information from the Department of Justice regarding its intentions. Such repeated remonstrances and requests, and the willingness to contact the reporters at home indicate a zealotry which we believe, at least, an unusual evidencing of extraordinary sensitivity to press treatment. . . . Even far more serious were the several encounters between ITT officials and New York Times Reporter . . . Eileen Shanahan.³⁹

Of the conversation between Shanahan and an ITT official concerning future Times references to Commissioner Johnson's opinions, the minority said:

This single incident, one might note, evidences (1) overbearing behavior generally; (2) an insensitivity to the independence of the press; (3) a contempt for the proper functioning of government; (4) either a willingness to engage in deliberate misrepresentations of fact, or incredible naivete in accepting and spreading unsubstantiated rumor; and (5) an attitude completely accepting the propriety, indeed the inevitability, of news reports reflecting the extraneous economic interests of a reporter's friends or employers. . . . This conduct--in which at least three ITT officials, including a senior vice president, were involved--demonstrates an abrasive self-righteousness in dealing with the press, a shocking insensitivity to its independence and integrity, a willingness to spread false stories in furtherance of self-interest, contempt for Government officials as well as the press, and an assumption that even as prestigious a news medium as The New York Times, would as a matter of course, want to present the news so as to best serve its own economic interests (as well as the economic interests of other large business corporations). Despite this, ITT offered no rebuttal of any of the testimony of Miss Shanahan.⁴⁰

Of the Shanahan, Aug, and Stout testimony, the Commission majority stated:

With the one exception noted and dealt with above, [note deleted] there is no evidence that either ITT or ABC did any more than ask reporters covering the proceeding to be factually accurate in their reporting. It is clear that there was some difference of viewpoint as to what the significant facts were, and this difference persists among the parties, counsel, reporters, and others concerned with the case. There is no impropriety in approaching the press to inform or to attempt to correct supposed inaccuracies.⁴¹

Of this particular aspect of the case, Anthony Sampson, in The Sovereign State of ITT, has written:

. . . just when Geneen thought that the merger was in the bag, the Justice Department complained that the commission had not fully investigated the issues and asked them to conduct a full hearing. A battle raged between the two departments, while the shares of ABC and ITT rushed up and down, according to the expectations. Geneen was exasperated by the delay, and ITT did what it could to swing opinion. With amazing heavy-handedness the public relations chief . . . set about pressuring reporters--just at the time that Geneen was protesting his concern for newsmen's integrity.⁴²

Regarding ITT's ability to discharge its responsibilities as licensee to ABC's seventeen stations, Commissioner Bartley said:

This merger presents the Commission with the very basic and fundamental question of whether licenses should be granted to corporations involved in businesses other than broadcasting. . . .

I do not believe that the mere fact of a "commitment" by Geneen, now president of ITT, to operate the broadcasting enterprise free of commercial influences is sufficient to

negate the probability that such influences would be a real and present danger to a large segment of our broadcast structure. Even though I do not disbelieve the emphatic statements of present intention to which Goldenson, president of ABC, and Geneen have given voice, carrying them out would seem to me to fly in the face of the probabilities of human nature and the needs of commerce. Also, it must be realized the assignment is to a corporation, not to Geneen and Goldenson. Either or both could, at any time, sell their interests and be out of the corporation.⁴³

On the same subject, ITT's responsibility as a potential broadcast licensee and the submergence of ABC into a conglomerate corporation with extensive non-broadcast interests, Commissioner Johnson said:

As a safeguard against subversion of the broadcasting service, ITT has provided that ABC will remain autonomous for at least 3 years and that the ABC news and public affairs staff will remain independent. I might ask what happens after the 3 years. But suppose assurances had been provided that no ITT official could ever intentionally order distortion or alteration of programming to serve ITT's ends. Even such assurances would miss the mark. Subtle pressures on ABC officials to serve ITT interests cannot be eliminated by the most scrupulous adherence to formal independence for ABC and its editorial staff.⁴⁴

The Commission majority did not deal with this issue extensively in its December, 1966 opinion but did so in its subsequent opinion. The majority stated, for the sake of argument, that even if ABC did not operate with the claimed degree of autonomy following approval of the merger that that consideration was insufficient

to raise the spectre of substantial detriment to the public interest. It said:

The top management of ITT is of such character and ability that their participation in ABC's important policy discussions will be a plus, not a minus.⁴⁵

The majority also cited a statement from the ITT Policy Guide, issued November 1, 1966:

The network and broadcasting operations of ABC shall be kept separate from other ITT operations and shall be carried out by its duly appointed officers and employees. . . . The operations of ABC as a broadcast licensee shall be performed unaffected by commercial, communications, or other similar interests of other ITT system companies or groups.⁴⁶

The majority also noted that it was relying upon this statement of policy in consideration of and action upon the proposed merger.

In the September hearings, Louis Stephens, on behalf of the Broadcast Bureau and Common Carrier Bureau of the FCC, argued:

The remaining question of law concerns the adequacy of ITT's provisions for the discharge of its ultimate broadcast licensee responsibility as the sole stockholder of the company which would carry on ABC's station and network broadcasting operations. The question is whether ITT is free under its merger agreement with ABC to comply with the fundamental requirements of the Communications Act, which attaches full licensee responsibility to a parent company which wholly owns the company holding FCC broadcast licenses.⁴⁷

Noting that under the provisions of the merger agreement ABC would be run as a "substantially autonomous unit" and

that members of the ABC Board would remain for at least three years (with added directors from ITT's Board), Stephens queried whether the two companies had inadvertently constricted ITT's freedom to discharge its full licensee responsibility with their effort to persuade the Commission that ABC would continue to function as an independent purveyor of news and opinion.

In his prepared remarks delivered to the Commission on the first day of oral hearing in September, Leonard Goldenson sought to assuage any fears that the submersion of ABC into the larger parent corporation would adversely affect the public interest:

In . . . situations . . . where the owners are in competing businesses, there is some theoretical possibility that the welfare of broadcasting will be subordinate to that of the other business activities. But experience has shown that this has not occurred, and, if contrary to experience, it were to occur, the Commission has adequate regulatory authority to insure that the public interest is protected.⁴⁸

Appearing as counsel for ITT, Marcus Cohn echoed Goldenson's assurances of ABC's continued autonomy.⁴⁹

Harold Gencen referred to the autonomy issue in his prepared remarks delivered on the first day of oral hearing:

The proposed method of operation of ABC as a substantially autonomous subsidiary, with the present ABC management and its distinguished board of directors, is harmonious with the present ITT management system and can be carried out in the manner contemplated in the application in full accord with ITT's responsibilities to the public and to the FCC. . . . ABC will be far more important

to ITT than any of its other subsidiaries or divisions; and consequently, there would be no conceivable reason for taking any action which might jeopardize the interests of ABC or adversely affect its reputation and acceptance by the public, or taking any action which might affect its standing as a broadcast licensee.⁵⁰

In an extensive question and answer session between Commissioner Johnson and Leonard Goldenson this subject was probed further. Goldenson stated that ABC might as well get out of the broadcasting business if ITT ever threatened the independent news judgment of ABC with overt management or control of its broadcasts.⁵¹ Johnson replied that he could not agree with Goldenson's argument that on the one hand ABC would be autonomous and on the other hand ITT would take complete responsibility for ABC as a licensee and guarantee that it live up to its public interest responsibilities.⁵² When challenged to cite one example of a position taken by a network that was in opposition to the economic interests of the enterprise owning the network Goldenson conceded that he could think of no such example.⁵³

In his supplemental remarks delivered to the Commission on the second day of oral hearing, Gencen again addressed the issue of autonomy at Johnson's urging and offered the following definition of that term:

Autonomy is a delegation of authority, generally within an agreed sphere of operating policy, and it works on a basis of continuous information and review, which means it is consistently updated as to the policies. [It] . . . is a controlled operation but within a

framework which makes sense . . . in day-to-day operations, operating decisions, short- and long-range planning, agreement on overall policies, the need and duty to be informed both ways. Within that concept I think it is perfectly sound to say that the ITT board as the licensee has the ultimate responsibility to the Commission, and I think it is also sound to say that that Board will delegate an autonomy to ABC to operate its business practically speaking in the manner it has always operated it.⁵⁴

Johnson noted that he had reservations about Geneen's unqualified assurances and stated that he could reach convergence with ITT on this point if Geneen would admit that there was at least a possibility of subtle psychological pressures being exerted on ABC, that potential dangers were indeed within the realm of possibility. Geneen reiterated that the merger agreement drawn up by ABC and ITT sought to minimize such potential dangers to the extent that, in Geneen's opinion, they were negligible, if not totally absent.⁵⁵

During the course of the April hearing there was a prolonged and tense exchange between Stanley Luke, an ITT vice president, and Thomas Fitzpatrick, of the Broadcast Bureau. Luke identified himself as the person responsible for negotiating preliminary and formal contracts between ITT and potential merging companies.⁵⁶ Fitzpatrick asked the witness if he had considered the management aspects of the proposed merger and whether ABC would retain an independent board of directors.

Luke replied that that clause was written into the agreement at Geneen's suggestion and not as a result of an independent determination stemming from his own investigation.

. . . there was an understanding between Mr. Geneen and the ABC people that they would have autonomy. My responsibility was to try to find a formula for giving them autonomy. I negotiated that with the ABC people on how we could give autonomy to the various, to the ABC people, keeping in mind as well the FCC problem, keeping in mind that ITT was putting in about \$400 million in ABC and understanding that our shareholders had a concern for this and keeping in mind that the ultimate authority had to be with ITT because the licenses are in ITT [sic].⁵⁷

Noting that "it was a terrific amount of work to come up with this autonomy concept," Luke added that a stipulation was also added that before ITT would take any action with respect to ABC it would be a matter between the Board of ABC and the Board of ITT.⁵⁸

In its December opinion the Commission majority stated its confidence in ITT assurances that ABC would operate as a substantially autonomous subsidiary.⁵⁹ In its June opinion the same majority said:

The evidence supports the conclusion that the ITT organization generally operates with centralized controls, particularly in financial matters, over the ITT subsidiaries. An oversimplified description is that ITT subsidiaries operate through their own officials, or line personnel, but are subject to coordination or supervision by ITT staff officials who intervene between them and the top ITT executives.⁶⁰

In his second appearance at the merger proceedings, Goldenson testified that ABC would remain autonomous after its merger with ITT. Under cross-examination he referred to an expenditure of \$130 or more million for programming contemplated by ABC. He said that he thought ABC would be able to make a decision regarding that expenditure on its own.⁶¹ Challenging that belief, the examining attorney called Goldenson's attention to Geneen's testimony which indicated that "matters of major importance will be submitted to the ITT Board of Directors for approval before becoming effective."⁶² Geneen had made that statement in September. Responding to Geneen's statement Goldenson said:

I have reviewed with Mr. Geneen and he in turn has advised me, his Board, that as to our regular operating budgets such as programming, I have advised him as to what we budget now for programming and at what rate it is increasing. . . . In this area I feel that we will automatically be able and properly so handle this on our own as a regular operating matter. If it comes to capital expenditures of an extraordinary nature . . . this will be brought to the attention of our own Board of Directors, the American Broadcasting Company and he and Mr. Perry will be on that Board and then if he feels it is necessary I think he then could very well bring it to the attention of his Board.⁶³

The examining attorney then suggested that there was a disparity between Goldenson's understanding of what was a matter of major importance and what may be done about it and Mr. Geneen's testimony. Goldenson denied that

there was any disparity and stated that his understanding was in perfect harmony with that of Geneen.⁶⁴

This line of questioning continued during the next day when Geneen testified. Agreeing that the proposed operation of ABC was unique in ITT history, he noted that "major matters of importance" had not been delineated, and that they would probably be defined in practice as a matter of fact.⁶⁵ Fitzpatrick asked Geneen if he thought a \$36 million expenditure for conversion of ABC facilities to color would constitute a matter of major importance; Geneen said yes.⁶⁶

This testimony in particular is illustrative of the point made by the Commission minority in its dissenting opinion that there was evidence of disharmony in the ABC and ITT positions and not harmony as had been repeatedly asserted. A \$36 million expenditure was a matter of major importance to Geneen, while a \$130 or more million expenditure was not for Goldenson. Attempting to reconcile this discrepancy, Geneen noted that the \$36 million figure referred to color conversion, a significant alteration of ABC facilities, while the \$130 or more million merely referred to a regular operating budgetary item.

Despite this distinction, the Commission minority stressed that the "clear and uncontroverted evidence" submitted by the merging parties in support of their autonomy argument "consists of nothing more than further, and

inconsistent, assurances . . . that ABC's relationship with ITT will be 'unique.'"⁶⁷

The third element to this first issue concerns the fusion of ABC broadcast and ITT common carrier interests. If ABC and ITT were permitted to merge, could the combined entity be expected to champion policies, services, and techniques, designed to serve competing interests?

At the September hearing, Louis Stephens presented a statement representing the views of the Broadcast Bureau and the Common Carrier Bureau of the FCC. In that statement he outlined questions of policy concerning possibly injurious and potentially beneficial effects of a merger between ABC and ITT. He noted that the fusion of ABC, a buyer of communications services, and ITT, a seller of communications services, would reduce the independence of each entity in matters where different roles would normally yield different viewpoints. He noted three examples in which ABC, broadcaster, and ITT, common carrier, had presented opposing positions, and suggested that approval of the merger might have a negative effect on the future independence of each.

In his statement Stephens noted that in 1965 ABC had asked the FCC for authorization to operate a satellite which would transmit network television programs from their source to the various ABC affiliates. This request

initiated a proceeding into domestic satellites. Stephens noted that ABC and a subsidiary of ITT, ITT World Communications, had filed opposing positions in that proceeding.⁶⁸

In another proceeding, concerning direct service to the public by Comsat, ITT World Communications and ABC had again taken opposing positions.⁶⁹

Finally, Stephens stated that ABC, as well as the other two networks, had filed objections with the FCC concerning rates charged by ITT for its services provided in the television coverage of the Gemini splashdowns.⁷⁰

The Broadcast Bureau and Common Carrier Bureau also believed that, in regard to the provision of live television service between the United States, Europe, and other continents, the public interest might better be served if the independence of ABC and ITT were preserved. Stephens noted that tariffs for this service had been a subject of controversy between overseas carriers, of which ITT was one, and broadcast networks, NBC and CBS, as well as ABC.⁷¹ Stephens had been charged with the responsibility of analyzing potentially beneficial, as well as, potentially injurious effects that might occur as a result of the merger. He suggested that the merger might put ABC in a better position to serve the public interest as a result of ITT's financial resources that would become available to ABC. The infusion of ITT capital would probably enable ABC to compete more effectively with the other two networks,

NBC and CBS. Stephens noted, however, that ABC was already a viable network and that the question of public benefit would have to depend on "something more directly meaningful" than the possibility of strengthening ABC's competitive position. He concluded his statement by suggesting that the Commission needed a more concrete showing from the merging parties as to specific benefits to the public resulting from the merger, to justify approval.

Summary. Issue no. 1, concerning ABC's service in the public interest as an independent corporation and as a wholly-owned subsidiary of ITT, has three elements: the integrity of the ABC news operation, the ability of ITT to discharge its licensee responsibilities, and the fusion of broadcast and common carrier services.

The majority Commissioners accepted the representations of ABC and ITT officials that ABC would remain autonomous if the merger were approved. The minority Commissioners, on the other hand, doubted ABC's ability to retain its independence in light of ITT's extensive domestic government contracts and commercial interests abroad. The collective testimony of Shanahan, Aug, and Stout further convinced the minority Commissioners that their suspicions were correct.

Although the majority accepted ITT assurances that ABC would remain autonomous, it did not question whether ITT would be able to oversee its responsibilities to the

public as licensee of ABC's seventeen broadcast stations. The minority Commissioners, however, found it difficult to reconcile these assurances and questioned their contradictory nature. How could ITT promise to give ABC complete autonomy in running its broadcast operation and at the same time assert that ITT would be responsible for whatever ABC chose to broadcast?

Finally, regarding the fusion of broadcast and common carrier services, the majority Commissioners concluded that there was no basis for the suggestion that one service might be subverted in the interests of the other. They cited the successful relationship between RCA and NBC to support their position. The minority Commissioners, however, continued to doubt whether both interests, broadcast and common carrier, would continue to be represented impartially in disputes involving competition between the two services.

Issue No. 2

Does ABC need to merge with ITT to compete effectively with NBC and CBS? This question has two components to it: the characterization of ABC as a weak third network in competition with NBC and CBS; and, the extent of ITT's financial commitment to ABC.

In its December opinion the Commission majority stated that its review of the record indicated that the