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TELEVISION

VOLUME III NUMBER 4

FALL 1964

QUARTERLY

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THE JOURNAL OF THE  
NATIONAL ACADEMY OF  
TELEVISION ARTS  
AND SCIENCES

Published by The National Academy  
of Television Arts and Sciences with  
the cooperation of the Television and  
Radio Department, Newhouse Commu-  
nications Center, Syracuse University.

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OF TELEVISION ARTS AND SCIENCES

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Published by The National Academy of Television Arts  
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Radio Department, Newhouse Communications Center,  
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FALL 1964

| VOL. III | NO. 4

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CHET HUNTLEY/DAVID BRINKLEY





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**New . . . DOCUMENTARY IN AMERICAN TELEVISION**  
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BY A. WILLIAM BLUEM

*Newhouse Communications Center, Syracuse University*

This critical study of the evolution and present status of the documentary movement in American TV has been termed by Ernest Rose of the University of California at Berkeley "a significant contribution to the literature of the mass media." Completed under a Research Fellowship from the Kaltenborn Foundation, this knowledgeable (and often controversial) work reviews the documentary as one of television's ultimate functions, treating:

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—From the Foreword by  
*Burton Benjamin*

- Included in the Appendices is a transcript of the 1963 Academy of TV Arts and Sciences Forum discussion on documentary; an as-yet unpublished memorandum on the functions of TV news by NBC's Reuven Frank; and a listing of 100 "classic" TV documentaries (with production data, full credits and sources for rental of prints).

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## TELEVISION AND THE PROFESSIONALS

The second in *Television Quarterly's* series of interchanges between professionals and creators of their TV counterparts focuses upon law and its operations in society. The issue is much the same as that introduced in an earlier exchange over the teaching profession: Do TV versions of life distort and demean the work and motives of the practitioner, as well as the field he represents?

In the current confrontation, *Edward Bennett Williams*, once described as being "already a legend in the line that includes Clarence Darrow, Sam Adams, William H. Seward, Rufus Choate and many other tough, worldly, (and usually soft-hearted) knights-errant of the bar"\* shows little "soft-heartedness" in his critical analysis of the treatment given lawyers and legal procedures in television's courtroom drama. His worthy adversary, *Reginald Rose*, reveals in his rebuttal that one does not create and supervise production of a major television series without also acquiring a bit of toughness. The two quotations on the facing page are a sample of what happens when two acknowledged masters of their crafts forget knight-errantry and begin punching.

---

\*By Eugene V. Rostow, Dean, Yale Law School, in the introduction to Mr. Williams' book, *One Man's Freedom* (Atheneum, 1962).

As an attorney who has been in the courtrooms for the past 18 years, I cringe and am sickened by the slick, glib legerdemain of television's lawyers. Our system of justice simply does not work that way. . . . Television's dramatists, while observing technical details, leave an impression that the scholarship of law is a bore; a bore that is unnecessary to successful practice.

*Edward Bennett Williams*  
Attorney at Law

It is wrong for anyone to say that the real purpose and function of law in society can be understood only in terms of every technical and legalistic detail of its operations and procedures. The fact that the legal details which might occupy a full day of courtroom procedure are related in five minutes in *The Defenders* is quite irrelevant. If what results is a fuller understanding of the *meaning* of law and justice among multitudes of human beings, then the charge of "unrealistic" is pointless.

*Reginald Rose*  
Executive Producer  
CBS-TV

A notable figure in the legal profession, *Edward Bennett Williams* was graduated *summa cum laude* from Holy Cross in 1941 and completed his law studies at Georgetown University, following an interruption for service in the Air Force. Upon graduation, Mr. Williams was appointed Professor of Criminal Law and Procedure and remained on the Georgetown faculty until 1956. He lectured on American criminal law at the University of Frankfurt in 1954 and, in 1962, wrote *One Man's Freedom*, a collection of thoughtful essays which has won unanimous critical acclaim.

# THE HIGH COST OF TELEVISION'S COURTROOM

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EDWARD BENNETT WILLIAMS

---

Television's dramatists have joined their predecessors in theater and motion pictures in feeding the public appetite for courtroom conflict. The popularity of such programming with writers and producers is understandable. The advocacy system of Western law, with the direct confrontation between defense and prosecution, has possibilities of high drama and climactic resolution. And the small physical area of the action makes for relatively simple staging and low costs.

Some practicing attorneys were unhappy over the dramatic license with which writers for the legitimate stage approached criminal law. But there were few plays in a season and the total audiences were relatively small. Even when motion pictures were most popular there might be only a dozen "law" films a year, and the audience could be counted in the low millions. But a single television program may reach 40 million viewers and the programs continue 52 weeks a year. It is thus time to evaluate the effects of the dramatic image of the trial lawyer.

My misgivings about television trial justice are not based at all on the economically produced daytime programs such as *The Verdict Is Yours*, *Divorce Court* and *Day in Court*. My work schedule does not permit seeing these.

I have no quarrel with the technical advice given to television's dramatists by appointed committees of the Bar Association. Much of TV's legal drama takes place at the pretrial hearing where rules of procedure are less strict than in the actual trial. The distinction, however, is lost on most viewers.

As an attorney in criminal practice, I appreciate the stand taken by *The Defenders* in favor of the Durham Rule, a new rule in the District of Columbia on the law of insanity. I admire Lawrence Preston's persistent campaign against capital punishment and I approve Perry Mason's weekly insistence that prosecuting attorney Hamilton Burger dot every "i" and cross every "t" in observing the procedural safeguards for the accused.

Producers of programs like *Perry Mason*, *Arrest and Trial* and *Sam Benedict* are undeniably men of good will. They are eager to observe technical niceties of a magnificent legal system. But its magnificence is misleadingly mirrored. Perry Mason has lost only one case in the past eight years. One might expect that his services would be in great demand, that his waiting room would be overflowing with clients and that, in preparing his cases, he would be working some long days. Yet he is free—day or night—to speed to the scene of a crime and beat the police to the discovery of a murder. He practices law, as far as any viewer can determine, with one secretary, one investigator and one legal assistant.

The creator of *Perry Mason* has said the popularity of his character comes from everyman's longing for a "knight on a white horse." It is not surprising, therefore, that Mason is always forced to be a courtroom magician—an attorney who wins consistently by springing an overlooked piece of evidence or by forcing a seemingly innocent witness to confess on the witness stand that he committed the crime.

*The Defenders* team of Lawrence and Kenneth Preston sometimes loses, but rarely. Their losses usually occur when the playwrights are attacking legislation or a decision that can be overruled only by courts higher than the ones in which the Prestons practice. But, at least, *The Defenders* deals with real issues. It is unusual among "law" programs, and TV programs in general, in its effort to introduce substance on a weekly basis.

The unending triumphs in television's courtroom tend to confirm a notion that few who are brought to trial are found guilty. Senator Goldwater, as a presidential candidate, decried the "softness" of our Federal Courts. No one argued with this description. "Softness" in Federal Court trials? In fiscal 1963 there were 34,845 criminal cases in the Federal District Courts. 29,803 resulted in conviction. 5,042 were "terminated without convictions." Thus there were convictions in 85.5 per cent of the cases. It is true, of course, that many convictions come from pleas of "guilty." But in 2,637 jury trials in 1963 there were 1,874 convictions. The defense counsel lost 71.1 times in every 100 cases.

The odds are no better in state courts. The most recent figures from California (fiscal 1962) show that jury trials ended in a finding of "guilty" 79 per cent of the time. But "Perry Mason" practices in California and wins weekly. In New York, home base of *The Defenders* and *Arrest and Trial*, District Attorney Frank Hogan's office lost only three cases during one term of court.

Television has also taught the public through endless repetition that trial lawyers are a scheming, tricky lot. This has actually produced repercussions in real life. The least significant witness now comes to court expecting to be tricked, ridiculed and harassed by inquisitorial gimmicks. The number of argumentative witnesses has increased. As a result, trials slow down with unnecessary evasions. Double and triple meanings are heard when a lawyer, in the most prosaic style, is trying simply to establish a sequence of events that can be corroborated by a second witness.

In general, TV law programs, hampered by the dramatic demands of television's chromatic precision, too often reach for the quick and easy denouement. An actual trial is often a dull, plodding affair to watch. It has to be. The rules of evidence generally reduce showmanship to farce. But television's courtroom is pyrotechnic and there is never time to show the actuality of carefully developed facts.

To illustrate—one of the most exciting cases I ever tried would have made dull drama indeed. The case involved the Reconstruction Finance Corporation in the Truman administration. A lawyer in Washington was charged with having committed perjury in front of the grand jury investigating the RFC, by denying that he had ever given anything of value to anyone employed at the RFC. It was subsequently developed that he had given a television set to one of the employees a few years before at Christmas.

His defense was that he had forgotten about it at the time the question was asked, and that he had later returned to the grand jury to give this fact (when his mind was refreshed) but that the grand jury by that time had gone out of session.

At the trial, one of the lawyers who had worked on the case as an investigator was on the stand. In cross-examination I asked him an almost irrelevant question. It was so irrelevant that my opposing lawyer, who was a very able man, did not object because he did not figure it could possibly hurt him. I asked the man on the stand: "Now who were the other lawyers from the Department of Justice who worked with you on this investigation for the grand jury?" He said, "Mr. Smith. Mr. Brown. Mr. Black. Mr. Blue. And Mr. Johnson."

"Now you worked on this investigation for a whole year and those are the only lawyers who worked with you?"

"That's all. Those are the ones. There were six of us."

So later in the defense, I called Mr. Smith and under the guise of simply testing the accuracy of the transcription of some testimony, I asked a couple of questions that appeared meaningless and boring. Then I asked him one that appeared even more meaningless and boring: "Who were the other lawyers who worked with you on this?"

And Mr. Smith said, "Well, there was Mr. Brown. Mr. Black. Mr. Blue. Mr. Jones"—then he named the man who had testified earlier—"and Mr. Murphy."

So then I called the next one and I asked him the same question, burying it in a lot of dull and meaningless other questions. Pretty soon it turned out that Mr. Blue left out Mr. Brown. And Mr. Brown left out Mr. Black. And Mr. Black left out Mr. Murphy. Every one of the prosecutors had omitted a name or added a name to those who worked with him.

And nobody—of course this was a long trial and these questions were buried in a melange of hundreds of pages of testimony—but *nobody* in that courtroom had any concept of the significance of what had happened. And I did not tell them! I just put it away in the icebox.

But at the end of the trial, in the summing up, I took it out and I said, "Now here we have the Department of Justice asking that you return a verdict of guilty beyond a reasonable doubt against this man whose reputation to this point has been unsullied. They are unwilling to accord him the benefit of a mistake in recollection,

and yet the very lawyers who got the indictment all have mistaken recollections about the very same grand jury that indicted him. All six of them have mistaken recollections.

"I am not asking that they be indicted, because I would be laughed down the courthouse steps if I made the ludicrous request that these six men be indicted because each of their recollections failed them about a transaction of *one* year ago. Yet they are asking you to convict this man whose recollection failed about a matter *three* years ago."

We won the case. But the making of the point resulted from tedious, seemingly pointless questions piled up among the other business of the trial—hardly the stuff of television drama. The vast majority of courtroom successes are of this sort—built with plodding care and exploited with common sense reasoning. Very, very few actual cases are won with dramatic appeals to a jury, sudden disclosures of proof or sly little tricks. A trial attorney's effectiveness is circumscribed by the materials of his case. He learns early that he will often do his finest, most thorough and most effective work in a case that he must lose in court.

Another fact unrecognized by TV is that the lawyer is not the absolute factor in winning or losing a case. Take a sample of 100 cases, 50 of which should be won and 50 lost. If these cases were defended by an attorney who embodied the best qualities of Clarence Darrow, Max Steuer and Martin Littleton, this miracle man would win about 60 of the cases and lose about 40. Turn the hypothesis the other way; let those same 100 cases be handled by the least experienced and least gifted member of the Bar and the results wouldn't change much. He would probably win 40 of the cases and lose the other 60.

I have used this illustration during ten years of lecturing at the Georgetown University Law School. More recently I have repeated it in lectures at more than 30 law schools during the past three years. Increasingly, I sense the disbelief of the students; for I am addressing a generation that has matured with the examples set by television lawyers over hundreds of programs. The students seem to have accepted a point that television's dramatists have not consciously tried to make. But almost subliminally, students have come to understand that criminal cases are decided by rhetoric; that the outcome depends on malevolent tricks; that the lawyer is always the key factor in winning or losing. The student has a definite impression that deception may be more important than the diffi-

cult and grubby disciplines. They would like to avoid the digging that makes the law student a competent attorney.

Television's dramatists, while observing technical details, leave an impression that the scholarship of law is a bore—unnecessary to successful practice. But the good legal defense, like a well-constructed house, is built brick by brick, block by block. A lot of sweat and discomfort goes into both. There are no cheap shortcuts in sound construction. The architect and the construction engineer expect their buildings to endure hurricanes. The competent attorney knows that a prosecutor's case is never going to disappear before a puff of oratory.

The long and continuing popularity of television's courtroom wizards indicates that they are not likely to be dropped from the prime-time schedules. But one might hope for portrayals closer to the truth and scripts that abide with the realities of the legal profession in the United States.

*Disraeli said that he was depressed by the law but exalted by literature. If he meant that law and literature are disparate, the statement is without meaning, for the term "literature" is merely a judgment of the quality of writing. Court proceedings, testimony, arguments, pleas and judgments, and the discussion of legal theories—all may be read as literature if the expression and thought are of a high order. Even statutory law can attain the level of literature. It was Stendhal's position that there was only one example of perfect style, and that was the Code Napoléon.*

From the Introduction by Ephraim London to  
*The World of Law, Volume I*  
New York: Simon and Schuster, 1960

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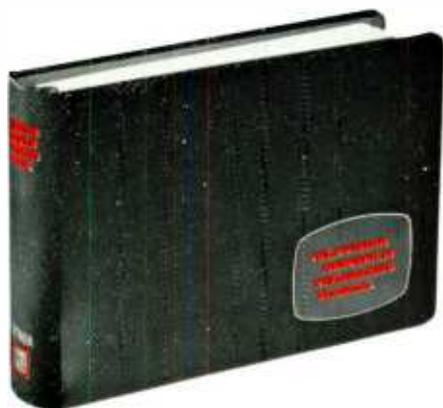
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*Reginald Rose* is one of television's most honored producers and writers. A native of New York City, he tried his hand as a camp counselor, a clerk, a publicist for Warner Brothers pictures, and an advertising account executive and copy chief before achieving recognition as a dramatist in the early 1950's. Many of his original TV dramas appeared on Westinghouse *Studio One*, the most notable being "Twelve Angry Men," "Crime in the Streets," and "The Incredible World of Horace Ford." Mr. Rose is the creator and executive producer of the Emmy Award-winning *The Defenders*.

# LAW, DRAMA AND CRITICISM

---

REGINALD ROSE

---

The serious television producer, when criticized by those who insist that he has cheaply served truth by making it interesting and compelling to great audiences, normally shrugs his shoulders, mumbles something about "life is life and art is art," and goes on trying. But in service of television, and *The Defenders*, I must return once more to a basic explanation of the functions of fiction in any civilization. I can do this best by considering at some length the concepts which *The Defenders* has tried to advance.

Historically, our series had its origin in a two-part program which I wrote for the old *Studio One* anthology series. It was called *The Defender*, and starred Ralph Bellamy and William Shatner in the roles now played by E. G. Marshall and Robert Reed. The characters were interesting, and the subject matter enabled us to move into a number of areas which held particular interest for me. I felt that we could investigate, in dramatic terms, some broader and more meaningful ideas about the law in relation to individuals and to society. CBS-TV asked me to develop this concept into a series. I accepted, primarily because I wanted to do a program that was reasonably adult in its treatment of the law and its meaning for our society. I wish to emphasize that law is the *subject* of our programs; not crime, not mystery, not the courtroom for its own sake. We were never interested in producing a "who-done-it" which simply happened to be resolved each week in a flashy courtroom battle of wits.

There were, as there always are, the normal pockets of resistance to any program which starts out to be serious, and even controversial, about the broader issues of life in a democratic society. There

was delay in making the pilot; and even when the series was finally approved and we were committed to network airing of 26 programs, there were still no sponsors.

We began, and sponsorship came. Critical endorsement came. Awards came. Now we are in our fourth season, and by the end of it we will have done 138 programs. I am told there will be a fifth season—another 36 programs. These numbers represent a massive amount of thought-jerking drudgery and the time, labor and creative energy of many people. All of this is channeled into execution of a basic concept which assumes that a mature and adult treatment of the law can be extended to a wide audience.

The premise is a simple one, and it has since been imitated by many of TV's most successful dramatic series. It involves the interplay of two strong characters for whom each new legal problem becomes a moral and ethical problem as well—a field of conflict wherein discussion and debate are natural and can always be related to the realities of human experience. Without such conceptual characters we might have easily descended to the superficialities of “guilty-or-not-guilty” played out in a courtroom setting each week. But since plot must always be the interplay of character and situation, we felt our approach would involve the audience at a deeper level.

It is important to recognize that the two central characters of *The Defenders* are adversaries. They are bound together in professional as well as fraternal regard and affection for each other. But because they are different in age, experience and their view of the world, their interplay can spark far more thinking and dispute than the blunt prosecution-*versus*-defense situation can generate.

Lawrence Preston, the father, is an experienced and practical attorney—a criminal lawyer who has had 25 years of involvement with the legal process. Perverse as he may be at times, Lawrence Preston is a good man, a knowledgeable man; a man of truth, dignity and decency whose only objective is to use what is in the law for the benefit of the people he represents. What might be mistaken for cynicism at times is simply an outgrowth of his basic understanding of human nature. In his own way, he represents political man—thinking and rational man who recognizes that Truth is all well and good, but what will work? He has seen enough of idealism and dedication to know it can also result in tragedy. The dominant

character trait he has acquired over the years is the capacity to compromise when necessary with dignity.

In Kenneth Preston, the son, we wanted to focus the traits of that opposite side of human nature. He is young, idealistic; an intelligent young man who does not understand, or want to admit, that there can be such a thing as compromise, in law or in life. He does not totally comprehend the vast gray areas within the law itself, and in the human beings for which it was created. He rounded out our initial conception of what is essential to an honest portrayal of the role and nature of law among civilized beings.

The basic themes of the series are expressed in these opposing forces. The key to all our stories must be sought in the relationship of these two men, because they symbolize, in a way, the contradictory forces in mankind. They defend the same clients, but an approach to the defense will spring from their basic opposition of opinion and instinct. What holds them together—what holds all of us together—is a common humanity and sense of regard for each other. The young man with only book learning, and his own feel for people and the law, is able to be freer, more demanding, and more concise about what he wants the law to do. He is able to resist the kind of compromise that his father knows must be effected if any progress is to be made. The two characters, then, have those great pluses and minuses which are part of human nature itself. Because of this we can bring them together in meaningful exploration of the issues which are important to all of us.

This is our "formula," and I use the word without shame because life itself is a formula—an equation between what *must* be done and what *ought* to be done. The courtroom provides us with one essential focal point required of any drama, a place where confrontation and conflict is expressed in verbal terms by characters. (There are many courtroom dramas where "formula" is applied in the meanest sense, and I wish that Mr. Williams had troubled to make some distinction.) If our concept is not new, it is seriously applied, and criticism ought to take this into account.

We do not think our characters are made of cardboard or plastic. In fairness to such series as *Perry Mason*, where they do tend in this direction, I can only say that the producers did not intend their program to be *about* law. It is conceived as an entertaining mystery program, with the same elements to be found in any western or detective series. They do what they *intend* to do quite well. But criticism is invalid when it confuses the intention and design of

programs by lumping them all together for purely technical reasons. It is unfair not only because it will not honor different dramatic genre, but because it too often fails to recognize the nature of drama itself. This is what must now be considered.

In order that we can reach some reasoned and intelligent understanding of the distinction between a dramatic story about the law and the actual occurrences and procedures in our courts, I must introduce some considerations which Mr. Williams has ignored. We are serious in purpose. We attempt to achieve some deeper revelation about the law. But these are incidental to the basic argument that we are working within a fictional context, and more specifically within the dramatic form. The realistic drama is obliged to provide verisimilitude but it cannot offer *literal* adherence to actuality. This is an obvious point. I understand it, the audience understands it, and I am certain that Edward Bennett Williams understands it.

We are in the business of providing entertainment within a form which has been described by William Archer as "the art of crisis." Every playwright, director, actor and theatrical producer since the dawn of time was in exactly the same business. Some were great, and many were bad. But the word "entertain"—like the word "formula"—immediately inspires a singleminded, head-on negativism in certain kinds of people. There is little use in berating them here. I merely wish to establish that what we try to do, week after week, is turn out good, solid, dramatic entertainment. I would emphatically deny that this must negate, or even make remote, the possibility that we might also be offering a serious, creative, artistic expression. The blithe assumption that "entertainment" is incompatible with high and valuable purpose is incomprehensible to me.

With this made clear, I can reiterate our reasons for putting our creation within the framework of law and, inevitably, the courtroom. The law offers us a natural area of development for stories of crisis in human affairs. That is precisely what all law is about. We welcome the courtroom because it gives us, as dramatic storytellers, situations where people are engaged in direct confrontation. But we seek far more than this. The situations and conflicts of the courtroom also let us explore basic human values and the meaning of life itself. Morality can be examined, the ethics of people-against-people can be explored. The law itself is a formula, with inherent elements of conflict in all of its codes of human behavior—codes that are as rich in their perplexities as life itself.

The problem is given: Each week we want to put before the audience a story that is entertaining, that is adult, that poses a moral, intellectual or social problem in which people can become involved, and that carries a point of view provocative enough to stimulate them into discussing its implications. We have tried to do that. If we have stimulated both the intellectual and the "average" man into serious thought about these issues, then we have accomplished something in service of our own creative motivations, the audience-building problems of the network, and—above all—the society in which both law and drama are engaged in finding answers to the human dilemma.

Criticism, then, ought to be made from this perspective. It must ask how well we deal with the same conflicts the law must resolve *within our own form and purpose*. Having laid out these guidelines, there is little left to do other than systematically break apart Mr. Williams' arguments and let the jury decide.

I would first insist that Mr. Williams and all critics who ask for more "realism" in our stories are basing their arguments upon the wrong grounds. They are talking about apples and we are talking about oranges; but it is they who have forgotten that both may nourish man.

The complaint, and I recognize its validity, is that *The Defenders* begins with a very real situation—the happenings in a court of law together with all the actions and reactions of the people who are involved in this machinery—and re-creates it as a drama which we make *appear* realistic but which in fact is not. The criticism has been leveled at us many times. I understand it. I sympathize with it. I even agree with it.

But while the criticism of our lack of literalness is technically correct, it is not right. Mr. Williams knows that it would be impossible for him to conduct a trial in a court of law employing methods used in *The Defenders*. He is not writing, creating, or even acting in, a drama. He is conducting the business of the court—an absolutely essential and imperative function. He is defending a client. Lawrence Preston defends a client in *dramatic* terms, and therefore is naturally "distorting" the process of law. Drama is an art which results, like all art, from selection and arrangement in creating expressions of human experience and activity. It "distorts" because it is *designed* to do so. Its purpose is to distill what is meaningful out of human interaction. It can certainly be judged upon the basis of whether it does this well or badly, but not upon the doing itself.

Its concern is not with literal detail, but with an essence (or truth) inherent among those details. Was it not Leigh Hunt who said that there may be "more truth in the verisimilitudes of fiction than in the assumptions of history"?

It is wrong for anyone to say that the real purpose and function of law in society can be understood only in terms of every technical and legalistic detail of its operations and procedures. The fact that the legal details which might occupy a full day of courtroom procedure are related in five minutes on *The Defenders* is quite irrelevant. If what results is a fuller understanding of the meaning of law and justice among multitudes of human beings, then the charge of "unrealistic" is pointless. We have not distorted the meaning of the law. We have not demeaned the law. We have merely compressed and foreshortened its operations because we are also bound to respect the law of dramatic form.

Having said the obvious, I would like to consider two related problems which are raised by Mr. Williams. First, we are fully aware that we cannot do right, in literal terms, by the scholarship of our hard-working attorneys. Does it necessarily follow that we are doing them a disservice? Have we, by creating that essential of all drama—a protagonist with whom the audience can identify—also created a knight in shining armor who bears no resemblance to the matter-of-fact lawyer?

Perhaps we have. The hero of other days seems to have disappeared from all but the rankest kind of drama. He exists in the western, of course, but the rest of our drama has abandoned the hero as old-fashioned. I think this is a great loss, and I also know that we have gone back to the concept in *The Defenders*. Certainly they are fallible, but the Prestons are definitely men with a mission—which is to expand the ideals of a society that may be too tired to expand them for itself.

Yet America's lawyers *do* battle injustice. They battle intolerance. They battle indifference. They crusade for the rights of human beings regardless of their economic, social or intellectual status, and I think they do it without being pompous, overbearing, stuffy, silly, or unrealistic. We have tried to reflect that concern. I think we have tried to bring back a fairly simple concept—that it is good to be good. There are heroes in this world who do not fight with guns, swords, or badges, but with ideas. If this implies romance, then let there be more of it. If this is corn, let it be so. No one can really dispute the value of drama's efforts to advance and promote

the idea of a hero, and I wonder if Edward Bennett Williams—caught up in the momentum of his argument—is not forgetting his own heroic crusading for justice?

And, finally, does the serious dramatist or producer in television do an actual disservice to society itself when he attempts to give dramatic treatment to the problems and achievements of its professional men and women? In our four years with *The Defenders* we have reached untold millions in terms that grip and hold them, which cause them to think about and discuss our work. There is no other possible way in which they could get the information we give, acquire some feeling about the morality and ethics of the law, and be exposed to explanations of the law's processes. Most people simply do not go into the courtroom each day to discover more about this precious heritage. They learn about law through newspaper headlines of lurid crime trials, when they are called for jury duty, or when they are on trial. So long as we go to great lengths to understand the law and interpret it in honest dramatic terms, I am convinced that we are doing good.

Judge Learned Hand once said that no court can save a society in which the spirit of moderation is lost. To all who would protest the lack of "realism" or the failure to "show things the way they really are" in any kind of fiction, I would ask: Who is responsible for the encouragement and sustenance of that spirit of humanity which leads to moderation in a society? Is it literal man only—the man who knows too much about pain, drudgery, the "facts" of life, and the darker side of human nature? Or is it poetic man—the poet, dramatist, storyteller and philosopher—who rises above the daily and the mundane facts of life to express some universal of human destiny? Both are essential to the progress of mankind, but we *know* which breed we hope will triumph.

Television will always have its critics, and this is good. But many of us who take our producing function seriously wish that some of our critics would borrow a leaf from a remarkable attorney named Portia, who never stepped inside any "real" courtroom, but who was given wisdom enough to say:

*... though justice be thy plea, consider this,  
That, in the course of justice, none of us  
Should see salvation: we do pray for mercy;  
and that same prayer doth teach us all to render  
The deeds of mercy.*

## TELEVISION AND LAW

In the ensuing essays, *Frederick W. Ford* and *Harold Messing* move beyond the issue of fictional re-creations of America's courtroom procedures to remind us of TV's deep and inextricable involvement with the laws of the land. Federal Communications Commissioner Ford brings his own vast knowledge and experience in the complex field of community antenna television systems to bear in a report which not only clarifies our understanding of the nature and function of this service, but also poses many of the legal questions arising from CATV's burgeoning in recent years.\* Mr. Messing reviews the history of Supreme Court decisions in a crucial area of broadcast communication—libel and slander.

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\*Commissioner Ford's essay is based upon an address delivered before the 15th Annual Convention of the National Community Television Association, Philadelphia, Pennsylvania, June 18, 1964.

# TELEVISION: DIVIDED OR UNITED?

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FREDERICK W. FORD

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Television has had many problems since the first commercial station was authorized by the Commission in 1941, and only a few of them were solved by the Sixth Report and Order 1 of 1952.<sup>1</sup> In fact, it appears that even though our television system as we know it today stems from that Report, barely 12 years old, the perplexities of television seem to increase the older, more popular and universal the medium becomes. One of these problems which is almost as old as commercial television itself is the impact upon our broadcast television structure of a system whereby the public pays for its television service. It has a number of names such as phonevision, toll-vision, pay-TV, fee-V, subscription television and community antenna television. The mention of any of these names arouses what appears to be a torrent of emotion and fear on the part of many traditional television broadcasters and their spokesmen. This fear is easy to understand, but I believe it is unjustified. And I have no doubt that those who espouse these various newer forms of television react in support of them with equal emotion.

It is my purpose here to undertake an analysis of this matter-at-hand, and to delineate the most important issues presented and their relationship to our national objective, which in the language of the Communications Act is, "to make available so far as possible,

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*Frederick W. Ford* was appointed to the Federal Communications Commission in 1957 and was its Chairman in 1960. Commissioner Ford has served in various legal, regulatory, and administrative capacities with different Federal agencies for many years. Immediately before being named to the FCC, Mr. Ford was with the Department of Justice as Assistant Deputy Attorney General. Mr. Ford is a member of the American Law Institute, Phi Delta Phi, Scabbard and Blade, and Sigma Chi.

to all the people of the United States a rapid, efficient, nationwide, and world-wide wire and radio communications service. . . .”<sup>2</sup>

Before proceeding I think it would be desirable to define a few terms.

First, I would like to classify under the term “pay-TV” all forms of television broadcast service in which some system is employed whereby the public, in order to receive the program, must pay a fee either at a flat rate, by program, or a combination of both.

Second, I would like to classify arbitrarily as subscription television—“STV”—all systems using wire for distribution of programs from the local point of program origination to the point of reception for which a fee is charged at a flat rate or by program or a combination of both.<sup>3</sup>

Third, I would like to classify as “CATV”<sup>4</sup> all systems which receive programs broadcast by licensed television stations and distribute them by wire to individual customers at a flat rate.

Fourth, I would like to classify as “cablecasting” the distribution over a CATV system of programs that are originated in some manner other than by a broadcast, payment for which is made at a flat rate or for each program accepted. From time to time I will refer to STV, CATV, and cablecasting as “wire television.”

Fifth, I would like to refer to the television broadcast service licensed to use channels 2 through 83 (excluding pay-TV experimental authorizations, translators and satellites) as “television.”

Aside from the early experiments authorized by the Commission in pay-TV with limited facilities,<sup>5</sup> there were no actual experimental pay-TV systems authorized until the General Tire Company was given an experimental authorization on WHCT in Hartford, Connecticut, on February 24, 1961.<sup>6</sup> On October 3, 1962, the Commission granted authority for the second public pay-TV test on KCTO, Channel 2, Denver, Colorado. On May 1, 1964, the permittee advised the Commission that it would not seek a further extension of time in which to commence operation.

Subscription television or STV, on the other hand, is just getting started in Los Angeles and San Francisco; and little is known about what its success or impact will be. Its proponents have great confidence in its success as an intrastate service free from the jurisdiction of the Federal Government. If STV is initially successful I doubt that it can grow and prosper outside the total national television system as a completely intrastate operation beyond the reach of Congressional regulation.

During the early phases of television another form of delivering television programs came into existence. The public in unserved areas and fringe reception areas were impatient for television service during the 1948–1952 “freeze” on television grants, and American ingenuity as usual supplied the demand by devising a common antenna system at a favorable site many miles away.

The first community antenna was installed on an experimental basis at Astoria, Oregon, in 1949 and the first commercial system at Lansford, Pennsylvania, in 1950. Today there are 1,295 CATV systems serving an estimated 3,300,000 viewers in something over 1,000,000 homes, creating a \$51,000,000 industry.<sup>7</sup> Of the 1,295 systems, about 250 use a microwave service to bring signals to their systems which cannot be received satisfactorily off-the-air.

These microwave services are furnished by independent common carriers, by affiliated common carrier, and by private microwave. Some of these systems have the facilities to originate programs. Most systems receive from one to ten stations with an average of about four. I am told that the number of systems is growing rapidly. It is worthy of note that CATV is the only television service which grew up in the “grassroots.” All other forms of television have been or are being developed in the great population centers.

For several years CATV systems operated in many communities without any great amount of friction. Beginning in 1957, however, it appeared that a number of sharp conflicts were developing between local TV stations and the CATV system operating in the same or a nearby community. These conflicts led to a hearing before the Subcommittee on Communications and Power of the Senate Interstate and Foreign Commerce Committee in 1958, and the Commission’s own Inquiry into the Impact of Community Antenna Systems, TV translators, TV Satellite Stations and TV “Repeaters” on the orderly Development of Television Broadcasting.<sup>8</sup> In the Report and Order issued in 1959 on that Inquiry, the Commission concluded that “. . . it would not constitute a legally valid exercise of regulatory jurisdiction over common carriers to deny authorization for common carrier microwave, wire or cable transmission of television programs to CATV systems on the ground that such facilities would abet the creation of adverse competitive impact by the CATV on the construction or successful operation of local or nearby stations.”<sup>9</sup>

On February 16, 1962, the Commission denied the application of Carter Mountain Transmission Corporation<sup>10</sup> for microwave facil-

ity on the ground that improved service to the CATV would probably force the local TV station off the air. The denial was without prejudice to refile the application when the applicant was able to show that the CATV would not duplicate the programs of the local TV station and would carry that station on its CATV system. On appeal the Court found that the Commission was fully warranted in its action.<sup>11</sup> On December 12, 1962, the Commission issued its proposed rule making in the Business Radio Service<sup>12</sup> relating to the duplication of programs and carrying the local stations on the CATV systems. Pending applications would be held until the conclusion of the proceeding. Exceptions would be made, however, where applicants voluntarily accepted the contemplated conditions. On December 13, 1963, a further notice was issued with respect to the Business Radio Service and a new notice of proposed rule making<sup>13</sup> was issued in the Common Carrier Service used to relay television broadcast signals to CATV systems proposing substantially the same rules for this service.

On October 3, 1963, an application was filed for consent to the transfer of control of H&B Microwave Corporation from H&B American Corporation to Video Independent Theatres, Inc., a wholly owned subsidiary of RKO General, Inc. H&B Microwave Corporation owns 37 CATV systems in 12 states and at least an additional eight systems under construction. RKO through subsidiaries now owns 27 CATV systems. Moreover, RKO General, Inc. already owns four VHF and one UHF television station in the United States, and one VHF station in Canada which serves Detroit, Michigan.<sup>14</sup>

As a result of this application and other matters the Commission issued its Notice of Inquiry on April 15, 1964 entitled "In the Matter of: Acquisitions of Community Antenna Television Systems by Television Broadcast Licensees."<sup>15</sup> It there stated that "Before it acquiesces in the formation of such an entity, the Commission believes it to be necessary to seek a basis for estimating the impact that acquisitions such as that contemplated by RKO General might have on its multiple ownership policies and on the television broadcast structure as a whole, as well as the impact on more specialized problems."

Finally, the Commission now has under consideration the question of allocating spectrum space to a CATV microwave service.

A notice of proposed rule making was issued on August 3, 1964 (Docket No. 15586), relative to the licensing of microwave stations used to relay television signals to CATV systems and providing that

comments may be filed on or before November 16, 1964, and reply comments on or before December 4, 1964 to Parts I and III of the notice. Comments and reply comments to Parts II and IV of the notice may be filed on or before April 1, 1965 and May 3, 1965, respectively.

Although Congress has shown a continuing interest in pay-TV and CATV, no legislation has been enacted. Bills were introduced in 1959 to regulate CATV and, after hearings, the Communications Subcommittee of the Senate Interstate and Foreign Commerce Committee introduced its own bill (S. 2653)<sup>16</sup> which was defeated. Following that, I suggested a bill<sup>17</sup> which the Commission sponsored, but no action was taken on it.<sup>18</sup> Recently, however, Congressman Walter Rogers indicated that the problems of pay-TV, STV and CATV "must come before the Congress in the not too distant future and will pose some most serious problems."<sup>19</sup> Moreover, representatives of the Commission, the National Community Antenna Association, and the National Association of Broadcasters have had a series of discussions in recent months looking toward legislation, but no draft bills have been agreed upon at this time.

This completes a brief description on where we are today and how we got here.

Our country is growing rapidly and with it is growing the demand for improved television service in communities across the land. The basic problem which the Commission and the communications industry faced in 1941 and still faces today is how that demand is to be best satisfied.

In seeking to satisfy this need must we consider only the use of radio frequencies or should we follow literally the national policy of providing an "... efficient, nationwide... wire and radio service"?

It is my belief that an adequate nationwide competitive television system with an increased choice of program service can only be achieved by an integrated and Federally regulated system of both wire and radio.

It is clear to me that the priority set forth in the Sixth Report and Order for the assignment of at least one television station to each community can never be realized by the use of the allocated frequencies alone. The radio spectrum neither can be nor should be expected to satisfy that objective. In the first place, it is not physically possible with the present state of the art to assign 82 channels to the 4,699 communities with a population of more than 2,500 each in the United States. There are now 536 VHF stations and 118 UHF stations on the air in 365 communities. Even with a recent proposal

to expand the assignments contained in the Sixth Report and Order to about 700 VHF stations and 1,980 UHF stations to 1,294 communities, the priority on its face is not attainable.

Even if it were possible to add enough additional spectrum space to provide one television station to each community in the United States, I do not believe that sound frequency management would permit such an inefficient use of this valuable national resource, to say nothing of the economic unsoundness of making such an attempt. I have reference here to the basic principles followed by the Commission in making the over-all frequency allocation in its major allocations proceedings in 1945, Docket 6651. You will recall that this was the proceeding that established the uses of the radio spectrum by various services that is still in effect today. It must be remembered that because the demand for frequency space far exceeded the space available the primary principle that guided the Commission in making its determination was, "The dependence of the service on radio rather than wire lines." In fact the Report stated in Section 4:

There were six general principles that guided the Commission in making this determination. In the first place, the Commission examined each request to determine whether the service in question really required the use of radio or whether wire lines were a practicable substitute. Obviously, with the severe shortage of frequencies, it would not be in the public interest to assign a portion of the spectrum to a service which could utilize wire lines instead. The Commission's determination was not limited to technical considerations but also took into account economic and social factors and considerations of national policy. For example, while fixed point-to-point service between countries could be carried on by cable as well as by radio, the great disparity in costs between the two types of service and considerations of national policy clearly required the assignment at least at this time of frequencies for such fixed point-to-point service.

This principle was not applied to television and I would not suggest that any dogmatic application of this principle would be proper now. I am concerned here only with satisfying the need for expanded television service over and above what can be provided by the present allocation. As I view it, this expanding need can and should be satisfied by the use of the alternate means, namely wire.

Let us now turn our attention to a consideration of whether Federal regulation of wire television is necessary or desirable. At the outset the touchstone of our judgments must be the same for all forms of television. This guiding principle is our present statutory

standard of the "public interest, convenience, and necessity."<sup>20</sup> Regulation of wire television is only appropriate if it is necessary to serve the public interest. It would appear that such regulation is essential if the Congressional policy of providing a rapid, efficient, nationwide wire and radio communications service is not to be frustrated.

The purpose of the Commission's efforts to regulate wire television has been based solely on the impact which it may have on the television stations which it has licensed. At the same time the Commission recognizes the desirability of urban areas having the widest choices of service possible unless that choice destroys television service to rural areas, and perhaps prevents the full development of a competitive nationwide television service. Arguments have been made that regulation is also necessary to insure the effectuation of our allocations of frequencies to the television service. It is also contended that in our attempts to regulate about one-fifth of the CATV systems (that is, those requiring microwave licenses), we create unfair competitive conditions as a result of the uniform application of our policies. The more I have studied these problems, the more I am inclined to doubt the wisdom of trying to regulate one-fifth of an industry through a technical legal device rather than by seeking legislation to subject the entire industry to regulation. CATV systems are engaged in interstate commerce since, thus far at least, they are basically extensions of the interstate service of the television broadcast stations whose signals they carry.

As time passes and the problems of wire television become more complex, it is becoming clear that regulation of a service which has the potential impact that wire television has on television should not be left to 50 diverse state jurisdictions and countless cities. The very nature of a nationwide television service, even if radio frequencies were not involved, dictates that we could not have 50 different systems and 50 different ways of meeting the problems of a nationwide service.

One of the purposes of the Communications Act of 1934 was to secure "a more effective execution of [national] policy by centralizing authority" in a single agency. The time has come, it seems to me, to recognize the development of wired television as a significant national force and to establish a comprehensive regulatory scheme that will provide one fully integrated and unified television system. In short, pre-emption of this field by the Federal Government is essential.

In any Federal system for the regulation of wire television the form of that regulation presents many problems. The formula for the solution of these problems will depend to some extent on whether it is determined that wire television is a supplemental service or whether it is a new service. Will this industry be content to fill in the gaps of television coverage or has a new force come into existence, the ramifications of which have not yet become clearly defined? Will the community antenna industry continue as an antenna service or will it begin cablecasting local programs on at least one channel, and in the course of events seek interconnection with other systems and finally become a nationwide multiple program service competing for national program product as well as a conduit for television stations to home receivers?

In any case questions will arise on the type of authority to be issued. Should CATV or other types of wire systems be licensed, issued certificates of public convenience and necessity, franchises or some other form of authority? Should whatever form of authorization is used be on the basis of geographical or political areas? Should the term of such authority be unlimited? What should be done about mutually exclusive application for franchises? Should comparative hearing procedures and criteria similar to that used by the Commission be adopted or some other form of selection process provided? What should be done about the limitation on holding and transfer of licenses or certificates of authority? Should some standards of legal, technical, financial and other qualifications be considered necessary? What sanctions, if any, should be available to the regulatory authority? What reports and other types of information should the regulatory agency be authorized to require? Is any type of program review such as that presently exercised by the Commission appropriate or reasonable? Should such things as political broadcasts, announcements of sponsorship identification and the "fairness doctrine" be matters of regulatory concern? What will the roles of networks be? Should they not be permitted to gain know-how in the wire television field to the extent perhaps of owning systems, or affiliating with individual systems which do not otherwise receive their program service?

Although the reasons for the Communications Act specifically declaring that "a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier"<sup>21</sup> would seem to be equally applicable to wire television,<sup>22</sup> at least as to the origination of programs, should the rates charged the

public nevertheless be subject to some type of regulation such as now contained in some city ordinances? Should some provision be incorporated requiring the extension of service or furnishing of service on a nondiscriminatory basis to the public? If so, what, if anything, can or should be provided relating to the use of telephone or power poles for wire systems? Should the consent of television stations for the use of programs be required? If so, should the regulatory authority be empowered to order consent and on what basis in view of the conflict over property rights in programs? Should there be authority to order a station on a system or off a system? If cablecasting becomes common on one channel of a CATV system should advertising be permitted in order to boost the local economy? Should there be authority to impose technical standards, type approval of equipment to minimize interference to the reception of signals off the air and inspections of installations?

Each of these questions deserves far more careful and complete analysis than would be possible here. I have posed them only for the purpose of trying to stimulate organized research and thought about them. These and many more questions must be faced and resolved in one fashion or another in deciding what form Federal regulation will or will not take.

With the growth and increasing importance of wire television a question has arisen with respect to the multiple ownership of wire systems and television stations, and cross ownership between them. The Commission's rules on the limitation of the multiple ownership of television and radio stations<sup>23</sup> is based on the fundamental theory of the Communications Act that the public interest is best served by a diversity of opinion and voices in this powerful medium rather than concentration of control. Therefore, to the extent that wire television has the possibility of engaging in cablecasting rather than merely delivering programs from multiple voices the same underlying principle would apply.

It is my present belief that the Commission's multiple ownership rules are adequate in most respects for television, but that they are not adequate for wire television. One of the deficiencies of our rules is that five VHF stations in small markets reaching a minimum number of viewers are equated with the five largest markets in the country which could reach more than 25% of our population. I am told that all 1,295 CATV systems, on the other hand, reach only 2% of the population. I do not mean to suggest that one person could own all existing CATV systems, but I do suggest that the same mul-

multiple ownership rules now in effect for television would be unrealistic if applied literally to wire television. For example, ownership of five average-sized CATV systems would deliver a signal to 4,000 homes or roughly 12,000 viewers, which would seem minimal when compared with the population in the Grade B contour of most television stations.

The multiple ownership problem of CATV systems would, therefore, be a completely different problem than that of television stations and should be solved in a different way. I am not yet prepared to offer a solution, but the number of systems owned, population served, other services available, and political and geographical areas involved, are factors which should be considered in finding a solution. Whatever the solution may be, if cablecasting becomes an important service there probably will be some kind of limitation on the multiple ownership of wire systems in any Federal regulation of the industry.

Another factor that may affect the multiple ownership principle is that of joint or common ownership of wire and radio television systems. At the time that I was Chief of the Hearing Division of the Broadcast Bureau, when our first comparative television cases were being tried in 1952, I took the position that pioneer radio broadcasters should receive credit for their past performance. If this was not done, the Commission in effect would be telling radio broadcasters that as a reward for their efforts and experience in building the radio industry, a new group would be selected to bring television to our country.

It seems to me that the exclusion of television broadcasters from the community antenna industry or that enterprise from the television industry may likewise be unfair. In that way we may in ultimate effect be excluding those well-qualified individuals who risked their money to develop television and wire television from participation in the final forms that it may take. At this time, therefore, I would not discourage television broadcasters from entering the community antenna field as many have already done,<sup>24</sup> nor would I discourage CATV from seeking television licenses. Eventually, however, the cross ownership or common ownership of television stations and CATV systems may have a bearing on the expansion of individual companies. It is possible that the results would depend on whether the common ownership was in the same or different markets. If common ownership were in the same market the question of area concentration of control may be involved,

depending on the form wire television takes, whereas this question would not be in issue if different markets were involved. From these observations it is apparent that this is a basic and difficult question which should be solved. To this end, the Commission instituted its Inquiry to which I have referred. It is now under study and we are seeking all the information possible to enable us to determine what, if any, action or recommendation for legislation should be made.

Finally, I would like to discuss the competitive impact which CATV could have on television. For example, in single station markets which for the most part are relatively small markets, a CATV system may bring into the urban area as many as ten program choices to compete with the television station for viewers. It is contended that only about 10% of a station's listeners are involved; however, it does not take much imagination to visualize this 10% growing much larger. If other communities in the station's service area are wired and if advertisers in those communities stop buying advertising on the local station, the economic consequences to the local station are obvious. Ultimately, the ability of the station to adequately serve the public or even survive could become questionable.

It should be observed that wire systems are not yet ready to serve all of the people served by a television facility. Rural areas still depend on television stations for their service. This is in large part the basis for the protection we have given television stations. This position would probably be revised if the technical developments should permit the delivery of a television signal to all by CATV systems on an economical basis so that the public would not suffer. The competitive factors then would not be of such concern to the Commission. Therefore, until such time as wire systems are able to deliver to a reasonable degree the service that a television station can furnish, it is likely that some form of protection to a television station in a single station market will be afforded if the facts justify it.

Considerable stress has been placed on the limitation or containment of CATV in order to stimulate the full development of UHF and give all-channel receiver legislation an opportunity to develop an adequate nationwide competitive television system. It is argued that if microwave authorizations are issued to bring programs to communities where UHF stations are authorized or assignments made, this will prevent the development of UHF stations and frustrate the Commission's allocation and assignment policies to the

detriment of the public. It is also argued that UHF needs protection from competition to survive economically. This is still an open question because it might well be argued that in some instances UHF needs CATV at this point in order to reach an audience in being and to survive.

Let me pose what very well may be a solution to one of the basic problems we face of giving urban areas a choice of service with no loss of service to rural areas. How many CATV operators would establish UHF stations and carry them on their CATV systems, if the Commission rules permitted it? Where assignments are available this may be done. I have in mind, however, the possible modification of the Commission's rules on assignment, height, power, and a liberalization on the number of UHF stations permitted one owner for this purpose. Would such modification of its rules on the part of the Commission result in the immediate construction of hundreds of UHF stations and help achieve the priorities of the Sixth Report and Order and the all-channel receiver law? I think it would if such changes were properly designed. Thus, I must ask, are the CATV industry and the television industry really basically divided? I submit that the answer is no—they are both a part of the same industry, and I see no reason why they should not be unified if both seek this result. These problems must be approached objectively and dispassionately by all, including the Government, with the one common purpose of seeking solutions which will give the best service to the public.

In conclusion, I would like to make two suggestions.

First: That a separate division be established in the Commission's Broadcast Bureau whose primary function would be to study the future of television, to accumulate technical data, to serve as a point of contact for industry and the interested public concerned with the various new television systems, to develop information on the issues presented, to study the technical, legal and policy problems in pay-TV, STV and CATV, to plan for the orderly development of television and to keep the Commission informed of the technical, legal, ethical, social and economical problems in this field.<sup>25</sup>

Second: That an ad hoc committee be formed composed of representatives of pay-TV, STV, CATV, broadcasters, manufacturers, networks and other interested groups to study all the technical, legal, social, economical and political questions arising from the developments in this field, and to make recommendations for the future orderly growth of a total television system in the United

States, including perhaps a revision of our allocation table for lower powered UHF stations, multiple ownership rules and concepts relating to the concentration of control of mass media; in short, to study and make recommendations on what form the regulation of wire television should take.

I do not pretend to know what the future of television will be. I do know that wire television is becoming increasingly important in our national scheme. I doubt that it will ever replace broadcasting, but I cannot be sure even of that. This is perhaps the most dynamic, powerful and influential of all the means of mass media in existence today. In the United States we have developed the greatest television system in the world. I think it will become greater, but it will require skill and wisdom in the years to come to keep television the servant of the people.

I have no preconceived notions of what the optimum system should be except that it should provide the greatest service to the greatest number of people. I am firmly convinced that all forms of television must constitute a unified and integrated system—that it should be united, not divided, in its objectives. I am also convinced that out of the caldron of conflict and uncertainty that exists today will emerge a total system best suited to serve the public interest, convenience, and necessity.

## NOTES

1. Sixth Report and Order, April 14, 1952, 1 Pike & Fischer RR 91:620 (1952).
2. 47 U. S. Code s 151.
3. See Prospectus of Subscription Television, Inc., October 30, 1963 for a description of this business.
4. See *Clarksburg Publishing Co. v. F. C. C.* 225 F2d, 511, 517 n. 16 (1955) for definition of CATV, also see S. 2653, 86th Cong. 1st Sess. (1959).
5. These early systems were the Skiatron system which was tested in New York City over WOR-TV in 1950, the Telemeter system which was tested over KTLA-TV in Los Angeles in 1951, and the Zenith system which was tested over its own experimental station in Chicago the same year.
6. *In re* Application of Hartford Phonevision Co., Docket No. 13814.
7. Community Antenna Television: Survey of a Regulatory Problem, by Palmer, Smith and Wade, 52 Georgetown Law Journal 136 (Fall 1963). I have also used the figures furnished by A. D. Ring and Associates to the NCTA. These figures are contained in their comments on Docket Nos. 14895 and 15233. Cf. figures contained in the June 15, 1964 issue of *Television Digest* which are slightly higher.
8. Docket No. 12443.
9. 24 Fed. Reg. 3004, 18 Pike & Fischer RR 1573 (April 14, 1959), Par. 77.
10. 22 Pike & Fischer RR 193 (1962). It is interesting to note that the grant to Carter Mountain had been set aside on July 29, 1959 on a protest by Station KWRB-TV a little over two months after the final Report and Order in Docket No. 12443.
11. *Carter Mountain Transmission Corporation v. F. C. C.*, 321 F2d 359 (May 23, 1963).

## NOTES

12. Docket No. 14895.
13. Docket No. 15233.
14. WOR-TV, New York; WNAC-TV, Boston; KHJ-TV, Los Angeles; WHBQ-TV, Memphis, Tenn.; WHCT, Hartford, Conn.; CKLW-TV, Windsor, Ont.
15. Docket No. 15415.
16. 86th Cong. 1st Sess. (1959).
17. Address before Eastern Regional Management Conference, NCTA, Shoreham Hotel, January 9, 1961.
18. S. 1044 87th Cong. 1st Sess. 1961. H.R. 6840 87th Cong. 1st Sess. 1961.
19. Address before the Station Representatives Association, April 28, 1964.
20. See "The Meaning of the Public Interest, Convenience or Necessity," *Journal of Broadcasting* (Summer, 1961), p. 205.
21. 47 U.S. Code § 153H.
22. I am informed that the attorneys general of the following states have ruled that CATV systems are not public utilities: New Mexico (1954), Washington (1954), Utah (1956), Arizona (1955). The Pennsylvania Public Utility Commission ruled in 1964 that CATV is not a public utility. The District Court for the First Judicial District of Wyoming ruled that CATV was not a public utility (1958). The Supreme Court of California decided that CATV was not a public utility (1956). Eleven state legislatures in the past six years have considered the regulation of CATV but have not enacted laws. In 1963 Connecticut enacted a law permitting the Public Utility Commission to grant franchises to CATV although the latter were not public utilities.
23. Section 73.636 of the Commission's Rules provide that, (a) No license for a television broadcast station shall be granted to any party (including all parties under common control) if: (1) Such party directly or indirectly owns, operates, or controls another television broadcast station which serves substantially the same area; or (2) Such party, or any stockholder, officer or director of such party, directly or indirectly owns, operates, controls, or has any interest in, or is an officer or director of any other television broadcast station if the grant of such license would result in a concentration of control of television broadcasting in a manner inconsistent with public interest, convenience, or necessity. In determining whether there is such a concentration of control, consideration will be given to the facts of each case with particular reference to such factors as the size, extent and location of area served, the number of people served, and the extent of other competitive service to the areas in question. The Commission, however, will in any event consider that there would be such a concentration of control contrary to the public interest, convenience, or necessity for any party or any of its stockholders, officers, or directors to have a direct or indirect interest in, or be stockholders, officers, or directors of, more than seven television broadcast stations, no more than five of which may be in the VHF band. (b) Paragraph (a) of this section is not applicable to non-commercial educational stations.  
NOTE 1: The word 'control' as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. NOTE 2: In applying the provisions of paragraph (2) of this section to the stockholders of a corporation which has more than 50 voting stockholders, only those stockholders need be considered who are officers or directors or who directly or indirectly own 1% or more of the outstanding voting stock.
24. The June 8, 1964 issue of *Sponsor Magazine* reports that there are 43 instances of joint broadcaster—CATV interests. Only 22 occur in the same market and only 6 involve 100% ownership of the station and CATV system.
25. The special study unit was created on July 9, 1964 to prepare a detailed fact-finding report on CATV within six months.

# “DEFAMACASTS” AND THE SUPREME COURT

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HAROLD MESSING

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In a recent Supreme Court decision (*New York Times v. Sullivan*)<sup>1</sup> the muddied waters of the law of defamation were made a bit clearer. Although the case in point involves a newspaper, there is no question that the decision will have a forceful impact on the mass media of radio and television.

From the very beginning, electronic communication has been exceedingly difficult to classify into the convenient historical molds of libel and slander. Simply defined, libel is *written* defamation while slander is *spoken* defamation. Damage awards in libel suits are traditionally more “generous” than in slander suits. In an early decision, defamatory words read aloud by a speaker from a written article and broadcast by radio constituted libel.<sup>2</sup> A year later under the same circumstances, the court decided that it constituted slander, because the words were spoken.<sup>3</sup> In 1939 the courts finally took notice of the uniqueness of sound broadcasting and stated that the distinctions between libel and slander are inapplicable to radio.<sup>4</sup>

In 1947 the court held, in a famous case involving Walter Winchell, that “The utterance of defamatory remarks read from a script into a radio microphone and broadcast was ‘libel’ and was not ‘slander’...”<sup>5</sup> The court did not reach the question whether the broadcasting of defamatory material which has not been reduced to

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*Harold Messing* joined the CBS Television Network in 1958 as a production assistant and is now an associate director. In 1961 he was a guest lecturer at the Stanford Radio and Television Film Institute. Mr. Messing holds an M.A. degree from Stanford University, where he won the Lasky Television Award in 1957. He is currently studying at the New York University School of Law.

writing should be held to be libelous because of the potentially harmful and widespread effects of such defamation.

Concurring in the result, Judge Fuld said,

I cannot agree with the court's rationale. It impresses me as unreal to have liability turn upon the circumstances that defendant read from a script when, so far as appears from the complaint before us, none of his listeners saw this script or, indeed, was even aware of its existence. As I see it, liability cannot be determined here without first facing and deciding the basic question whether defamation by radio either with or without a script should be held actionable per se because of the likelihood of aggravated injury inherent in such broadcasting.<sup>6</sup>

Finally, in 1962, the court declared that defamation by broadcast constituted a new type of publication of defamatory matter—and the word “defamacast” was born. The court reasoned that

The distinction [between libel and slander] bears very little relationship to the realities of the problem. After all, the listener or viewer cares little and often doesn't know whether a script is being used. Nor does the use of a script have any relationship to the broadcast's ability to harm... [Radio and television] pose new problems which cannot realistically be solved by resort to old libel and slander thinking.<sup>7</sup>

Of much greater import than the classification of the new “electronic tort” is the question of liability of the broadcaster. Under the theory of “whatever a man publishes he publishes at his own risk,” the broadcaster was held to be absolutely liable for any statement broadcast through his facilities, and local stations were held to be liable for matter originating at the network.<sup>8</sup> And if this wasn't enough to dissuade anyone from going into the business of broadcasting, Section 315 of the Federal Communications Act of 1934 completely boxed-in the broadcaster. It reads as follows:

If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, Provided—that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate.<sup>9</sup>

This is commonly known in broadcasting as the “equal time” provision.

The combination of absolute liability and no power of censorship completely frustrated the broadcaster. In 1952 Adrian Murphy,

then President of CBS Radio, testified before a Senate subcommittee, explaining the method used by the Columbia Broadcasting System in handling political speeches. He related:

We normally review scripts to make sure there is nothing obscene or profane in them. That has been our consistent policy, and if, in doing so, we find something that we think might be defamatory or libelous, we ask the candidate if he wouldn't like to change it, pointing out to him that it puts us in the embarrassing position of perhaps being subject to suit, and as far as I know, the candidates have always made the changes, and in most cases, thanked us for calling it to their attention; but if the candidate should refuse to make the change, we just let them go on the air with it.<sup>10</sup>

On several occasions, Congress has attempted to rectify this injustice to broadcasters. In 1952 the House passed a bill which included immunity to broadcasters.<sup>11</sup> But the immunity provision was deleted because the House conference committee felt that the subject hadn't been "adequately studied" and that "it should be acted on only after full hearings have been held."<sup>12</sup> Congressional inaction has since followed that attempt. Several states have passed legislation favorable to broadcasters, and some states, like New York, have been able to mitigate the effect of the defamation laws without the aid of legislation. But because of the widespread, national effect of broadcasting, this is not enough.

There was some relief finally in 1959 when the Supreme Court, in a tight 5-4 decision (Mr. Justice Black speaking for the majority), clarified the position of the broadcaster in relation to Section 315 by noting that the power of censorship of political broadcasts is forbidden to a station and decided that this prohibition carries with it immunity from liability for defamatory statements made by the political candidate. (The speaker, of course, was not exempted.) The Court also ruled that it "could not believe that it was the intent of Congress to compel a station to broadcast libelous statements and at the same time subject it to the risk of defending actions for damages."<sup>13</sup>

It is readily apparent that broadcasting has problems which are unique, distinguishing it from the printed media. The Communications Act, cited above, is most obvious. Newspapers and magazines have the power to eliminate defamatory materials before publication. Radio and television are without this power. There is no "ad lib" in print. Every time television and radio covers a live event,

such as the national political conventions, the way is opened to a possible suit.

How, then, does the Supreme Court ruling come to the aid of networks and stations? The decision involves the head-on collision of two basic rights: that of freedom of speech and press, as opposed to the individual's rights to protection of reputation against defamatory comment.

The *New York Times* case involved an advertisement, carried by that newspaper, which attacked the treatment of Negroes in Montgomery. Five public officials in Alabama claimed they were defamed. The lower court granted \$500,000 in damages to one of the officials, and this is the judgment which was reversed in the Supreme Court.

News coverage of racial disorders in the South also has resulted in a total of eleven suits pending against the *New York Times* (seeking a total of \$5,600,000) and five such suits (for a total of \$1,700,000) against the Columbia Broadcasting System.

In one parallel suit, the Columbia Broadcasting System was sued by Eugene ("Bull") Connor of Birmingham for \$500,000 for alleged defamation on a broadcast of *CBS Reports*, "Who Speaks For Birmingham?"<sup>14</sup> On the program, citizens of Birmingham were interviewed and their varying viewpoints (some of them unfavorable to plaintiff) were broadcast. CBS was sued on the theory that because it provided the facilities for publication and transmitted the statements—"the tale-bearer is as culpable as he who perpetrated the tale." This is the same theory on which the *Times* case was founded. The CBS case did not come to trial, pending the *Times* decision, and in light of that decision, it is possible that it will not come to trial.

The crux of the Supreme Court holding is that "comments on the officials, however false and defamatory, are privileged unless made with deliberate malice." Mr. Justice Goldberg went even further and thought that "comment on official conduct should be absolutely privileged, even when malicious." To Mr. Justice Black, it seems, *all* libel suits are absolutely forbidden by the Constitution.

The decision not only allows, but practically requires the broadcast media to take responsible advantage of this newly expanded freedom. If Mr. Justice Black is correct and "...An unconditional right to say what one pleases about public affairs is... the minimum guarantee of the First Amendment," then it might be argued this right is transformed into a duty on the part of the responsible news media.

The objective of the protection given speech and press was made explicit as early as 1774, by the Continental Congress:

The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honorable and just modes of conducting affairs.<sup>15</sup>

The problems of the broadcaster are far from solved. The danger of a suit still exists in broadcasts involving private citizens (as opposed to public officials) as well as the private lives of public officials. The responsibility of the broadcaster is as great as, if not greater than, it ever was. In the words of Mr. Justice Brennan who wrote the Supreme Court majority opinion,

...we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials... Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations... the pall of fear and timidity imposed upon those who would give voice to public criticism is an atmosphere in which the First Amendment freedoms cannot survive.<sup>16</sup>

## NOTES

1. *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).
2. *Sorensen v. Wood*, 123 Neb. 348, 243 N.W. 82 (1932).
3. *Miles v. Wasmer*, 172 Wash. 466, 20 P. 2d 847 (1933).
4. *Summit Hotel Co. v. National Broadcasting Co.*, 336 Pa. 182, 8A.2d 302 (1939).
5. *Hartmann v. Winchell*, 296 N.Y. 296, 73 N.E.2d 30 (1947).
6. *Ibid.*
7. *American Broadcasting—Paramount Theatres, Inc. v. Simpson*, 106 Ga. App. 230, 126 S.E.2d 873 (1962).
8. *Coffey v. Midland Broadcasting Co.*, 8 F. Supp. 889 (W.D. Mo 1934).
9. 47 U.S.C. par.315 (1952).
10. Hearing before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, 82d Cong., 1st & 2d Sess. 110 (1951-1952).
11. H.R. 7062, 82d Cong. 2d Sess. (1952).
12. H.R. Rep. No. 2426, 82d Cong., 2d Sess. 21 (1952).
13. *Farmers Educational & Cooperative Union of America, North Dakota Division v. WDAY, Inc.*, 360 U.S. 525, 79 S.Ct. 1302, 3 L.Ed.2d 1407 (1959).
14. *CBS Reports*, "Who Speaks For Birmingham?", May 18, 1961.
15. 1 Journals of the Constitutional Congress 108 (1774).
16. *New York Times v. Sullivan*, *supra*.

In the fall of 1963, ABC-TV initiated *The Fugitive*; and this season, in a major alteration in nighttime programming, the same network installed a serial drama, *Peyton Place*, in its schedule on two nights of each week. Whatever generic differences exist between the series, both have these basic similarities: they deal with a form of serialization (stories which "end but do not *really* end"), and they enjoy considerable rating success. The latter condition, in particular, has inspired some widespread speculation as well as re-thinking about the potentials of television fiction.

As the subsequent pages reveal, most of the anxieties created by such series fall upon the producer, and most of the fun upon the consumer. *Paul Monash*, understandably agitated, discusses some of the basic physical and psychological hardships related to keeping *Peyton Place* on schedule, while *Richard Averson*, the Associate Editor of this journal, joins in playing an increasingly popular literary game—seeking hidden meaning and motivation in the plight of "the fugitive."

# NOTES ON *PEYTON PLACE*

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PAUL MONASH  
CECIL SMITH

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In September, just as ABC-TV was preparing to offer its innovative series in nighttime drama, *Peyton Place*, executive producer Paul Monash met in Hollywood with Cecil Smith, critic for the *Los Angeles Times*. They discussed the nature of the experiment and considered its implications for all of TV fiction. An abridgement of their conversation is reproduced below. A transcript of the discussion was later sent to Mr. Monash, along with an invitation to add any comments he wished to make in light of the initial reaction to the series. His remarks are printed at the end of this article.

*Mr. Smith:* We can begin with the expected, Paul, by asking you to define what it is you're creating. Is *Peyton Place* merely a soap opera or is it a form entirely new to TV?

*Mr. Monash:* It is a half-hour episodic drama. Since the story does

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Executive producer of the new serial *Peyton Place* and of the Dramatic Unit for 20th Century-Fox TV, *Paul Monash* holds a B.A. degree from the University of Wisconsin and an M.A. from Columbia. His writing credits include two novels and several television dramas. In 1958 he won an Emmy for *The Lonely Wizard*, a biography of Steinmetz.

*Cecil Smith* has been entertainment editor and TV columnist of the *Los Angeles Times* since 1958. He began his career as a radio script writer, and in 1947 he joined the *Times* staff as a reporter and drama writer. In addition to writing several TV scripts for all three networks, Mr. Smith has acted in a number of television productions and has appeared on panels and interview programs.

continue, and since there are no other useful direct analogies in the medium, I suppose it must be considered as having been derived from the soap opera. It tells a convoluted story, which goes on and at the same time turns back on itself in order to remind the audience of what is happening. Each episode must always end at a point of high interest, although you could not always call the program a "cliff-hanger." Finally, it does have a strong appeal for women. In all these respects, it resembles daytime soap opera.

*Mr. Smith:* Where does it differ from the soaper?

*Mr. Monash:* Hopefully, in the broader appeal of its stories. It also differs in terms of the way we tell the story, the way we mount it, the care taken in production, the degree of humor, and the dramatic shadings. If its similarities to soap opera may be manifest, we still feel it has distinctive dramatic qualities. The pace within scenes, for example, is consistent with nighttime television. Daytime TV forces its performance to drag. Actors read their lines slowly, they sip coffee, they pace and posture. In daytime TV voices are seldom raised and speeches are never read in haste. There are great numbers of pauses and delays in the action.

I confess that our temptation to stretch material is strong. We know that if we proceed at too rapid a narrative pace the audience will simply lose the thread of the story. On a two-nights-a-week schedule, we must expect the audience to retain a great deal of narrative material and character definition from program to program. In addition, we find ourselves wondering if it is not to our interest to explore scenes in greater detail, letting our cast share in this exploration-in-depth. This cuts down the narrative pace. And we do have a tendency to conserve dramatic material.

*Mr. Smith:* What are the basic appeals of *Peyton Place*? I am told that the English series, *Coronation Street*, is popular because it trades in nostalgia. It treats a way of life that is vanishing in England; the neighborhoods, the little garden conversations—these have a broad appeal. Of course your series deals with a small town, too, but do you think it has a great appeal to most of the urban Americans who once came from small towns?

*Mr. Monash:* No, I don't. I think there is little real desire to flee back to the small town. I think there is an aspiration, among urban groups, for the less complex life associated with small towns—we are trying to emphasize these values in *Peyton Place*—but I also think

this less complicated life is more myth than reality. The conservative appeal of the simpler life doesn't necessarily mean a return to the small town. It's just that most of us tend to assume this, and so our show reflects it. Personally, I have very little desire to live in a small town. Even *Peyton Place* is a synthetic town, where we are not dealing with small-town problems per se so much as with general and contemporary American attitudes and problems.

*Mr. Smith:* As you know, Paul, you are pioneering in a field where success will bring a great deal of imitation. Plans for more continuing series are being made in several places. What experiences have you already had, especially in the matter of logistics and continuity, that might be passed on to those who will follow?

*Mr. Monash:* To this point, none of my experiences would lead me to feel that this approach should not be extended. But the conditions and contingencies are almost appalling. The idea of a continuing situation makes *Peyton Place* strongly dissimilar to a show like *Dr. Kildare*, even though the latter also has continuing characters. In *Kildare* there are no "memory stories." That is, you can take show number 19 and put it on before show number six, and it won't disturb the concept. But we are dealing with a continuing drama with a core story. It's easy to write breathless publicity about each story being "complete in itself—and yet there is still a continuing story," but when you try to *implement* this the headaches begin.

Our series demands enormous concentration on the sequence and consequences of the story. The episodes must be written forward—two must come after number one, three after two, and so on. This creates a basic condition of all continuing stories—no margin for error. I may not like an episode, but I know it must be shot next. I can't reach into a stockpile and then use the weak one at a later time, after I've had a chance to strengthen it. In physical production we cannot permit ourselves to fall behind at all, since we have no repeat pattern and are committed to 104 shows a year. It just seems that all the challenges of television are magnified in this form. And perhaps the opportunities.

*Mr. Smith:* You must, then, consider any story in terms of the continuing nature of the core?

*Mr. Monash:* Yes, and this leads us to adopt certain techniques which also carry inherent problems with them. A basic technique

we must follow is that of withholding, rather than revealing, action. Most programs constantly fulfill the dramatic expectations of the viewer. We must constantly withhold, because once we finish a situation it is abandoned. In addition, we must choose our basic dramatic situations with great care. Each basic story will run for several weeks—even months. Once we get into a story we are committed, and that's what's terrifying. We are 13 weeks ahead in production, and if we discover that a story does not interest viewers to the degree we had hoped there is nothing much we can do about it.

*Mr. Smith:* How do you view the series in relationship to the book which inspired it? Grace Metalious' novel is probably among the most widely-read works of this century. It was a bitter book, a tale of the ferment of sex beneath the surface of small-town life.

*Mr. Monash:* I've read the book. I've seen the film, several times, and I got more from the film. It carried an underlying expression of tenderness and affection that wasn't in the book. If many highly dramatic, even harsh, things happen in the course of our television treatment, we feel we have at least tried to put wings of love underneath it. The book is a harsh, unloving document, and we intended to put our stories at a different emotional level. The book, however, has given us an extremely recognizable property to which we could attach what is considered a hazardous programming concept.

*Mr. Smith:* I've previewed several early episodes at your invitation, Paul, and it seems to me there is a great deal of sex in the series. The mill-owner is having an affair with his secretary—

*Mr. Monash:* It appears as though he is having an affair.

*Mr. Smith:* Allison, the heroine, is having vague stirrings. Her mother is a frustrated, loveless woman who hasn't shared her bed with a man in 18 years. The young couple are in the throes of a hot and fervid affair. These are all revealed in the first 30 minutes. The basic motivations, it seems, are sexual.

*Mr. Monash:* I think it is fairer to call it a love story, and my argument springs from the simple fact that both the book and the picture were set in the period immediately before World War II. The TV version is not. We have obviously undergone a moral revolution in the past 25 years. We are more honest about many things today than we were then. We are more willing to admit that

there is a link between love and sex. We tend to romanticize less, and a series that tries to deal with this matter and not make some admissions of this kind is not very honest. Obviously, though, there are things which cannot be condoned or seriously described in a medium like television.

A more disturbing problem to me is that no one in the series is very happy about love. Part of the explanation lies in the nature of drama itself. There is simply more conflict in unhappiness, and this is the heart of drama. It is difficult to dramatize at great length *any* kind of amicable relationship. But this offers us no reason to consider *Peyton Place* a manual on sex. If it were, it could not succeed. We cannot be, and don't intend to be, as blunt, in visual terms, as the motion picture. We would not want to be as grimly descriptive as the novel.

But the important point to be made is that this series is about love—love in contemporary and valid terms as a reflection of society. The basic theme of the show is a quest for love. Allison McKenzie is searching for love. She is afraid that love leads to sex, and wants it to be more than that. The couple who are on the verge of an affair are basically seeking, from each other, the things they have not found with their own partners. This is a common problem.

We must, on occasion, deal in melodrama. We can tell melodramatic stories in the series because we can relate them in greater detail and tell them with some semblance of honesty. At this moment I am working with a story that is dangerously melodramatic. I would like to do it because I can envision a number of powerful scenes. But I must wonder whether the audience will accept it. I'm not sure it will unless I can find the supporting details and motivations that will allow me to tell it honestly.

*Mr. Smith:* What are your personal satisfactions in this series? What is your personal vision—the important element you are trying to communicate? Do you think the series will be successful on more personal terms?

*Mr. Monash:* Most of the assumptions we began with over a year ago have now been abandoned. I have a feeling of security about the project, however. If I don't have any final personal sense of fulfillment yet, maybe it's because I know we are just beginning to cut our way through the underbrush. *Peyton Place* is not the ultimate property I would like to explore. I would, in time, like to deal at length with other environments, using some of the things I am

learning about continuing drama. There is the possibility of doing a contemporary *War and Peace*. There is the possibility of doing Dos Passos' *USA*. There is the possibility of doing something more, because it is obvious that in *Peyton Place* we are not trying to create great television literature. We are creating popular entertainment.

If I were Sherwood Anderson I might touch the verities. But even if it were possible to do so, I would be circumscribed by the limitations of volume demand. We will always be limited by the fact that we cannot go to many writers at once and solicit their efforts. We must turn out scripts quickly, shoot them quickly, and keep moving along. The nature of the series—even more so here than in more conventional series—demands assembly-line operation.

Yet this is a beginning. Perhaps, someday, we will go beyond this and have still further modification of form. It has been proposed, for example, that a series of this type go for a year and stop, to be supplanted with another year-long continuing drama. In this way, the new series could benefit from a full year of preparation and script stockpiling.

*Mr. Smith:* In Spanish television there are programs similar to our soap operas which tell a story with a number of characters, which may continue for ten weeks or so and then end. Then they'll begin a completely new series with new characters all over again. Would this be a practical approach, as an alternative to the obvious misgivings you have about your own commitments and problems?

*Mr. Monash:* I'm not certain. I think not, and for two reasons. First there are nearly insurmountable problems of casting within this approach. Next, the natural tendency of American TV to go with a winner would be hard to overcome. If one of these were enormously successful it would undoubtedly stay on the air.

But I believe it's going to become necessary to devise some way of creating a continuity which offers dramatic fulfillment—an eventual beginning, middle and an end—but which escapes the kind of limitation imposed upon the situation drama with a complete story each week. If *Peyton Place* does not succeed, this will still come. We will see five-part, six-part and even ten-part stories that reach dramatic crisis and resolution. I was involved in an earlier experiment in making a "horizontal" motion picture of this kind, to be played in three- to five-hour TV time periods. The pitfalls lay in trying to work within a TV budget to get major

properties. There is no way to do this and still come out with a motion picture respectable enough for overseas release, and that was felt necessary to make the productions financially feasible.

*Mr. Smith:* Paul, in view of your many doubts, even the success of *Peyton Place* seems to mean only a qualified success for you as a creative figure. While I was in England I spoke with several people at BBC and the commercial companies there about their continuing interest and faith in the anthology series. There are a number of them going at once. And they told me their major reason for keeping them on the air is talent. They would lose all their talent—writers, producers, directors—if they did not have this outlet for them.

*Mr. Monash:* I think that is a nice thought, but I'm afraid that in the United States more practical and immediate considerations are paramount. There doesn't seem to be great anxiety in network centers over where new talent will come from. You know, it is just assumed that it will appear, somehow—in Hollywood, or perhaps in the East. I think there is no sense of creative drive in the networks. I really think they are strictly pragmatic. When good young writing talent comes into the field now it has no place to go to work. It must turn out formula drama, and therefore it becomes corrupted. Writers therefore eventually hope to become motion picture writers, or producers. It has become very difficult for a writer in television to prove himself to that point where he will be hired for a major motion picture. Television, as it is constituted now, is corrupting and therefore destroying talent. Is it so conditioning the audience to the results of this that eventually the audience will wholeheartedly accept an inferior product—which is the safest kind of product to turn out? I don't know.

Maybe the primary comment to be made is that very few people who create television watch much of it.

*Mr. Smith:* They haven't the time—the desire—or what?

*Mr. Monash:* They haven't the desire.

*Mr. Smith:* Is TV discouraging to you? You've been in it since 1952. Does it seem less exciting to you now than it was then?

*Mr. Monash:* Yes, and I can't blame it entirely on television. When I first came in TV it was exciting. To be writing anything—I had not really been a writer—just to sit down at a typewriter

for seven hours was a challenge. And the money was pouring in. It was an exciting kind of money. It was new money. It was fresh money. I am not sure I wasn't like a child with a new toy. I don't remember when I became bored. Now it isn't a toy. And I am not a child. The game has become my business. And I am twelve years older.

#### COMMENT BY MR. MONASH

I was interviewed by Cecil Smith some hours before the first episode of *Peyton Place* was to be aired. I felt quite apprehensive, and that apprehension is fully reflected in the interview.

Because of that, I did not stress some of the creative opportunities which would make the continuing drama attractive to members of the Academy. I do believe that we are groping toward the television novel and that *Peyton Place* does indicate some of the possibilities of that eventual form.

When television programming does permit its suppliers (and I am using the *business* word) to treat serious material at length and in depth, it will become rewarding to TV's creative suppliers (and now I am using the *gratifying* word).

I do feel that—somehow, someday—American television will begin to grow. If it does not, then many of us will have to grow ourselves, have to grow away from and apart from television. For most of us, of course, this is a gnawing concern.

# THE FUGITIVE: TV's ROGUE-SAINT

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RICHARD AVERSON

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Readers, theatergoers, and television viewers find intellectual delight in speculating upon the symbols (both real and imagined) of which novels, plays, films—and more and more TV programs—abound. The search for meaning, after all, is modern man's greatest sport. The rules of the game demand, however, an allowance for error: any meaning extracted may be the remotest intention of the creator of the work under scrutiny. (Fortunately the author never spills his subjective beans; that would spoil all the fun.) Thus, *The Birds* may not suggest an apocalyptic warning of universal cataclysm, but is merely another ingenious prank by which Hitchcock leads more sheep. And *The Turn of the Screw* may be only a ghostly potboiler composed by James to beguile a wintry evening—and not a psychological projection of the governess's sexual frigidity. Further, *The Fugitive* may not bear the slightest proximity to the interpretive notions I am about to propose. The program may simply present the uncomplicated yarn of a middle-aged doctor, fed up with routine, who finds an unexpected excuse to get away from it all.

Face-saving aside, it is a tribute to the richness and complexity of an artistic creation that various and often contradictory meanings may emerge. *The Fugitive* is one of those rare television offerings that invite exegesis. The fact that the program is a melodramatic

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crime-thriller in no way invalidates the superb intricacy of its conception. Since Poe, and Joseph Conrad's *Secret Agent*—and Graham Greene, too, especially *Brighton Rock*—the conventional crime-mystery has become the most ambiguous and provocative of all literary genres.

The special ambiguity of *The Fugitive* engenders numerous queries and conjectures. Who is the maimed man Richard Kimble claims he saw quitting the scene of his wife's murder? Does this one-armed creature physically exist, or is he a projection of a psychic traumatic wound the doctor has suffered? Another perplexity is: Why, for an entire television season, and into a second, have viewers condoned Kimble's criminality? He is an adjudicated criminal on the basis of circumstantial evidence, an escapee from the legal establishment, who is weekly flaunting the law. Yet audiences willingly collaborate in his transgression. (Stern moralists may have a right to be disturbed.) And, from a psychosocial viewpoint: While ostensibly Kimble is running from Gerard, is the real thrust of his flight a compulsive quest for ego-identity and persistent self-sameness which can be effected only by sharing some kind of essential human character in the people he encounters?

A ratiocinated case might be constructed for each of these suppositions concerning the latent meaning of *The Fugitive*. I wish to advance—with the ordnance of supportive footnotes—the following interpretation which touches upon all of them: Audience acceptance of the less-than-perfect Kimble is not entirely unexpected, for he is heir to a long tradition of rogues and anti-heroes; further, his being a rogue qualifies him as a television representative of the *picaresque saint*; and, finally, the employment of Kimble as this rogue-saint suggests a framework for the symbolic transposition into television terms of that Christian theology which regards Man as a participant in the passion, crucifixion, and resurrection of Christ. Having submitted myself to that preliminary rule of all explication, let me hopefully begin.

Richard Kimble's sanctioned criminality was foreshadowed by admiration and tolerance of the many rakes and rascals who first sliced their way into popular fiction, conned a debonair *entrée* into the movies, and later infiltrated television programming. The Villain, once encamped in his gypsy cave outside the municipality of conventional social morality, is now in libertine control of the city. He has replaced the traditional Hero in the affections of the populace. The vagabond with the harmonica, the unheroic anti-hero,

the *picaro* with a twinkle-in-the-eye and a handsome shock of unruly hair now surrounds and regales modern audiences. In literature and the movies the anti-hero goes under the several aliases of Valmont (in *Les Liaisons Dangereuses*), Tom Jones, Julien Sorel (*Rouge et Noir*), Huckleberry Finn, Jimmy Valentine, Raffles, and Cartouche—to mention a few of his affable incarnations who, by sheer wit and joviality, have managed to evade the police line-ups. (The anti-hero is a transvestite: his harlot counterparts are Manon Lescaut, Moll Flanders, Becky Sharpe, Scarlett O'Hara, and Angélique.) Lovable rogues, all.

Sometimes, however, in more vicious moments, they partly remove their charming masks and confront us—particularly in the novels of Norman Mailer and James Jones—as “the genial raper, the jolly slasher, the fun-loving dope-pusher.”<sup>1</sup> But moviegoers<sup>2</sup> and readers of best-sellers don't react indignantly; we have all been conditioned to the antics of the anti-hero.

What were the circumstances of the anti-hero's illegitimate birth and *parvenu* success? In his remarkable dissection of novelists of the 1920's entitled *The Vanishing Hero*, Sean O'Faolain traces the corrosive inroads made into the original conception of the Hero. The irruption was initially at work in the literature of the seventeenth and eighteenth centuries, and the job was completed in the modern novel. O'Faolain describes the traditional Hero as “a purely social creation. He represents, that is to say, a socially approved norm, for representing which to the satisfaction of society he is decorated with a title.”<sup>3</sup> How did the Hero lose his rank, and how was his social position usurped?

The method was sympathy, sympathy for unfortunate others—a misguided compassion that began to dominate all moral sense. O'Faolain supports his thesis of “the vanishing hero” by this statement of Cousin, a philosopher of the eighteenth century:

...Man is a creature who naturally finds the unhappiness of others hard to bear; to blot out the sight of unhappiness he is, so to speak, obliged to collaborate with the unhappy.<sup>4</sup>

Because of this collaboration with the miserable—with the panting, rejected suitor and unrequited lover, with the political outcast and the subversive migrant, with the gold-hearted prostitute and pimp—the established social code was divided and the Hero deposed. In the modern novel the Hero is an *ignis fatuus*; and the anti-hero has replaced him.

Television, perpetuating popular tastes in movies and novels in so much of its programming, is becoming another playground for the anti-hero. Even the stalwart Private Eye and sturdy Cowboy are beginning to crack under the threat of competitive strain. Mr. Lucky skirted the gambling laws just deftly enough to remain lovable; Tod and Buz, "the Bobbsey Twins of the highway"<sup>5</sup> in *Route 66*, were really stout lads at heart and so could be excused for their picaresque behavior<sup>6</sup>; and Paladin, despite his wielding a mean deck of cards, exuded the proper aura of well-oiled masculine charm to off-set his maverick and bounty-hunting propensities.

The television season now under way offers another manifestation of the video anti-hero, under the logical title of *The Rogues*. True to its genealogy, this jolly rumble relates the exploits of "a family of debonair scoundrels whose credo is 'honor before honesty,' and who make it a point of bilking only bigger crooks than themselves."<sup>7</sup> A description of the program goes on to say that "one of the rotating regulars in this comedy-adventure series" dealing with "sophisticated swindlers" is a principal character advertised as a "polite thief."<sup>8</sup>

On television, so long as the rake is *entertaining*—and doesn't drop his mask—he eludes the long arm of the Television Code. The TV *pícaro* is permitted to go only so far: he may seem to temporarily stray from the law but must, before the final commercial, return to the bosom of conventional morality. He cannot cross the line between devil-may-care roguery and criminality.

Richard Kimble, the fugitive, shares the impure bloodline of all anti-heroes. His way was surreptitiously prepared. But he has exceeded their reach: he has crossed the line into criminality. If he were not a knave he would have felt some pang of social conscience and, at the conclusion of the initial episode of the series, surrendered himself to Gerard. Justice may be blind as she attempts to balance her scale (the symbol is visually employed in many episodes), but imperfection in man's wisdom is no license for burning our law books. Yet not even NAFBRAT has arched a condemnatory eyebrow.

The explanation is, again, sympathy. Not only does the unhappy Kimble *say* he is innocent; he has *the look* of innocence. Such an unassuming, soft-spoken and underplaying protagonist—a doctor at that—couldn't possibly be a dissembler. He is too pathetic, too humble, to be guilty; he is too gentle with children. Thus does sensibility master sense, and pity make cowards of us all.

And yet, in the anatomy of pity, there is always another possibility, always another consideration that makes all the difference between sentimentality and love. The case of the State against Richard Kimble deserves this other consideration. Despite his tarnished lineage, there is a vast existential distance that separates Kimble from his brutish precursors. It is the distance partitioning hell from heaven. Richard Kimble is a rogue, to be sure, but he is also a saint.

"The fugitive" is the transformation into television of another and more recent figure in literature—a paradoxical amalgam of roguery and sanctity which R. W. B. Lewis has detected in the novels of Graham Greene, Malraux, Ignazio Silone, Albert Camus, Faulkner, and Moravia. This figure Lewis identifies as *the picaresque saint*.<sup>9</sup> Common to the major expressions of these writers of twentieth-century fiction is a protagonist in physical or psychological flight. He is a questioning dissenter, or a political or religious outcast, escaping the established social order of his time and place. Compelled to run for fear of incarceration—or wandering by voluntary exile—he is always "on the road" in pursuit of solutions, answers to life's riddles, and personal sanctuary. Whether his quest be inward or outward, he is a rootless vagabond and rogue. In his picaresque journeys without maps along lawless lowroads, he encounters the full range of humanity. Some will extend succor, some will be eager to betray him; but with all who suffer, as he suffers, this fugitive will enter into "tragic fellowship."<sup>10</sup> This sharing of human misfortune is the qualifying condition by which the rogue becomes the saint:

...the saint is the image of participation in the sufferings of mankind—as a way of touching and submitting to what is most *real* in the world today... he is apt to share not only in the miseries of humanity, but its gravest weaknesses, too, even its sins."<sup>11</sup>

And the more is he a criminal, Lewis maintains, the more is he a saint.

The extension of this thesis to *The Fugitive* need not be labored. The series provides too many examples of Kimble's compassion for humanity to be enumerated. His involvement with other people, his participation in their problems and trials, his taking upon himself their crosses, so to speak—often at the risk of his apprehension, imprisonment and death—constitutes the consistent framework for plot-development. Moreover, by the very fact of his adjudicated criminality is this commiserating rogue—by Lewis' definition—a saint. Whether Kimble murdered his wife is, at this

point, unimportant. But growing evidence, subtly revealed as the series progresses, indicates a breach of love between the doctor and his wife. They quarreled; Helen took to excessive drinking; their marital relationship lost authenticity:

...he grew to hate her, hate her childish tantrums and pouts ...her way of evading his every effort to fabricate some adult rapport between them...Yes, he had hated her but never enough, God knew, to kill her. Their life together had deteriorated to the point where they could yell at each other, throw things at each other, even strike each other—but to kill her? Christ, no!<sup>12</sup>

Because he *had wished* Helen dead—someone has said we are damned by our thoughts as well as our actions—Richard Kimble is burdened by guilt. Was he indirectly responsible? There are numerous parallels in the case studies of psychoanalysis to corroborate Kimble's "guilt complex." The judgment of the court cruelly compounded his own indictment of himself. To find inward peace and to restore his ego-identity, to exonerate himself within himself, Kimble must pursue and apprehend his one-armed man. He cannot be captured by Gerard and he cannot turn himself in—he cannot be, so to speak, a suicide. Prison and death would forever nullify his aspiration for wholeness.

The conditions of the melodramatic crime-thriller are ideally suited to the dramaturgical construction of *The Fugitive*. The murder, the escape of the accused, the police dragnet, the final detection of the real culprit—all of these are inherent and natural elements on which a sequential plot may be overlaid. The very scheduling of *The Fugitive* as a weekly, continuing serial is an appropriate complement: seven days is a credible telescoping of time to permit the rogue-saint to flee to another locale.

It seems more than coincidence that television's assertion of the rogue-saint's odyssey is entitled *The Fugitive*, for this is also the title of the film-version of Graham Greene's *The Power and the Glory*. (The whisky priest of Greene's novel is one of Lewis' picaresque saints.) Kimble and the priest are fellow vagabonds; both of them—pursued and in pursuit of sanctuary—traverse similar psychological landscapes. They chase across similar physical terrains, too: the Greenland of vultures, pye dogs and foul vermin is geographically adjacent to the "desert town" and primitive backroads of Kimble's adventures. Both are haunted by guilt; both are seedy outcasts from the established law; both enter the labyrinthine ways

of successive human entanglements, and both find—despite their impurity—astonishment of heart in helping their fellowmen. By their furtive good works and love for others, the wretched priest and the despairing doctor become more than flesh and carbon. Survival of heat and pressures creates the immortal diamond. It is the grandest of themes, and *The Fugitive* is worthy of its acclamation by television's audiences.

I do not wish to explore the special imagination of Graham Greene, nor his subjective perceptions of the Catholicism he has embraced. Nor am I suggesting that Richard Kimble is an unordained priest. Yet because of the more-than-chance similarity of the priest and the doctor, some further argument may be advanced to fulfill the tripartite intention of my interpretation of *The Fugitive*. In the design of this exegesis, I postulated that the employment of Kimble as a rogue-saint provides a symbolic framework connoting the passion, crucifixion, and resurrection of Christ. If the game is not to be lost, I must attend now to this.

In *The Power and the Glory*, Greene makes of the whisky priest a martyr. He is betrayed, and is shot by his pursuers while providing spiritual aid. To be sure, he does not gain martyrdom by any strictly religious or primary meaning of the term; the unprincipled fornicator, unless reconstructed and persecuted to death for his newly-found faith, does not qualify. But in the more generally accepted, nonreligious and secondary, implication of the word—in the sense that he suffers misery for a long period of time—his martyrdom is ensured. Richard Kimble, too, suffers; and like the priest he is, in many episodes of the program, betrayed.<sup>13</sup> The Judases of the world are always close by.

It is this ever-present Judas who supplies an associative link joining *The Fugitive* to those events that Christians recall during their observance of Holy Week. Despite his proclamation of innocence, Christ was delivered into the hands of his executioners by a betrayer. He travels the Way of the Cross and, on a hill named Golgotha, is martyred in the company of rogues and thieves. If Christians are to share in Christ's resurrection, they, too, must take up their crosses in life, endure misfortune and suffering, face death.

One episode of *The Fugitive* in particular, a fairly obvious manipulation of symbols, parallels the incidents and circumstances of Holy Week. In "Angels Travel on Lonely Roads" Kimble (under the alias of vagabond Nick *Walker*) comes upon Sister Veronica, whose old and battered car has broken down during her journey

to California—a journey she is “destined to make.”<sup>14</sup> “The car,” the nun apologizes, “is looking for a place to die.” Believing that Kimble’s appearance is by “highest authority,” she presses him into repairing the car. He unplugs the fuel line and becomes her driver. When immediate danger of detection by the state police has subsided, Kimble is anxious to leave her. But circumstances forbid their parting company. During the course of the program Sister Veronica discloses that she is on her way to Sacramento—which lies over a precarious mountain—to renounce her vows. She has lost her power to communicate to “empty faces”; she would rather give up her vocation and would prefer to “coast downhill.” Like Kimble, the nun is running from an unhappy event of her past; she describes herself as “a fugitive from God.” They stop at a pack-station for supplies, where Kimble encounters the unscrupulous Chuck. “What are you,” challenges Chuck, “a priest or something?” They quarrel over money; and wherever the fugitive and Sister Veronica subsequently progress, from one pack-station to another, the embittered Chuck is always nearby. He eventually betrays Kimble to the police, but in the final climactic pursuit of Kimble and the nun, the betrayer meets a critical accident (did Chuck break his *neck* in the collision, as Judas is believed to have hanged himself?) which prevents him from identifying Kimble. In Sacramento now (the play on the religious *sacrament* is unfortunate), Sister Veronica has changed her mind: she will remain a nun. Although aware that Kimble is a wanted man, she had come to rely upon him, and he upon her. Her dedication to her vocation is strengthened as she apparently realizes the import of Kimble’s earlier comment to her: “There’s a practical side, too, not just parting of the waves.” If the nun has discovered renewed meaning in life, so too has Richard Kimble. Before they separate at the steps of the church the fugitive tells her: “Because of you another side of me came up for air.”

There are several novels in modern literature, each employing a rogue-saint, whose plot-constructions are patterned upon Holy Week. More than one critic considers Faulkner’s *The Sound and the Fury* and *A Fable*, and Greene’s *The Power and the Glory*, as symbolic of Christ’s passion and crucifixion.<sup>15</sup> Yet none of these transposes these essentially religious events into the unique terms of the crime-thriller, as does *The Fugitive*. It requires little imagination (Christian or otherwise) to interchange Kimble with Christ in “Angels Travel on Lonely Roads.” The pack-stations along the

mountain road urgently suggest the stations of the cross by which Catholics commemorate Christ's journey to the hill of Golgotha. According to religious belief, Veronica wiped Christ's brow with her shroud—gave him refreshment by which he "came up for air." In return, Christ left his impression on her veil. What Christ and Veronica exchanged, as Kimble and the nun exchanged, was a precious memory of each other.

Not unlike Kimble who was reluctant to make the dangerous trip over the mountain, Christ would have preferred that the cup of suffering be taken from him. But by authority of the Father he was destined to be caught up in circumstance, to plod his way to the cross. It was the practical thing to do. Practical in the religious sense that if the "battered old car" of humanity were to be redeemed (if the "fuel line" of trust between God and Man was to be repaired after the calamitous Fall) Christ must die to vindicate his teachings. To satisfy the practical side of men, parting of the waves is not always enough.

In the interest of practicality, Christ had a need of Judas—just as in the interests of dramatic development, Kimble requires his own betrayer.

I have no doubt that Richard Kimble will be exonerated, that his innocence will be publicly proclaimed (after the series is cancelled). As a television rogue (albeit reconstructed) he will, like his predecessors in the medium, be returned to respectability and that established social and moral code by which civilized society prevails. The television viewers, whose sympathy has been exploited and whose suspension of disbelief has been strained, have a right to expect acquittal. Audiences have been encouraged *to believe* in Kimble's innocence, and surely this faith should not be betrayed.

There is another reason for my optimism regarding Kimble's exoneration and eventual renewal as a human being. Because of the terrible happenstance of his wife's murder, the personal guilt of his having wished her dead, the nightmare of his trial, and his psychological flight into despair (what St. John of the Cross called "the dark night of the soul"), Kimble touches, in the image of the saint, what is "most *real* in the world today." He, too, is a maimed participant in "the aboriginal calamity" of which Cardinal Newman said we are all involved. After the train wreck and Kimble's escape, the fugitive thinks he is miraculously released from the responsibilities of man's society; but by his baptism (each episode usually recapitulates that scene of Kimble dipping his hands into the waters

of the mud-hole) he is forever involved in the human act. He thinks he is fleeing society, but he is actually *running back* into the company of men. Supported by the succor of others, sharing their sorrows and offering them, in his turn, understanding and love, Kimble endures his horror and, it is to be hoped, will eventually find personal resurrection and glory. Hope, itself, can create.

To the credit of the producer of *The Fugitive*, Richard Kimble is no quitter; he does not lose the name of action; he will not give in permanently to his despair. It is as though he says to himself, as do all who make their picaresque journeys through life: "I am a good man, I am an innocent man; now I must spend the rest of life proving it." He will solve the riddle of the one-armed man—that symbol he has of himself as a broken image.

## NOTES

1. *Time Magazine* (June 2, 1958) in a review of Edmund Fuller's *Man in Modern Fiction* (New York: Random House, 1958). Fuller denounces the image of Man presented in the contemporary novel as rootless, adrift and as inhabiting "a morally neutral universe," 11.
2. Anti-heroism in the movies goes on its box office way. A recent advertisement (*New York Times*, September 17, 1964) for the film *Topkapi* employs this rakish copy: "We're crooks (honest)! We resolve to make the world a better place to steal in!"
3. Sean O'Faolain in *The Vanishing Hero* (Boston: Little, Brown and Company, 1957), xii.
4. Quoted by O'Faolain, xiii.

5. The phrase is not mine. See a review of the *Route 66* episode, "Two Strangers and an Old Enemy," in *Variety*, October 2, 1963.
  6. See Philip Booth's "Route 66—Television on the Road toward People" (*Television Quarterly*, Winter, 1963) for an interpretation of the series as being in a picaresque tradition. Booth considers Tod and Buz "fallibly, modern knights-errant in the wasteland of contemporary America," 7.
  7. *TV Guide* (September 12-18, 1964 issue) in a summary of *The Rogues*.
  8. *Op. cit.*, 14[27]. This is the New York State edition.
  9. R. W. B. Lewis, *The Picaresque Saint* (Philadelphia and New York: J. B. Lippincott Company, 1961).
  10. This phrase is attributed to Henry James and is quoted by Lewis, 33.
  11. Lewis, 32.
  12. Roger Fuller, *Fear in a Desert Town* (New York: Pocket Books, Inc., 1964), 10. This is a novelization of primarily the first program in *The Fugitive* series. Such extensions in other media are always perplexing: one gets the feeling of not having been told the *whole* story.
  13. In "The Witch" a naughty child is the culprit.
  14. This quotation, as well as others in the paragraph, is based on a transcription of heard dialogue.
  15. O'Faolain treats this interpretation of Greene's novel in *The Vanishing Hero*.
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## TELEVISION JOURNALISM

Earlier this year Time-Life Broadcast, Inc. and the Radio-Television News Directors Association co-sponsored a two-day "Newsfilm Standards Conference" for the purpose of articulating principles for local TV newsfilm production. Some 275 newsmen from across the nation were on hand to hear *Robert J. Shafer* issue a keynote call for some historical and theoretical insight into the nature of film as a reporting medium. The following article is based upon his speech.

## INTERNATIONAL TV

American broadcasters traveling abroad continue to be amazed and enlightened by the manner in which other nations deal with seemingly insoluble problems. In the final essay of this issue, *Stewart Wilensky* provides an interesting account of how the Scandinavian TV networks which participate in Nordvision have engaged in creating a truly international TV service.

# THE GRAMMAR OF NEWSFILM

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ROBERT J. SHAFER

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The history of photo-chemistry and photography traces the origin of the trichrome color reproduction process now in universal favor to a Frenchman by the name of Louis Ducos du Hauron, who published his first paper on the theory in 1869. I do not wish to dispute the matter with historians, but it may well be that Louis Ducos made a far greater contribution to the science of photographic reproduction five years earlier than that, in 1864, when he applied for a patent for a device which would reproduce photographic images on a continuous strip of something approximating what we now call celluloid.

As it happened, Ducos abandoned this and concentrated on the color reproduction process, but his patent brief gave an inventive generation sufficient inspiration to pursue the earlier idea. What is most remarkable about all of this is what Ducos said in his brief: "There will be a living representation of nature. I am especially enabled to reproduce the passing of a procession, a review of military maneuvers, the movements of a battle, or public fête." What Ducos foresaw, 100 years ago, was the evolution of *film reporting*—

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In 1961 *Robert J. Shafer* became News Director for WRCV-TV and Radio in Philadelphia, where his department's efforts in local news coverage and documentaries have earned 45 awards. Mr. Shafer is the only News Director in the country to win the NPPA "Newsfilm Station of the Year" Award on two occasions.

the intrinsic nature of newsfilm reporting on TV today. To ignore the history of that evolution is to deny ourselves a perspective considerably more revealing than that which can be drawn from 23 years of scheduled TV programming.

After Ducos, it was nearly 30 years before experimentation (by Edison, Lumière, and a few others) resulted in both a mechanism which would record a continuous strip of images and a device for reproducing the moving images so that they might be seen with the naked eye. Those who could avail themselves of the early motion picture cameras began to photograph what were later called "one-shot news events"; among them were President McKinley's inauguration, the Columbia and Shamrock yacht races, the Jeffries-Ruhblin sparring contest, the Galveston cyclone, and McKinley's funeral cortege. Most of the early films which were catalogued and distributed were these simple reports of international events, world figures, and headlines of the moment. Early film journalists, according to Lewis Jacobs in *The Rise of the American Film*, expressed the prevalent optimism, the pride in American progress, the new interest in the common man, the rising assertiveness of labor, America's mounting interest in foreign affairs, and the foibles of the newly recognized machine age.

It is worth noting that the lot of the cameraman was not as comfortable as he might have liked it to be. The Edison Catalogue of 1901 offered *The Galveston Cyclone* with this supplementary information:

At the first news of the disaster by cyclone and tidal wave that devastated Galveston on Saturday, September 8, 1900, we equipped a party of photographers and sent them by special train to the scene of the ruins. Arriving at the scene of the desolation shortly after the storm had swept that city, our party succeeded at the risk of life and limb in taking about a thousand feet of moving pictures. In spite of the fact that Galveston was under martial law and that photographers were shot down at sight by the excited police guards, a very wide range of subjects has been secured.

In Europe, one of the very early motion picture photographers was a professional magician. He roamed the streets of Paris with his camera, shooting people, trains, soldiers— anything that moved—in hopes that something might happen which would make a salable news report-on-film. One day while he was photographing a street scene the camera jammed, the film was caught in the gate.

Film was expensive, so he draped himself and camera under a cloth, cleared the gate, re-wound the film a few feet, and resumed the shot. After the film was processed and projected he couldn't believe what had happened: a bus on the Paris street suddenly turned into a hearse. The delighted photographer was George Méliès. He was not only a magician, but also a cartoonist, a theatrical producer, an actor, and a scenic painter. His instinct told him that, in the unwitting "cut" he had effected, he had stumbled upon some rather remarkable photographic possibilities, and what happened after that is legendary.

The motion picture became a novelty, a highly lucrative one; and one-shot news events were no longer so attractive to producers and distributors. As a matter of fact, had it not been for Charles Pathé the whole concept of film reporting might have been lost.

Pathé, who was then regarded as not only the largest producer of moving pictures in Europe but the chief one of the world, introduced the *Pathé Weekly* in the United States in 1911. Because these newsreels seemed to help his box office for feature films, he began to station cameramen around the world with instructions to make one-shot news events of anything they thought would lend interest to a theater advertisement. Other producers and distributors were reluctantly beginning to follow his example when World War I broke out, and then could not turn back. The newsreel became recognized as a method, although a crude one, of film reporting.

The end of the war did not mean the end of the public's interest in non-fiction motion pictures. The film report had established an appreciation for witnessing actual events in their actual surroundings. A real factor had not been skill in production, but speed—and hazard and impudence. Newsreel cameramen had had little opportunity during the war to improve either technique or product; speed and the "scope" which could be merchandised were the only criteria for success.

But the leap-frogging technology of the post-war years began to change all that. Spring-wind and motor-driven cameras were developed, sound was added, and as the depression approached there were six newsreels under twice-weekly production and distribution.

Even the literature of the cinema, which had been more engrossed with theatrical implications of film production, found cause to consider the merits of film-reproduced actuality. One writer of the period, Miss C. A. Lejeune, voiced what must have been regarded then as a rather shocking appraisal:

The presentation of fact has always had a fascination of its own and the presentation of fact in pictures has to many people an added conviction that the printed word can never achieve. That this is the natural journalism of today cannot be denied. Ours is not a reading age; words are too tardy for us.

Andrew Buchanan, in *The Art of Film Production* (1936), could not have been more devastating in his disagreement on the value of newsreels:

Each reel appears to copy its competitor, and they all seem terrified to break away from a conventional form of presentation which they, themselves, have established. My temperature rises when I am confronted with annual stories which appear with clockwork regularity; Cup Finals, Ascot, The Derby, Armistice Day; and in the case of football and racing, I am quite sure that the majority of people would be no wiser if last year's events were shown next year.

Miss Lejeune's enthusiasm may not have been entirely justified at the time, but a few years later the "natural journalism of today" took on a form and substance all its own. Until then, except perhaps for Pathé in his early days, no reputation—good or bad—had ever been made with film reporting. On February 1, 1935, the first *March of Time* was released to the public. It was a monthly series, but it gave film reporting both concept and design. Until then, for one reason or other, newsreels had never been *produced*. They merely happened.

With the notable exception of *March of Time*, film reporting spanned another decade (a period including World War II) before the advent of television provided an incentive for qualitative concern. "What is the good of expecting fine film construction, or well-balanced sequences or first-class photography?" Buchanan had written. "That is impossible, and explains why the newsreel cannot be judged according to the standards reached by any other type of film production."

Let us examine Buchanan's assumption that it was impossible to accomplish fine film construction, well-balanced sequences or first-class photography in newsreels. His assertion is relevant to the very questions to be dealt with here. Buchanan used that assertion to explain why the newsreels of his period could not be judged according to the standards reached by any other type of film production. I will use it to cast aside any suggestion that now, 25 years later, it is any more possible.

There are essential differences, and it would be well to consider

them. One concerns techniques. In the last great years of film reporting for theater presentation, cameramen were still shackled with heavy, unwieldy field equipment. Even the hand-held "Eyemo" was a beast, and I doubt that anyone figured out a way to carry more than one spare roll of 35mm film and an empty can in his pockets. Needless to say, the cameramen 25 years ago were no less aware of the severe restrictions on their mobility imposed by the equipment available at that time than we are today, but their attitude about physical limitations was apparently more justified than ours.

One of these early cameramen, Austin Lescarboursa, wrote in *The Scientific American*:

It is not surprising that inventors have been at work on the problem of evolving a better camera. Several types of hand cameras which do not require a rigid tripod support, thanks to automatic driving means and gyroscopic stabilizers, are being used. They operate from a portable storage battery and are held firmly by two handles. . . . Another type comprises a number of compressed air flasks and a pneumatic motor which replaces the hand crank, as well as a gyroscopic arrangement for maintaining the camera on an even plane.

Sound recording then was a rarity except when it seemed necessary to portray a statesman "by backing him up against a wall and letting him stand there and jaw at the camera for thirty seconds." Hand-held, single-system sound recording was, indeed, an impossibility.

And what of the lenses and the lighting equipment? Well, it required more footcandles of artificial light to penetrate the average newsreel camera lens in the early forties than an entire station newsfilm operation has at its disposal today—and a bigger truck, and a stronger back, and an absolute genius of an electrician on the crew. In addition to these technical limitations, the film emulsions were hardly more than one step beyond glass plates in speed. Processing was not only agonizingly slow, but it may well be that the hazards were so great that mere survival entitled Mr. Houston to be so fearless.

A second essential distinction which sets today's film reporting apart from that of a quarter-century ago concerns the creative attributes of cameramen who work in three distinct environments, as do today's film reporters. In the heyday of the newsreel there were only two types of cameramen: those who had learned to

get footage the first time and those who lost it. The creative requirement has always been the same—the need for an army of intrepid cameramen who not only understood the essentials of cinematography, but who also knew how to tell a news story in pictures. But there was little, if any, reason then for a man to want to be a film reporter. Few had good staff jobs. Most worked on speculation. The odds were against a good photographer turning his back on the call to studio production to remain a free-lance cameraman.

Was there an incentive for the cameraman to engage in the subtleties of technique? Certainly not. Speed was the essence. Ingenuity in outsmarting the competition to get your own film shipped (while at the same time impeding the shipment of your competitors' film, or destroying it if possible) was something the editor took for granted when he gave a cameraman an assignment.

A third difference between film reporting today and 25 years ago lies in the editing of film. Until the immediate post-war years, editing was largely a matter of determining how many cuts and splices it would be possible to make from the time the negative came out of the processing tank until the time it entered the printing room. The exception to this was, again, *March of Time* which was "produced" as a film report.

What about editorial influence? Could editorial pressures in any way make it impossible to utilize fine film construction, well-balanced sequences or first-class photography? Mr. Buchanan did not suggest that it might have been a factor, but another writer, Terry Ramsaye, observed (in *The Motion Picture Herald*) that "for a great many years newsreels suffered from a relative unappreciation at the hands of the trade. They were considerably more important to the more intelligent and influential fraction of the audience than the boys of film were aware. With the coming of sound an opportunity presented itself to re-establish newsreels on a new basis. Nothing of the kind happened. The zest is gone out of the newsreel cameramen and their editors chiefly because the fate of the product is being decided not by performance in the field, but around the tables in sales conferences and trade-offs of playing time."

Editorial influence was seen by some as primarily a *competitive* influence. Editors called for, and cameramen shot, "something different—anything different—as long as the competition doesn't get it too." As a *Time* editor later reflected, "Cameramen might risk their necks to get an occasional scoopshot, but the scoops cancelled

each other, leaving one newsreel's baby parade almost exactly equal to another newsreel's sea-lions."

And there was still another concern which most certainly depressed the creative instincts of both cameramen and film editors. The newsreel, it should be remembered, had long since ceased to be an independently produced film report. It was irrevocably allied to a fiction-creating industry. That industry was, in the late thirties and early forties, dependent upon an eager, entertainment-conscious audience for the success of huge financial investments in studio production. Many persons responsible for these investments feared that newsreel coverage of controversial events taking place at home and abroad might so antagonize portions of the theater audience that the feature film would be thrown into financial jeopardy.

For example, there was an unofficial but strikingly thorough ban on Hitler's voice and picture in theaters in this country for some time. Jacobs was concerned about the implications of this in 1939 when he wrote that "various forms of editing or omission by producers has made it possible for newsreels to propagate a particular point of view, or to refuse to recognize a particular point of view. The commentator can twist the meaning of the accompanying pictures. The deletion in part or whole of some portion of an event can have a distorting effect on news for some propaganda purpose."

Jacobs was particularly concerned about one incident that seems rather commonplace to us now—the shelving of the footage of the industrial riot in the Republic Steel Corporation strike in Chicago in June of 1937. That happened to be the very year when Gilbert Seldes wrote: "There is no great tradition of the impartial recording of news on the screen as there is in the press. A newsreel proprietor who also has large investments in a motor-car factory might omit all pictures of accidents on the road, and perhaps make a special showing of accidents on the air."

Seldes, too, was concerned about a particular incident involving labor-management disputes. He charged that "an unimportant episode in the newsreel of a strike in New England was staged for the cameras. A private guard fired a tear-gas projectile at a striker and severely wounded him—entirely for the benefit of the newsreel."

Given all these factors that limited the scope and underscored the mediocrity of newsreels, it is doubtful whether Buchanan's assertion that film reporting cannot be judged according to the standards reached by any other type of film production remains valid today. The fact is that both time and technology have worked to our ad-

vantage, thereby forcing greater concern for quality. The advent of television, which radically altered the patterns of diversion for the American public, brought an end to the influence of the fiction filmmaker on factual film-making. At the same time, television itself made possible a "living representation of nature" beyond the wild-est fancy of a 24-year-old Frenchman named Louis Ducos du Hauron a century ago. It was the advent of television which put new meaning, an element of truth with evidence, into the statement of Miss Lejeune that "ours is not a reading age; words are too tardy for us. In a good film report there is always something to touch one's personal experience, some point of contact with the individual."

Television may not have come to the film reporter's rescue as fully equipped or adequately prepared as we think we are today. Our principal synch-sound recording tool is, after all, no more than a modification of a camera which was being marketed for amateurs long before we had need of it. But we have added much of our own development of lighting equipment and editing devices, and we have encouraged—by our insatiable appetite for improvement—a host of advancements in lens capability, film sensitivity, and processing systems.

But most of all, television has given the film reporter his greatest gift, and we are only now beginning to recognize it for what it is. It is what Reuven Frank calls the highest power of television, "its unique ability to transmit experience." The experience must be defined first, isolated, and photographically recorded by the cinematographer and his associates. That is, as it has always been, the professional concern of the film reporter.

Today's film reporter may involve himself with the implements, devices and techniques of his profession in hopes of arriving at his own standards of performance and excellence, or he may disregard such considerations entirely; but in either event he ought to be aware that he must soon be prepared to hear his theories tested against a new body of scientific knowledge about human behavior.

This knowledge deals with non-verbal communication. Those who are exploring it in great detail—men such as Jurgen Ruesch and Weldon Kees at the University of California School of Medicine and Langley Porter Clinic in San Francisco, and R.L. Birdwhistell, a senior research scientist at Temple University in Philadelphia—are impressed with the communicative significance of the ways in which people actually move and act.

In his notes on the visual perception of human relations, Dr.

Ruesch reveals that time is running out for the film reporter who is only concerned with camera position and choice of lens. He writes:

Few are trained to look steadily and searchingly at the visual world and really see what passes before the eyes. . . . The nature of action is inherently transitory, and our very familiarity with our every-day surroundings prohibits us from forming an accurate estimate of them. The highly consequential act of putting a "frame" around a person or group or an object concentrates and emphasizes, and there are not many films that deal honestly and directly with real events. . . . films that permit us to look at human beings as they actually are. In a culture of action, symbolic and verbal expression is not usually regarded as an end in itself but tends to be implemental and practical. Political speeches, newspaper reports and the remarks of commentators consequently may not reflect what their writers actually believe. Hence implicit non-verbal communication as it is used by the American "man in the street" is of the essence. The photographic technique is ideal for conveying to the observer topics, factual representations and details of the "how" that words are incapable of expressing. Although most people are familiar with the rules that govern verbal communication—logic, syntax and grammar—few are aware of the principles that apply to non-verbal communication.

Dr. Ruesch and his colleagues in this remarkable research have already hinted at the influence their findings must eventually have on the work of TV newsfilm reporting. Their concern with human action and reaction, the conduct of social behavior which results from uniquely human expression, may well impose upon us an entirely new consideration in film reporting standards.

It is not what most of us would recognize or define as today's television newsfilm, not a pictorial estimate which attempts to satisfy an essentially verbal consideration of fact, but a film redemption which more effectively transmits the experiences of non-verbal reality. We will need a new language, a new vocabulary, one that expresses the non-verbal reality of human relationships. And we will need a set of standards, our own logic and syntax and grammar, with which to apply this new language to responsible television newsfilm reporting.

# VISION IN THE NORTH

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STEWART WILENSKY

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*Ingrid:* What have you got, Bendix?

*Bendix:* Turks at Tivoli, Minister of Education on anti-Swedism.

*Ingrid:* I'll take the second.

*Tollev:* Count us out; too much going on in Oslo.

*Poppe:* If Ingrid takes Tivoli, we take it too.

*Ingrid:* We'll take it.

*Poppe:* And so do we.

A Scandinavian news program is in preparation. At the daily Nordvision news conference, Bendix Madsen speaks from Copenhagen, Ingrid Öhnell from Stockholm, Tollev Berg from Oslo, and Poppe Berg from Helsinki. Each represents one of the four Scandinavian television networks, the members of Nordvision.

Danish, Swedish, Norwegian and Finnish television have formed a partnership which, though merely an informal agreement with no constricting legal bounds, is highly efficient, friendly and tremendously profitable. It has no chairman and no board, but its four members have ambitious plans for the development of Nordvision's facilities and exchange of production. But for all its development and expansion, it will have no membership drive. Though highly democratic in procedure, it remains a most exclusive club; you must be a Scandinavian television network to join. Only Iceland, when it has television, need apply.

In 1958, when the Nordic Council's Cultural Committee in Oslo

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A Fulbright Research Scholar in Europe for the year 1963-64, *Stewart Wilensky* specializes in the field of the documentary in international television. While abroad he produced *De Gamle: The Old Ones*, a half-hour documentary on the Danish care of the aged, and gave lectures for the USIS in Germany. He has produced and directed documentaries for the Berlin, Venice, and San Francisco festivals.

took under discussion the ways and means of promoting Scandinavian Broadcasting, it discovered that the networks (DSR of Denmark, SRT of Sweden, NRK of Norway, and YLE of Finland) had gone ahead under their own initiative. Denmark, Scandinavia's veteran in television, had already joined the Eurovision link and Sweden was ready to make its first Eurovision hookup. The Norwegians and Finns were about to follow suit. By 1960 the Eurovision link extended from Southern Sicily to all Scandinavia and the Arctic Circle—and the idea of Nordvision had become almost commonplace.

Denmark, Norway, Sweden and Finland are alike in many ways. Their cultural, political and social attitudes, their economic and geographic problems are similar. The four Scandinavian television networks naturally turned to each other for help, advice and cooperation. The Nordic Council had already played a role in the establishment of Eurovision. Scandinavian cooperation in radio over a period of 30 years paved the way for simple solutions of engineering problems and the exchange of program material. Nordvision was considered a natural and logical step, a duplication of 30 years experience in radio.

Scandinavian television cooperation had another important foundation on which to build: Danish, Swedish and Norwegian TV people have no difficulty communicating with each other. Although the Finnish language is ordinarily incomprehensible to most Scandinavians, Swedish is spoken by about 7% of the Finns. This is helpful at the planning level of program exchange. But the fact is that sub-titles are often used in Nordvision transmissions, not only to overcome the Finnish handicap but also to facilitate Danish, Swedish, and Norwegian exchange. Nevertheless, full-scale debates and even quiz programs involving representatives of the latter three countries are held frequently. Recent subjects were "Are We Suffering from Teen-age Tyranny?" and "Communism Today." Above all, a spirit of mutual cooperation prevails among the four nations. Though Scandinavian television is state controlled, the television networks believe that cooperation is not the exclusive domain of central government.

Scandinavian audiences expect at least one significant entertainment program each week, usually on Saturday night. In countries with a limited amount of money, limited production facilities and a small pool of talent, the Saturday night entertainment program may prove to be a large headache. The Scandinavian countries

have found a cure in program exchanges. Since there is little time difference (and because each uses a device which superimposes titles as the show proceeds) the exchange is relatively simple to achieve. For several years the Nordvision countries have alternated in producing the weekly show: one week, Sweden; one week, Denmark; and so on. In the recent past Swedish Television has been able to offer several Ingmar Bergman productions.

During the spring of 1964, the quatercentenary of Shakespeare, the four countries exchanged a series of Shakespeare plays. The outstanding offering was the Danish Broadcasting-BBC co-production of *Hamlet*. It was the most successful program in the history of all Danish Broadcasting. Both *Hamlet* and a Danish documentary on its production were well received throughout Scandinavia, though some Danish critics commented that Hamlet's Kronborg Castle was not entirely suited to the television production.

Representatives of each network meet three times yearly, bringing program offers for a four-month period. A total of 150 to 200 programs are offered, all of them free of charge. For each acceptance there is a program offered in exchange. If a Swedish program is accepted by Finland, Norway, and Denmark, Sweden will receive three programs in exchange for its one. In addition to the exchange, problems of mutual interest are discussed, and representatives of the four countries often determine common policy toward Eurovision, Inter-vision and satellite broadcasting.

Each member contributes to the maintenance of the technical coordinating office in Copenhagen, the engineering staff and communications circuits. The annual cost is approximately 100,000 Danish kroner or just under \$15,000, a strikingly low sum. The amount of each member's payment is based on the Eurovision unit system, which is itself based on the number of television viewing licenses paid for in each member nation. Of the Nordvision countries, Sweden has the highest number of paid-up viewers and pays 20 units. Denmark follows with 14, Finland 8 and Norway, the most mountainous and with the most difficulties in reaching the hinterlands, 4 units. Only in rare cases are there actual payments for exchange programs in Nordvision.

When it comes to the purchase of foreign productions, the four members usually go their separate ways. It is true that a visiting ballet troupe such as Guinea's "Ballet Africain" or the Kiev Ballet, which appeared in Copenhagen coincident to the Khrushchev visit, may be taped, shown on the host country's network and offered to

the other three Nordvision members, all with the consent of the visiting entertainers. And BBC's *Inspector Maigret* series was bought by the Nordvision members in common. But when it comes to shows like *The Valiant Years*, *The Defenders*, *Lucy*, *Maverick*, *The Danny Kaye Show*, *The Flintstones* and *Petticoat Junction*, all popular in Scandinavia, the closest the Nordvision members get is a communal screening, to save money. A satisfactory modus for the distribution of commercially produced shows from abroad on all four Nordvision networks has yet to be achieved.

While the television networks of the member nations remain disinterested in payment, the postal departments have maintained an old-fashioned sense of values. They charge! The Nordvision exchange uses high frequency (7,000 megacycle) transmissions, and these come under the jurisdiction of the four postal departments. The high cost of transmissions is mitigated when each member nation receives the same program. Thus if a transmission emanates from Oslo, and Denmark is to receive it, the Danes will watch hopefully for Swedish participation as well. Swedish broadcasting, by receiving the Norwegian program, would save Danish Broadcasting the cost of transmission through all of Sweden. The Danes would then pay for the short distance from Malm to Copenhagen. Their mutual dependence naturally applies to Southerly as well as North-erly broadcasts. Highest transmission costs fall to little Finland. There is no friendly neighbor between Stockholm and Helsinki to absorb the costs of high frequency transmissions.

An explanation of the Nordvision news operation must begin with Eurovision. Daily at about noon the Eurovision coordinator in Geneva contacts by Telex all members of Eurovision including the four Nordvision members. The noon message may bring as many as ten offers from the member nations, all received by the Eurovision coordinator in Geneva. The deadline for replies is 1:45. At 1:00 P.M. the Nordvision countries hold their own daily program conference. They discuss Scandinavian news stories available to the other members and to Eurovision. Stories may be exchanged by Telex but are often discussed at the 1:00 P.M. conference. The four-way talk is held over a special intercommunications system linking Copenhagen, Stockholm, Oslo and Helsinki. In each of the four cities, the Nordvision representative uses a gray metal device about the size of a hatbox. It holds a microphone and speaker, each with its amplifier. It is an improved telephone system, with extensions in several offices in the various broadcasting houses.

During the 1:00 o'clock conference, each country informs the others about developing film stories, interviews of interest and stories that could be covered by the other parties.

At 1:45 the Nordvision representative in Copenhagen will have to telephone the Eurovision representative in Geneva informing him of the stories in which one or perhaps all the Nordvision members may be interested, and what they have to offer. At approximately 4:30 P.M. the Eurovision News Conference is held. The telephone device is the same but the *lingua franca* is now English. Each member of Eurovision in turn indicates interest or disinterest in each story previously mentioned on Telex. During the 4:30 Eurovision conference, Denmark speaks for all four Nordvision members.

At 4:45 P.M. a Eurovision network for the day is established by the Brussels Eurovision technical center. Via Telex, Brussels informs each country which circuits and high frequency links to order from their various postal operations. At 5:00 P.M. the transmission begins. Hopefully stories ordered by the Nordvision members will also be chosen by German and Swiss television, sparing Nordvision the costs of high frequency transmissions through those countries. Each Nordvision member receives and VTR's its own picture; sound is received via Copenhagen. When Brussels is through transmitting for Eurovision, the Nordic countries may resume their own communications. All four members can send and receive stories of local interest in time for their evening news programs.

At present, there is a permanent sound network open all day among all the Eurovision nations, Nordvision countries included. It will not be long before Nordvision and the rest of Eurovision will be linked by a permanent, around-the-clock picture network. Scandinavia will be in constant contact with Belgium, France, Italy, Germany, England, Holland and Switzerland. Finland, receiving Soviet transmissions, will be able to link the Eastern nations and their network, Intervention, with Eurovision and the Western nations. The Nordvision members are building their own ground station near Gothenburg, Sweden, for the reception of satellite transmissions. The bonds uniting the four Scandinavian television networks continue to strengthen; and in a world plagued by top-heavy bureaucracies, these four government-controlled networks manage to get by with a minimum of fuss and a great deal of patience and mutual understanding.

And the budget is low!

## BOOKS IN REVIEW

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Eric Sevareid. *THIS IS ERIC SEVAREID*. New York: McGraw-Hill Book Co., 1964.

This is a book of interpretation and opinion; reasonable men may or may not agree with its commentary. What is important is whether the book stimulates the reader and reveals a thoughtful analysis. The answer to both questions is affirmative.

There is a kind of elegance in Mr. Sevareid's collection which comes not from any unusual historical or philosophical insights, but from the basic integrity, levelheadedness, and empathic sensitivity of his writing. This current effort is a somewhat haphazardly assembled collection of articles, broadcasts, and speeches which have appeared in other places during the past years. The book is best read as it was written, in episodes. The collection doesn't make as much sense if read as a whole; the contributions are lumped together under vague categories such as "The Landscape of Our Lives," "The American Cacophony," "Man Is Still a Political Animal," "Governments Are Not People," and other innocuous chapter titles. There is no chronological sequence to the combination; some of the articles are dated exactly, others are not; some reports are written passionately, others dispassionately. However, these limitations are not of great importance. Sevareid himself describes the book as a volume "of notations—partial, diverse, occasionally contradictory—made on the margin of time." The author could hardly be more honest with the reader.

Sevareid's range of topics is broad—not surprising from a commentator who once found time to write a children's book, *Canoeing with the Cree*. The author discusses cities and their problems—particularly New York—conservation, the Presidency, race relations, political campaigns, foreign policy, the West, a visit to his hometown (Velva, North Dakota), Christmas, bullfights, and quite a few other topics. He seems most comfortable commenting on his contemporaries, which he does with decision and directness. "Like most political writers," he observes, "I am a romantic at heart; belief in heroes is my secret vice." The author's search for heroes is not a simple one; he finds a heroic spirit struggling for expression in often unsuspected places. He is apparently disturbed by the growing hesitancy in mankind to respect emotions—in themselves and others—and admires the quality in a variety of individuals, including some for whom he otherwise has little sympathy. Rejecting the aspirations, methods, and pretensions of Jimmy Hoffa, he still finds a "refreshing quality" in Hoffa: "In this age

of indirection and the careful, lawyer-inspected statement, he (Hoffa) can hate, and he's one of the few public figures not afraid to express his hatreds from the generous choice of words afforded by the richest language in the world. . . ."

Emotional strength is a quality Severeid admires particularly in political leaders. Of the fatally ill Sam Rayburn, he writes:

As I write this he still clings to life. He will die hard, but well. Courage is poise under pressure. In the loneliest moment of all he will not admit to his loneliness. I am sure he will die as my old father died, of whom he so much reminds me—reassuring those about him, patting the nearest hand and saying, "Everything is all right."

In the 1960 Presidential campaign, he observes:

I am not at all sure that Kennedy is a more intelligent or conscientious man than Nixon. What I feel quite sure of is that he is a stronger man, the kind of human creature who can make a fateful decision and, like Harry Truman, sleep soundly in his bed.

What is particularly refreshing in Severeid's collection is the unpredictability of his interpretations. Unlike some political commentators, whose viewpoints fall into neatly defined patterns with almost predictable consistency, Severeid distrusts even his own patterns. To challenge a myth is a credible journalistic venture, but to take on one's own myths requires a higher ambiguity tolerance than most of us are capable of supporting. Severeid appears to be retreating from doctrine, and apparently to his dismay he finds himself changing his views and reducing the consistency of them. He attributes this to an unsuspecting drift into middle-age—the world's and his; whatever the cause, the results for the reader are often illuminating.

Much of the book is concerned with foreign policy. The author questions many myths about foreign policy from the Peace Corps ("...a bright stroke of domestic, not foreign policy") to the belief that economic modernization yields parliamentary democracy.

The liberals with social-worker mentalities do not grasp that illiteracy, low wages, concentrated land ownership and so on are not "social problems," but integral parts of a *system* of life and, therefore, enormously resistant to quick change by anything less than the "totalitarian disciplines" the same liberals abhor. . . . The gamesmen in the Kremlin must smile in their sleep as they realize how deeply ingrained is the American illusion that a ton of wheat can offset a ton of Communist artillery shells, that a squad of Peace Corps-men is a match for a squad of guerrilla fighters. . . . Frightened people in a score of desperate countries want to be on the winning side, not necessarily on the moral side. . . .

In the introduction to his book, Severeid observes that this article was "written in pure anger" and was "melodramatic, in part overdrawn"; it would be hard to argue with him about that. However, he demonstrates an awareness of his role as a political commentator by adding that the article may have served a good effect "...by reason of the fact that I was known as a liberal journalist and by reason of its fortuitous time, it served as an intellectual catalyst." The author often refers to the impact of his profession and the broadcasting media upon American politics. We are, he believes, in the age of the journalist rather than the artist, the teacher, the

pastor, because in this age of "non-fiction" one's "...imagination cannot keep up with the fantastic daily realities." Somewhere on his "margin of time" he might expand upon this point more fully; we are only beginning to comprehend the tremendous feedback of contemporary journalism upon our political, social, and legal systems.

Sevareid emerges through this collection as a distinctive combination of political realist and cultural romantic. His realism leads him to question many American myths, particularly those concerned with means, and the frequent assumption that technological progress is somehow equated with a more satisfying way of life. He is skeptical that meaningful goals can be derived purely from the interplay of conflicting ideological doctrines either domestically or internationally. His fear of his own "intellectual schizophrenia" is, I think, misplaced; he offers a kind of solution, whether realizable or not, in the less complex human virtues he admires in some of the men he discusses, and in his pursuit of these human qualities in a technological society.

The book may not lead the reader directly to any particular destination, but it does traverse a high level of political and social commentary and can be recommended for this reason alone.

*Ronald H. McDonald*

*Maxwell School, Syracuse University*

Arthur Calder-Marshall. *THE INNOCENT EYE, The Life of Robert J. Flaherty*, based on research material by Paul Rotha and Basil Wright. London: W. H. Allen & Co., 1963.

To understand Robert Flaherty one needs to think of him first of all as an explorer. Those of us who know the man through his films tend to forget that he was a respected Arctic explorer whose name was given to an island long before it graced a credit title.

This book puts Flaherty into that perspective and provides an insight into his way of working that has been lacking in previous writings about him. For it was out of Eskimo life and Eskimo art that Flaherty evolved his unique approach to film. Professor Edmund Carpenter puts it this way:

Nowhere is life more difficult than in the Arctic, yet when life there is reduced to its barest essentials, art and poetry turn out to be among those essentials. Art to the Eskimo is far more than just an object: it is an act of seeing and expressing life's values; it's a ritual of discovery by which patterns of nature, and of human nature, are revealed by man.

As the carver holds the unworked ivory lightly in his hand, turning it this way and that, he whispers, "Who are you? Who hides there?" And then: "Ah, Seal." He rarely sets out, at least consciously, to carve, say, a seal, but picks up the ivory, examines it to find its hidden form and, if that's not immediately apparent, carves aimlessly until he sees it, humming or chanting as he works. Then he brings it out; Seal, hidden, emerges. It was always there: he didn't create it; he released it; he helped it step forth.

What emerges from the ivory, or more accurately from the artistic act, isn't simply a carving of a seal, but an act which explicates, with beauty and simplicity, the meaning of life to the Eskimo.

It is obvious that such an approach applied to film requires a great deal of time. To let the film emerge from the shooting means the exposure of a great deal of raw stock, and months in the cutting room. The roll call of Flaherty's important films is revealing in this context:

<i>Nanook of the North</i>	1920-21
<i>Moana</i>	1923-25
<i>Industrial Britain</i>	1931
<i>Man of Aran</i>	1932-34
<i>Elephant Boy</i>	1935-37
<i>The Land</i>	1939-42
<i>Louisiana Story</i>	1946-48

Thirty years of work; seven films. And yet what films they are. There is little doubt that they will still be showing a hundred years from now.

Flaherty has been called "the father of the documentary film," a paternal role he did not really play. His genius lay in telling stories of human beings in simple relationships with nature. His innocent eye failed to see the problems of civilized man, problems which have traditionally been the subjects of documentary films. Science, and all the strains it has engendered, was outside his concern, at least on film.

Film people have often spoken with contempt of some of Flaherty's methods. He did not work from a shooting script. He was sometimes extravagant in his personal life. He did not expect a budget to be inflexible. Sometimes producers accused him of thinking funds were inexhaustible. There is some truth in these accusations, but within the framework of his integrity he tried to give value for the sponsors' money, and his two greatest films were financed by business. *Nanook of the North* and *Louisiana Story* were sponsored by Révillon Frères and Standard Oil of New Jersey, respectively. Neither company has ever complained, at least publicly, of not having received full value for their money, and it was Flaherty's own time that he was spending on his work. His methods were essential to the results and he never suggested that they be emulated by others. Nevertheless many films made today would be better if their creators demanded from the sponsor more time for thought and execution.

The book leads us through Flaherty's explorations to his first abortive film effort which was destroyed by fire before it was finished, and then through the making of all of his important films. Sometimes the way is tortuous, even perhaps tortured, but to any of us who have seen a Flaherty film it is a fascinating journey.

There are a few minor reservations one might have, as would be true of any biographical work. One might question, for instance, the author's criticism of Pare Lorentz for failing to hold a tight rein on Flaherty during the filming of *The Land*. And the circumstances of Flaherty's wedding and his relationship with his wife Frances are described with unnecessary candor. For the greater part, however, it is a most satisfying book.

*Willard Van Dyke*

*Documentary Film Producer*

Wilbur Schramm. MASS MEDIA AND NATIONAL DEVELOPMENT. Palo Alto: Stanford University Press, 1964.

Dr. Wilbur Schramm, Director of the Institute for Communications Research at Stanford, has prepared a book that will serve as a basic text for people holding responsible mass media positions in developing countries of the world, as well as for those who are assisting these countries during these periods of change.

The work provides a synthesis of studies undertaken on the role and effectiveness of mass media in emergent nations, and draws upon Dr. Schramm's experiences as a delegate to a series of UNESCO meetings (in 1960-61-62) designed to survey the status of the press, radio, film and television abroad.

In his preface, Schramm observes that:

one aspect of communication development is of specific concern to the new and emerging countries. This is the contribution that effective communication can make to economic and social development. Free and adequate information is...not only a goal: it is also a means of bringing about desired social change. Without adequate and effective communication, economic and social development will inevitably be retarded, and may be counter productive. With adequate and effective communication, the pathways to change can be made easier and shorter.

By developing the mass media to reach all of their cities and villages, the people of a new nation can better prepare themselves for change within their society, together with those inevitable economic and technological advances implicit in national growth. The mass media, writes Schramm, can insure a smooth transition in all development processes by informing the populace of national goals and by speeding the flow of information and education to areas not reached before.

Dr. Schramm has not avoided a crucial question: the ethics of using what we know about modern communication to assist social and economic change, even though we are aware that some people in any country will resist some of the changes that are desirable. He responds to this problem of "manipulation" of a population by explaining that the developing countries have committed themselves to change ("...they have decided that for the good of their people and the destiny of their nations they must modernize their society...") and suggests that the decisions related to what changes are to be made, how extensive these changes should be, and how fast they should come, must rest with the people of the nation. "Without adequate information," says Schramm, "such a decision is bound not to be a national decision at all, based neither on popular will nor on sound evidence."

The book presents useful current data and analyses on the world distribution of mass media, the flow of information in the world, and the ways mass communication can contribute to national development. There are chapters dealing with the role of communications research in the development process, as well as with means by which mass media can be established and strengthened. A final chapter summarizes and elaborates upon fifteen recommendations which Schramm directs "to developing countries and their friends and aiders, concerning what they might do about the mass media."

*George Mastroianni*

*Syracuse University*

## RECORDS

**Burke's Law** (Liberty LRP-3374/LST-7374)

**I Can Hear It Now** (Columbia ML-4095; ML-4261; ML-4340; KL-5066)

**Lawrence Welk Tenth Anniversary Television Show** (Dot DLP-3591/25591)

**More Hit TV Themes** (Capitol T-1869/ST-1869): *Ballad of Jed Clampett; Bonanza; Bubbles in the Wine; Dick Van Dyke Show; I'm Dickens... He's Fenster; Lucy Theme; McHale's Navy; Naked City; Paladin; Stoney Burke; Supercar*

**Mr. Broadway/Toki's Theme** (Columbia 43133)

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