

REPRINTED FROM:

Harper's

magazine

The Easy Chair by Nicholas Johnson

WHAT YOU CAN DO TO IMPROVE TV

Critics of radio and television are generally agreed that the Federal Communications Commission is a far from effective guardian of the "public interest" in broadcasting. It has failed—according to one widely accepted view—because it has, in effect, been "captured" by the industry it was established to regulate. How did this come about? And what can you do about it? Many people have written me letters asking essentially that question. This article is an attempt at an answer.

So far as I know, the problem is not that sinister forces staged a coup one dark night in the FCC's headquarters at 20th and M Street in Washington. The problem is much more subtle, and common to virtually all regulatory agencies. As James Landis put it in his devastating report to President Kennedy: "... it is the daily machine-gun-like impact on both agency and its staff of industry representations that makes for industry orientation on the part of many honest and capable agency members as well as agency staffs."

The remedy, in my view, is not going to come from spontaneous government action. Ordinary citizens can, must—and upon occasion do—influence those administrative decisions. But *effective* citizen representation requires considerably more sophistication than has been generally evidenced.

One basic principle, which I will call "the law of effective reform," is this: in order to get relief from legal institutions (Congress, courts, agencies) one must assert, first, the factual basis for the grievance and the specific parties involved; second, the legal principle that indicates relief is due (Constitutional provision, statute, regulation, court or agency decision); and third, the precise remedy sought (new legislation or regulations, license revocation, fines, or an order changing practices). When this

principle is not understood, which is most of the time, the most legitimate public protests from thousands of citizens fall like drops of rain upon lonely and uncharted seas. But by understanding and using the right strategy the meekest among us can roll back the ocean.

Here is an illustration of both points.

The health hazards of cigarette smoking and, especially, the impact of TV cigarette commercials on teen-agers, have been matters of wide concern for a good many years. Yet despite ominous government reports, and despite the warning notice now printed on cigarette packages, the commercials continued, cigarette consumption increased, and more and more teen-agers picked up a habit which TV told them was the road to sexual prowess and a fun-packed adult world. A Federal Trade Commission report deplored the impact of cigarette commercials. Senator Robert Kennedy had suggested legislation outlawing them. Hundreds of thousands of Americans wrote letters to everybody they could think of—Senators, Congressmen, the networks, advertisers, the FTC—and the FCC. Most got replies; some did not. But nothing happened.

This protest failed I believe, because it ignored "the law of effective reform." Vague feelings rather than facts were presented. The letter writers were not specific about who had done something wrong. They did not refer to any legal principle that had been violated. And, finally, they did not seek a precise remedy. Indeed, many such letters begin, "Can't the FCC do something about

...?" The answer is that it can't—or at least that it won't—until you tell it just what you want it to do.

Fortunately, however, there was one young man who understood the "law of effective reform" and attacked the problem accordingly. He was John Banzhaf, a New York lawyer in his twenties. Mr. Banzhaf, too, wrote to "Washington." But his "letter" was different. He called it a "Fairness Complaint." In it he specified an offender: the CBS-owned flagship station in New York City, WCBS. He said the station ran great quantities of cigarette commercials. He then referred to a legal principle, the "fairness doctrine," which has evolved over the years from the Communications Act, FCC regulations, and FCC and court decisions.* It provides, in summary, that a broadcaster has an obligation to treat "controversial issues of public importance" fairly, and to present all sides of such issues during the course of his programming. The remedy it provides, and which John Banzhaf sought, is that the FCC can order a station complained of to present the omitted points of view. (The FCC generally leaves it up to the station to decide how this is to be done.) In this case, said Mr. Banzhaf, the debate about cigarette smoking is "a controversial issue of public importance." Cigarette commercials constitute the presentation of a particular point of view. (Cigarette smoking is associated with vigor, success, and good times.) WCBS had failed, he said, to present the other point of view. (Cigarette smoking is also associated with gruesome lingering illnesses and death.) The "fairness doctrine" e-

*A pamphlet known as "The Fairness Primer" is available free on request from the FCC, Washington, D.C. 20554. Other free pamphlets describe the rules concerning the right of rebuttal to personal attacks and the equal-time rights of political candidates. Such rules of responsible conduct are under almost constant legal challenge by the networks and broadcasters, as they are now.

Mr. Johnson began a seven-year term on the Federal Communications Commission in 1966. He is a former practicing attorney and Berkeley law professor, and was appointed U.S. Maritime Administrator in 1964, at the age of twenty-nine.

Copyright © 1969 by Harper's Magazine, Inc.

Reprinted from the February, 1969 issue of Harper's Magazine. All Rights Reserved.

THE EASY CHAIR

quires, therefore, that the FCC order WCBS (and, by implication, all other stations) to present information about the health hazards of cigarette smoking.

Mr. Banzhaf won. A potential of some fifty to one hundred million dollars' worth of free anti-smoking commercials are now being presented in the course of a year over radio and television. As a result of his rather simple act and investment in a six-cent stamp he has produced a result that federal officials and hundreds of thousands of concerned Americans had been unable to bring about: cigarette consumption has declined in our nation for the first time in its history.

The point of this story is not that "one man can make a difference" (although he can, and did), or that the "fairness doctrine" is the magic solution to all complaints about broadcasting (although it has not been used as much as it might). The point is that for each citizen grievance (about broadcasting or other matters) there is one particular course of action suggested by "the law of effective reform" that will bring the quickest and most thorough results in the most efficient and cheapest way. Any effective reformer must spend at least as much energy planning that optimum strategy as executing it. You can fight city hall, the "little man" can do effective battle with massive corporate and governmental institutions, the government can be made to be responsive to an individual citizen's desires. The individual's frustration in our institutionalized society comes only from ignorance, not impotence. Those who preach the necessity for revolution in this country might do better to study and practice the strategy of utilizing presently available techniques of reform.

It is obviously impossible to spell out in advance all potential grievances about broadcasting, let alone the optimum remedy for each, especially in a short article. But a few more examples may be useful.

Though you may not know it, you can, and should, have a voice in deciding who will operate radio and TV stations in your community. This is the citizen's ultimate control over broadcast programming. A broadcast station "owner" is using the public's property—the airwaves—and Congress has provided that he cannot "own" this property in the sense that the corner druggist owns his drugstore. A broadcaster is like an elected official, and his license entitles him to no more than a three-year term, after which he must either have his license renewed by the FCC or be turned out of office. You—his constituents—who

are supposed to vote in this election often do not even know it is being held. All the licenses in each state expire at the same time. (For example, New York broadcasters' licenses are renewed June 1, 1969. Other expiration dates can be obtained from the FCC.) Any local organization with a stake in the quality of broadcasting (church, union, civil-rights group, or civic club) can appear as a party in a license-renewal proceeding by writing the FCC that it wishes to be a party, expressing its views in writing, or requesting an oral hearing. It can not only participate in the FCC proceeding, but—often more important—it can appeal to a court for reversal if the FCC grants the renewal unjustifiably.

This right was first established five years ago, when the United Church of Christ, along with two leaders of the Jackson, Mississippi, Negro community, the Reverend Robert L. T. Smith and Mr. Aaron Henry, filed with the FCC a petition to deny the application for license renewal of the local TV station, WLBT. Their petition, which represented the culmination of a decade of complaints by Jackson Negroes against WLBT, alleged that the station systematically excluded Negroes from access to its facilities and that it had systematically promoted segregationist views and denied presentation of opposing views supported by Negroes.

The Commission, which tended to regard these public intruders as some sort of unfamiliar pestilence to be scourged from its corridors, refused to accord the petitioners "standing" to participate in the renewal proceeding as parties. These representatives of the Jackson black community took an appeal to the District of Columbia Court of Appeals and won. The Court held that local citizens do have "standing" as parties before the FCC, remanded the proceeding to the Commission for another hearing, and retained jurisdiction to finally dispose of the case. The FCC subsequently held the hearing, admitting the Church as an active party to the proceeding. It has since granted the station a renewal—over the dissenting protests of Commissioner Kenneth A. Cox and myself—and at this writing the matter is back before the Court for ultimate resolution.

Others have argued that public participation in the license renewal process be made easier. Congressman John Moss says, "It is time to make every single broadcast license renewal application subject to a public proceeding within the city or region where the station is located." Consumers Union has urged that broadcasters be required to carry more meaningful and regular announcements about the public's rights. And Thomas B.

Hoving's National Citizens Committee for Broadcasting (609 Fifth Avenue, New York, New York 10017) is showing signs of possessing the capacity and courage to play a very constructive role in this regard.

Agency legal action is not, of course, the only form of popular participation in policy formation. John Banzhaf could have organized mass picketing, protesting the immorality of stations and tobacco manufacturers profiting from the promotion of disease and death. The church could have obtained thousands of signatures on a petition and sent it to the President or to Jackson's Congressman. Either could have conducted a sit-in at the FCC or at station WLBT. (WNBT-TV in New York was seized by twenty hippies during a broadcast-in about a year ago.) The point is not that the activities they chose to pursue were somewhat more gentlemanly. It's that the appropriate legal remedy may be the most efficient and effective path to reform.

Within the past two years a number of other groups have bestirred themselves, by effective legal means, about the broadcasting situation in their communities. Four interesting cases are illustrative. One concerns the renewal application of radio station WXUR in Media, Pennsylvania. Some nineteen local organizations banded together and hired a Washington lawyer to protest WXUR's alleged policy of carrying masses of right-wing political programming unrelieved by programs promoting other viewpoints. They requested, and obtained, a public hearing in their own home town.

On different grounds a group of Los Angeles businessmen petitioned the Commission not to renew the license of TV station KHJ. They charge it has provided inadequate local service to the area. Moreover, these businessmen have asserted their rights under the Communications Act to apply for a license to operate this profitable station themselves.

In Ashtabula, Ohio, a local of the Retail Clerks Union petitioned the Commission to deny license renewal to several nearby radio stations which refused to carry the local's paid advertisements urging consumers to boycott a department store with which it had been involved in a labor dispute. It argued that the fairness doctrine required the stations to match the department store's commercials urging people to shop at the store with the union's contrary message.

Another protest was filed from St. Louis by organizations of young blacks who believed three local Negro-oriented ("soul") radio stations were not pro-

THE EASY CHAIR

viding adequate service to the city's Negro population. (A station in Dayton was picketed for similar reasons with signs protesting "Soul Music Is Not Enough.")

On a national level, the American Civil Liberties Union intervened in the FCC's proceeding involving the proposed takeover of ABC by International Telephone & Telegraph Corporation. (The Justice Department ultimately appealed the FCC-approved merger to the U. S. Court of Appeals, and the parties called it off before the Court resolved the matter.)

The AFL-CIO has taken a general interest in the application of the fairness doctrine, especially, of course, when unions are attacked. The Washington-based Institute for American Democracy exists solely to combat hate programming and publishes "How to Combat Air Pollution" and a newsletter (1330 Massachusetts Avenue, Washington, D.C. 20005). John Banzhaf is now supported in his follow-up activities by an organization called Action on Smoking and Health (2238 Fifth Avenue, New York, New York 10037). He has urged a license revocation proceeding against NBC-owned WNBC in New York on the grounds that it has failed to comply with the FCC's cigarette fairness ruling, and intervened in the renewals of several California stations. (In an "unrelated" action the NBC network subsequently volunteered to put on a fixed number of anti-cigarette-smoking commercials during prime-time television programming last fall.) A group of good music lovers in Chicago ("The Citizens Committee to Save WFMT-FM") has made an effort to prevent The Chicago Tribune from acquiring the station.* A similar group in Atlanta inundated the FCC with mail protesting the possible loss of broadcast classical music in that city. A new national group, "Television Improvement Society of America" (1500 Massachusetts, Washington D.C. 20005), has been formed to combat violence on television.

The American Civil Liberties Union has recently suggested that, instead of

relying on the spontaneous activities of existing organizations or the formation of ad hoc groups, the FCC set up local committees of citizen volunteers to monitor local radio and TV, particularly with respect to the fairness doctrine. Monitoring is one of the most important aspects of effective broadcasting reform. It is an ideal group project for people of all ages, but must be done right to be useful. The United Church of Christ has had the most experience.

Unfortunately there are few presently recognized legal rights or remedies that will affect the quality of programs, protect us from an inundation of commercials, or guarantee the opportunity to express our views or talents over the airwaves. There will be in time—when you, and others like you, finally harness your outrage and your imagination to "the law of effective reform" and pull other newly recognized legal rights into our stable of remedies.

But for now the best defense is still to turn off your set or switch stations. Since the broadcasters are in the audience-delivering business they would undoubtedly respond if enough people refused to watch or listen; but such an effort is admittedly hard, if not impossible, to organize.

On the other hand, it is easy enough to write or phone a local station manager and even to arrange a conference with him. He is not likely to be unresponsive. Similarly, letters to network presidents and to advertisers can be influential. (If one tenth of one per cent of the audience of the average network series show were to request its continuation it probably would not be canceled.) You can also send such general letters to the FCC, which, if you request, will be included in the station's "complaint file" for consideration at license renewal time. However, they will not have maximum impact unless a citizens' group subsequently appears as a party contesting the license renewal.

In fairness to the broadcasters, it should be said that citizens' groups and listeners and viewers are not generally too helpful when it comes to suggesting new program ideas. What many organizations *think* would be a good program often turns out to be a dud. When offered free air time, many organizations do not take it, or do not follow through for a sustained period. (On the other hand, some radio-station managers who have been offered locally produced programs of good quality have turned them down in favor of cheaper and easier disc-jockey or phone-in shows.)

Many communities have the blessing of community-supported noncommercial

stations. The Pacifica Foundation operates radio stations WBAI in New York, KPFA in Berkeley, and KPRK in Los Angeles. Seattle has listener-supported KRAB. Public television stations (or "educational television") now exist in about 150 communities (such as Channel 13 in New York and Channel 28 in Los Angeles). Such stations should be especially responsive to listener-viewer commendation, criticism, and contributions, since most are heavily dependent upon audience financial support. If your town doesn't have such a station you might want to investigate starting one. If cable television is to be installed as a profit-making venture in your community (instead of community-owned) you will want to be sure the licensing authority (often the city council) requires it to provide a number of "free" channels for educational programming to schools and community programming to homes.

Television and radio probably have as much effect upon our lives as any other single force. About 95 per cent of American homes have receivers, and the television set is on in the average home from five to six hours a day. This is clearly America's number one consumer product, our most powerful potential force for good—or evil.

Moreover, the whole theoretical foundation of American broadcasting is the tie of a local station to its community and its local service. The station is licensed to serve the needs of the local community. And if it is not doing so we should seriously consider substituting direct satellite-to-home (or cable) broadcasting for a system that gives away 95 per cent of the public's most valuable airwaves to the private profit of 7,350 local stations. FCC regulations require the station to survey the community's local needs, and to provide programming to those needs. Station files at the FCC are supposed to be filled with comments from local citizens. The three-year license-renewal process is designed to encourage local participation.

In fact, greater community involvement in stations' affairs ought to be welcomed by the more responsible broadcasters—better local service is usually translated into larger audiences and higher commercial rates and profits.

The philosophy and rhetoric of participatory democracy is on the rise. All that remains is to translate its abundant energy and ideals into effective action. The legal process often offers the easiest route to results. Yet legal rights and powers lie about unknown and unused. Increasing sophistication has been reflected in greater public participation at the FCC. I, for one, welcome it. []

*Other organizations concern themselves with broadcasting generally. They include the American Council for Better Broadcasts (17 West Main, Madison, Wisconsin 53703) and the National Association for Better Broadcasting (373 North Western Avenue, Los Angeles, California 90004). A number of church groups are involved, such as the Office of Communications of the United Church of Christ (289 Park Avenue, New York, New York 10010), the Television, Radio and Film Commission of the Methodist Church (475 Riverside Drive, New York, New York 10027), and the Broadcasting and Film Commission of the National Council of Churches at the same address. The *Columbia Journalism Review* (Columbia University, New York, New York 10027) is a quarterly that comments on the performance of both broadcasting and the print media.