

## Public Channels & Private Censors

### **NICHOLAS JOHNSON**

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On two recent occasions, CBS cut from its late-night *Merv Griffin Show* requests by Elke Sommer and Carol Burnett that people mail letters supporting world peace to Mrs. Martin Luther King, for forwarding to President Nixon. A few weeks ago ABC

censored remarks made by folk singer Judy Collins on the *Dick Cavett Show* which were reported "sharply critical" of Judge Julius Hoffman and Chicago conspiracy trial. And last year NBC censored Robert Montgomery's remarks on the *Johnny Carson Show* when he mentioned that a CBS television production was being investigated by Congress and FCC. Yet these are only the most recent incidents in which various television networks have exercised their power to silence opinions with which they

agree, which they feel would offend advertisers or injure profits, or which they fear might stimulate official reaction.

Tommy Smothers has said that 75 per cent of the *Smothers Brothers* shows were altered in some way by CBS censors. The network censored Joan Baez's comments about the war in Vietnam, made in a brief dedication of a song to her jailed husband. It banned any appearance whatsoever by Dr. Benjamin Spock. Ultimately it censored the entire *Smothers Brothers Show*. The time has come for all of us to ponder the serious implications of "corporate censorship" in this country.

The FCC, disturbed by Vice President Agnew's apparent intimidation of the networks after they had "commented" on the President's speech about Vietnam, replied to letters supporting the Vice President with the official and unanimous observation that "The drafters of the First Amendment to our Constitution knew that the way to preserve truth was not through government surveillance or censorship (for that government may also be wrong) but by giving all persons with views the freedom to express them."

Even Dr. Frank Stanton, president of CBS, in forthright response to the Vice President, has acknowledged that "no more serious episode has occurred in government-press relationships since the dark days of the fumbling infancy of the republic when the ill-fated Alien and Sedition Acts forbade criticism of the government and its policies on pain of exile or imprisonment." He went on to indicate that CBS would resist such pressures:

If these threats implicit in the developments of the past week are not openly recognized, unequivocally denounced and firmly resisted, freedom of communications in this country will suffer a setback that will not be limited to checking the freedom of television or to barring critical comment on government policy.

Yet what "freedom of communications" does this country really have if censorship is exercised, not by the government but by the large private corporations that control much of our access to news and opinion—the three national television networks? In an exchange of articles, Richard Salant (president of CBS News) and I have debated the existence of "corporate censorship." [Johnson: "The Silent Screen," *TV Guide*, July 5, 1969; Salant: "He Has Exercised His Right To Be Wrong," *TV Guide*, September 20, 1969; Johnson: "Is There a Salant in TV News?" speech to Radio and Television News Directors Association, September 26, 1969. All reprinted, 115 *Congressional Record* E 10174 (December 1, 1969, daily edition).] I contended that the networks, to a rather pervasive extent, have so designed their programming that important information affecting lives and health is being kept from the public. I argued that this was information that, if generally known, might damage the corporate profits of the networks and their advertisers.

I referred to a number of examples of this "corporate censorship"—such as information about shoddy products, critics' evaluations of the new TV shows, or corporate profits from war. I did not say the networks *never* broadcast such information; just that they broadcast very little, very seldom, and usually too late.

Mr. Salant replied:

In the eleven years I was a CBS corporate officer and in the six years that I have been president of CBS News, to my knowledge there is no issue, no topic, no story which CBS News has ever been forbidden, or instructed directly or indirectly, to cover or not to cover, by corporate management. . . . [T]here has been no self-censorship. . . . [We] have never avoided a topic or altered treatment to protect, or to avoid displeasing, corporate management or any advertiser.

Of course, I had argued that "it is also a form of censorship to so completely clog the public's airwaves with tasteless gruel that there is no time left for quality entertainment and social commentary, no time to give people 'full information of their affairs'" (a reference to a statement by Thomas Jefferson on the importance of free speech). But I also contended that the networks were pulling their punches and withholding from the public information in their possession.

Now *Variety* magazine (February 4, 1970) has made the point again. Bill Greeley provides a long list of "shrunk or vanished" documentaries at CBS which have been shelved, turned down or killed. His list includes the following: a "hard-hitting" documentary on homosexuals by Bill Peters, gutted by the management before showing; an "in-depth investigation of Saigon corruption" by Jay McMullen of CBS News, tabled; Felix Green's film footage of North Vietnam, rejected for broadcast by CBS, and given to NET; Doug Leiterman's hour production on the black middle class, dumped several months ago; a project on "police brutality," turned into "an industrial promo film for sponsor IBM"; and Gene DePoy's probe of the military-industrial complex, ultimately devoted to "the nomenclature of military rockets." Greeley says CBS News has also had pending for several years a project on "Congressional ethics." I wonder when we'll see that one. In fairness to Columbia Broadcasting (and Richard Salant), however, Greeley congratulates CBS for being the best of the lot, and for at least having "good documentary intentions."

Before Elke Sommer and Carol Burnett were censored or—since both CBS management and the Vice President dislike that word—"edited," Mrs. King had hoped to deliver an impressive stack of mail, asking for an end to violence and war, to President Nixon. CBS's rather myopic explanation of its intrusion was, "long-established network policy prohibits appeals for active support of any cause without prior consultation with the network." Yet there was ample time for such consultation between CBS and its employee, Carol Burnett, during the five or

six days between the show's taping and broadcasting. Indeed, one wonders whether Vice President Agnew's similar appeal for mail during his Des Moines "media speech" was also subjected to "prior consultation" and network approval. Just the other night Bob Hope presided over a nationwide NBC entertainment special which honored Mrs. Eisenhower and featured a statement by President Nixon—with explicit appeals for *money* (not just letters) for an "Eisenhower Hospital."

What was the effect of Vice President Agnew's speech castigating the networks for their few, faltering attempts at analysis of President Nixon's November speech on Vietnam? *TV Guide's* recent editorial (January 3) puts it succinctly:

Vice President Spiro T. Agnew's scolding of the networks apparently had the desired result: after President Nixon's Dec. 8 press conference, there was no criticism whatever from the commentators who followed him.

There is censorship in this country all right. Television networks censor themselves (and their guests)—while asserting their commitment to free speech and denying self-censorship. The Nixon Administration attempts to control the broadcasters' comments—while professing its abhorrence of government censorship. Meanwhile, notwithstanding a rare hassle in public, both parties agree well enough on what should be kept from the American people.

When the founding fathers drafted the First Amendment, they feared that the *government* might one day attempt to interfere with the freedoms of speech and the press. Accordingly, they carefully protected the people against censorship by the government, stating: "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ." (And the Supreme Court soon extended this

First Amendment protection to censorship by the individual *states* as well.)

However, the power centers have changed since 1789—and the ability to influence thought and opinion has shifted from public to private hands. Today 100 corporations own about half the manufacturing assets in the country. Our information comes in large part from the three national radio and television networks, ABC, CBS and NBC, and the two wire services, AP and UPI, and we must recognize that we may have to expand the protections of the First Amendment if we are to eliminate censorship.

Fortunately, there is already Supreme Court precedent for extending the ban on censorship to cover private corporations. In its recent *Red Lion Broadcasting* decision upholding the constitutionality of the FCC's "Fairness Doctrine," the Court made the following, extremely important observation:

There is no sanctuary in the First Amendment for unlimited private censorship operating in a medium not open to all. "Freedom of the press from *governmental* interference under the First Amendment does not sanction repression of that freedom by *private* interests." (Emphasis added.)

In an opinion the year before, the Supreme Court had presaged this development by extending the protections of the First Amendment to peaceful picketing on private property—a large shopping center near Altoona, Pa. The shopping center had excluded the picketeers, arguing that their First Amendment rights of speech were not infringed because the shopping center was not a "state" or "federal" government, and that the First Amendment did not protect citizens against censorship by *private* persons or corporations. Rejecting this view, the Court stated:

[U]nder some circumstances property that is privately owned may, at least for First Amendment purposes, be treated as though it were publicly held. . . . [T]he fact that the property from which appellant was sought to be ejected for exercising her First Amendment rights was owned by a private corporation rather than the State was an insufficient basis to justify the infringement on appellant's right to free expression occasioned thereby.

Concurring in the same opinion, Mr. Justice Douglas stated even more clearly that the Court would not "make 'private property' a sanctuary from which some members of the public may be excluded merely because of the ideas they espouse."

In its *Red Lion* decision the Supreme Court made another observation that has generally been overlooked by commentators. The broadcasters had "strenuously argued" that requiring them to devote time (possibly free) to issues of controversy might force them to eliminate such coverage completely. Not so, replied the Court, and for two reasons. First, the Court quoted network officials to the effect that they did not intend to abandon their efforts to cover controversial issues. Second, and even more significant, the Court said that if broadcasters reduced the "volume and quality of coverage," the FCC has pow-

er to insist that they give adequate and fair attention to "public issues."

To condition the granting or renewal of licenses on a willingness to present representative community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of the press. Congress need not stand idly by and permit those with licenses to ignore the problems which beset the people or to exclude from the airways anything but their own views of fundamental questions.

The *Red Lion* decision was scarcely three months old when *Variety* reported that CBS had refused to broadcast an announcement by *Look*, describing an article on New Orleans District Attorney Garrison, because the *Look* advertisement contained "personal attacks" of the sort which might require CBS to offer Garrison rebuttal time. It would appear, therefore, that the Supreme Court's precise fear has materialized: that "licensees should suddenly prove timorous." To the extent that broadcasters are now

refusing to give their attention to issues of public importance and controversy, new approaches are needed to safeguard the flow of information and opinion to the public.

The networks have also tried to argue that the dissemination of "news and opinion" is different from "entertainment," and that while they may censor news with some reluctance, they normally feel free to cut and chop "entertainment" programming as they see fit. Yet here, too, the networks have refused to heed the warnings of the Supreme Court, which has discussed and rejected the distinction between opinion and entertainment.

The line between the informing and the entertaining is too elusive for the protection of that basic right [a free press]. Everyone is familiar with instances of propaganda through fiction. What is one man's amusement, teaches another's doctrine.

The networks are used to making others listen to them. Now it may be their turn to listen—to the people and to the United States Supreme Court. □