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Media Concentration, Media Balkanization and Informing the Electorate

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| Good morning and welcome to the 9:00_am panel. Thank you all to the panelists and the audience for getting up early on a Saturday morning when it might have been very tempting just to sleep in a little bit. But in order to aid you with the alertness factor, we've chilled this room to sub-zero temperatures just to keep you alert. And I hope that will help with that.

Laughter

| Our panel today is on "Media Concentration, Media Balkanization and **Informing** the Electorate." And we are going to try and make it worth your while for having gotten up so early. We have a terrific group of panelists here who have diverse and well-developed, thoughtful opinions and material to share on this issue.

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I wanted to just set the stage a little bit by going back to one of the important documents in the communications field, a speech referred to as the “Vast Wasteland Speech,” a speech by Newton Minnow. Newton Minnow was chairman of the FCC under President Kennedy. He has since written a book; in the '90s he wrote a book with Craig LaMay called, “Abandoned in the Vast Wasteland.” This speech that Newt gave before the National Association of Broadcasters (NAB) – talk about going into the lion’s den – he made this speech while a guest of the National Association of Broadcasters.

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And he directly criticized the broadcasters for their inadequate stewardship of the airwaves, accusing them of filling them up with game shows and soap operas instead of content that advanced civic dialogue. You can only imagine what Newt might think of reality TV programming that dominates the airwaves now. I mean it makes shows game shows look erudite. He used that speech, and the experience giving it, in the book to frame an argument that the airwaves do, after all, belong to the public, and that the public has a right to hold those who operate businesses on them, pursuant to federally issued licenses, to certain standards, which together frame what is referred to in communications law as “the public interest.”

At Georgetown, where I teach, I use this book in my course. I used it for the first time about a year ago. And students, all graduate students, had two interesting reactions to the book. First, when they read that the broadcasters’ principle argument against public interest programming requirements for children’s programming – children’s television, three hours per week – the broadcasters’ principle argument was that they had a First Amendment right not to be forced to carry programming not of their own choosing.

My students were stunned. It never occurred to them that corporations, first of all, could have a First Amendment right, but moreover, particularly corporations who are operating a franchise on public property; that they should have a First Amendment right to refuse to cooperate in accommodating the public interest.

The second reaction they had – and this one still has my faculty colleagues reeling, those who heard it – my students concluded that there is no such thing as the public interest. The public interest, they believe, is term of convenience that has no definable content.

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So I offer this as a backdrop for today’s dialogue to suggest that even among thoughtful people, among who I count my students, (most of them anyway), people who care about what media concentration means, face a tough audience that is on the one hand somewhat naïve, and on the other hand, skeptical verging towards cynical, about whether media concentration matters and what can be done about it.

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So I am going to introduce our extremely distinguished and talented panelists, and then I am going to get out of the way for what I hope will be a lively discussion that touches upon: How big is too big? How do you know what to measure to decide how big is too big? And does it matter (an extremely important question) And if it does matter, how do you convince a critical mass of people that something should be done and can be done?

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So, our panelists today, We have the Honorable Susan Ness, former Commissioner of the Federal Communications Commission (FCC), and deeply involved in giving content to the term “public interest” while she was a commissioner, now leads a company called the Woman’s Radio Network, which is going to be syndicating and distributing women’s talk programming around the country. She had a career as a lawyer and a banker before she came the Federal Communications Commission, and has a unique perspective on what it really means to serve the public interest.

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Paul Waldman is here from Media Matters. He’s a Senior Fellow there, and he graciously agreed to pinch hit for David Brock, who couldn’t be here this morning. He is the author of several books about media and politics, including “The Press Effect: Politicians, Journalists, and the Stories that Shape the Political World.” And formally he was Associate Director of the Annenberg Public Policy Center, and is a Ph.D. from the University of Pennsylvania Annenberg School.

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Ronald Cass, the Honorable Ronald Cass, is former Vice Chair of the International Trade Commission (ITC), and for many years, 1990-2004, was the Dean of Boston University School of Law. He is an expert in international law and intellectual property, and has written numerous books, including “The Rule of Law in America” in 2001.

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Victor Kovner, who is joining us from Davis Wright Tremaine. He is the senior partner in the communications law practice, and represents national and regional broadcast and print media clients in all aspects of communications law. He was corporation counsel for the City of New York in the administration of Mayor David Dinkins. And among many other storied accomplishments in the field of communications law, he is a co-founder of the Libel Defense Resource Center.

So, what we agreed to do is each of the panelists is going to outline their perspective for a few minutes, five or six minutes, and then we’ll have a discussion among the panelists and invite you to join in with questions and comments and barbs, if you wish. So why don’t we start with Victor?

Victor KOVNER, Davis Wright Tremaine

Thank you Kathleen, it’s a pleasure to be here. I’m also a member of the board of the American Constitution Society, and I want to welcome everyone. It is unusual that I have that position, and I thought I was going to be the bad guy on this panel, although Ron Cass assures me that he will play that role.

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I grew up in a different time from many of the people participating in this program. And it was a time when national news was accessed by most Americans on three networks; and where most Americans had, what is sometimes described as “the universal campfire,” at which voters saw and heard common ads and messages from candidates over common media sources. Thus, I was comforted in the knowledge, for example, that most Americans saw Walter Cronkite’s reaction to the Tet Offensive in 1968, which for those

of us in the anti-war movement was a critical molder of public opinion, and I guess I am one of those troglodytes that does not believe that today's multiplicity of media has brought us to the best of all possible worlds.

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We now live in a society where we talk, read, and listen, principally, to those with whom we agree, which is why the present administration, for example, simply doesn't care about what's published in the New York Times, or the Washington Post, or other many other media, because they seem to be addressing an entirely different audience.

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Now I want to give a few disclaimers. I'm an old-fashioned, unreconstructed progressive I would have said Democrat, but we were all asked to sign something where we wouldn't say anything about parties, who likes and believes in regulation in the public interest in many contexts. I think, for example, that airline deregulation has been a national disaster serving merely as a mask for union-busting and pension evisceration.

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But I am also a First Amendment lawyer, and I represent many media, both small and large, specializing in resisting efforts of government through the courts to control content or punish speech through libel and invasion of privacy claims. I do not practice before the FCC and, with one exception, have not addressed the subject of media ownership in my own practice. And I certainly want to make clear that my views this morning are neither the views of my firm, and most certainly not those of many of our clients.

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But I'd like to begin with one of the fundamental structures of First Amendment protections for the press in the United States, as seminal as *New York Times v. Sullivan*. It's a case from 1974. It's called *Miami Herald v. Tornillo*. There, the Supreme Court was confronted with a claim that a newspaper would not publish a letter to the editor, as required by Florida's "right of reply" statute. Mr. Tornillo, who was a candidate for the Florida legislature and had been harshly criticized by a *Miami Herald* editorial, had sought to compel the newspaper to publish his response, a position that would seem perfectly reasonable to a great many in this country. But the United States Supreme Court concluded unanimously and that includes for example, Justices Brennan and Marshall that the First Amendment prohibited such compelled speech.

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Now, it must be emphasized that that case arose in the context of a newspaper and not in the context of broadcast media, which are subject to far broader regulation. But newspapers are also subject to the regulations that we are going to be talking about this morning in terms of media ownership. And the principles of *Tornillo*, in my view, should be kept in mind when examining the wisdom and constitutional limits of ownership regulations. And the Court noted in a footnote, back in 1974, that even at that time 'one newspaper towns' had become the rule, and there was effective competition in only four percent of our large cities - effective newspaper competition. Notwithstanding those rather dramatic numbers, the Court unanimously rejected a right of reply as a matter of First Amendment law.

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And among those seeking relief from the present restrictions are the newspapers. It's not just the networks, which are very large and very powerful. It's not just the chains of radio

stations; it's the newspapers as well. And newspapers, I might emphasize, are hurting in this economy, and are victims of the new technology, and are struggling, and need, I submit, to be retained. Our society has a great stake, it seems to me, in newspapers.

Now, given my background, it's not surprising that when I came to this subject, I thought, among other things, that the Fairness Doctrine and the Equal Time Rules applicable to candidates for elective office were sound public policy. What could be more equitable? Indeed, I note, that my good friend Maurice Hinchey, one of the more progressive members of the House, has just introduced a bill to restore the Fairness Doctrine.

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But after years of media representation, I have learned all too well that the problem with these well-motivated regulations is that they are often counter-productive. They lead to less speech, not more. The simple truth is that the mass media will more often avoid controversial speech or controversial candidates, lest they be the subject to demands for response of one kind or another – and perhaps as important, the cost of litigation. And it's significant back in *Tornillo*, the Court expressed the same concern that, faced with right-of-access pressures, editors might well conclude that the safe course was to avoid controversy.

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So where does this mixed background take me in terms of media ownership? It's not an easy question. I reject, out of hand, the notion that there should be no limitations whatsoever. And there is a body of a few that is pressing that. And I believe the burden for lifting or reducing restrictions rests heavily upon the proponents of such change.

The problem, of course, is what weight to give to the alternative sources of information now available through the internet, and numerable bloggers, and the ever-expanding variety of media, of gadgets. Now, for example, satellite radio – not currently subject to FCC jurisdiction – enables one to listen to their home radio station while traveling throughout the country. Those of you who rent cars will find it, at least through Hertz, right there in your rental car. And you can listen to your home teams' games, no matter in which market you might otherwise be, changing the face of the radio audience.

Now to those who rely on the broader sources of media, of news, to reduce restrictions, what is most disturbing to me has been the practice, especially during election campaigns, of certain conglomerates, such as Clear Channel, to exclude from their remarkably broad range of radio stations, views with which their owners disagree. Clear Channel owns stations in every single market. And in some markets, they own a majority of radio stations. The views they exclude would be the views shared by most of the people in this room. It seems to me that the people who have such little regard for the public trust, that accompanies the award of an FCC license, provide the greatest reason to retain most of the applicable ownership restrictions.

But to those who want more regulation of ownership, beware: the tendency to regulate extends easily to content. And behind ownership regulations come content regulations,

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regulations addressing indecency, violence, and other subjects. Those advocates are already out there and, it seems to me, in the end threaten speech.

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Kathleen WALLMAN

Thank you, Victor. Paul?

Paul WALDMAN, Media Matters for America

Since I am the only non-attorney on this panel, and probably in the whole hotel, actually...

Laughter

... I am going to talk a little bit about content. For those of you who are concerned about media consolidation and want to do something about it, I think it's important to understand that you are going to have to find a way to convince people that it's a bad thing, because it is not self-evident to most people. And in order to do that, you need to have a critique of the content that results from media consolidation. You need to be able to find a way to tell people that there are problems for what they see on their news, what they read in their newspapers, etc., because if people are happy with that, then their answer is basically going to be along the lines of, 'well, so what if I have to eat lunch at McDonald's every day? I like McDonald's.'

And so you have to deal with this paradox that Victor alluded to, which is that, as we are seeing more and more media consolidation, and a few enormous media companies gobbling up more and more outlets, at the same time there has been this multiplication of voices, particularly through the internet. Now, the least of this problem of balkanization, which is really a whole separate question, But that's going to be the response from a lot of people is, 'I don't see any kind of consolidation, there are 800 million websites out there that I can read.' So you have to be able to find a way to talk about that that deals with that problem.

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And one way into it, I don't have a perfect answer, but it's important to understand that although the internet has transformed the way that people get information, it has only done it partially. The news source, still today, that most people get their news from, the one that's used most commonly, is not the internet, it's not newspapers, it's not network news. It is that fetid sewer of fearmongering and human tragedy, and Botox news bunnies with fake Hispanic names, that is known as local television news. That is the most commonly used news source, still today for Americans.

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But, unless your local station happens to be owned by a company, like Sinclair, that is jamming their political orientation down your throat, most people have no idea who owns their local news stations, their local stations. And they probably figure that it's the network, which in most cases it isn't. So, you have to be able to find a way to make the

effects of media consolidation visible to people. And that's very hard when it comes to television.

It's somewhat easier when you get to newspapers and radio. But I should note that, particularly on television, if there is one story that is going to be more under-reported than any other, it is going to be media consolidation itself.

Laughter

And this is something that is very difficult to deal with. I mean, if you take for example the '96 Telecom Act, which was probably, in terms of the relationship of the magnitude of the effects on American life to the amount of coverage it got, was one of the most under-reported stories of all-time. There was virtually no coverage of it all. The American Journalism Review did a little survey, and they found that it was, until a couple of days before it passed, there was nothing on any of the networks. And that happens every time that there is a new push to relax the ownership rules; it's not covered on television at all. And that's a problem that is extremely difficult to deal with because, obviously, the news networks have no particular incentive to talk about that story, not only because they think it's boring to their viewers, but also because it is something that they just don't particularly want to talk about.

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But you can make it clear to people when it comes to something like newspapers. Now, this may be a familiar story to you, but what has happened to a great extent in recent years is that more and more newspapers – locally-owned, family-owned newspapers – have been bought out by large, publicly traded corporations. Now, publicly traded is the important part, because what happens in these cases? Well, the newspaper immediately comes under tremendous pressure from the corporate parent, which is always trying to increase its stock price, to increase their profit margins.

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Now you may or may not be aware of this, but the newspaper industry is an extraordinarily profitable industry. Newspapers can generate on the order of 20 to 30 percent profit margins; which, if you are a company that owns supermarkets, you are probably making two or three percent profit margins. Other industries have maybe ten percent. But what happens is, the companies immediately try to put pressure onto the local paper that it just bought to cut costs and increase profits.

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And where do those cuts happen? Well, they come mostly out of the newsroom. And what does that mean? Well, that means less local coverage, more reliance on wire stories, less coverage of city hall, and certainly less investigative reporting. And this is one of the key problems because investigative reporting is very difficult to do. It takes time. It takes money. And a lot of the time when you do an investigation, it doesn't yield anything. And so, companies that are relentlessly focused on next quarter's profits are going to be much less inclined to do the kind of investigative reporting that is absolutely essential to the watchdog role that the press has.

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If you take, for example, *The Toledo Blade*, which won a Pulitzer, I think last year or the year before, for an extraordinary set of investigations into some human rights abuses during the Vietnam War, and is right now having a serious role in breaking down the edifice of a corrupt Republican rule in the State of Ohio; *The Blade* is revealing more and more scandals by the day.

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Well, they are owned, not by a large company like Gannett or Knight-Ridder; they are owned by a small company and they are the main property of that company. Now, they are not saints or angels. This company also owns the cable system in Toledo, so they have something of a local monopoly. But they have, as one example, a level of investigative reporting that is almost unheard of for a paper of that size. Their circulation is less than 150,000. And you just don't find that at papers that are owned by large publicly traded companies.

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So the newspaper area is one area in which you can make this case. The other one that is apparent to people is radio. And we mentioned Clear Channel. They now own about 1,200 radio stations; almost one out of every ten stations in America, and that all happened as a result of the '96 Telecom Act, when the rules on radio ownership were loosened. They began gobbling up station after station in market after market.

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And, I'll tell you a little story that you might have heard about – this town called Minot, North Dakota. It is the fourth largest city in North Dakota, which means its population is around 37,000. Now the facts of this case are a little bit in dispute, but the basic story is that in January, 2002, a train derailed right in Minot that was carrying some dangerous chemicals. And as a toxic chemical cloud began to move over the city, the local officials rush to the radio stations to inform the public that they had to get out of town.

But what had happened not long before was that Clear Channel had bought up, basically, all the radio stations in town. There was one small Christian station and one small public station, and the six commercial stations were all owned by Clear Channel. And since this was nighttime, they didn't have any staff there because all of their content is produced centrally. It is a very effective and efficient system that Clear Channel has where they don't need DJs and programmers in every city. They can do it all centrally.

And as a consequence, it took much more time than it should have for the officials to be able to get to someone at the radio station who could make a broadcast telling people to get out of town. One person died, I think. And the facts are in dispute, but in Minot today the news staff of these combined six stations is one person. So they're not getting a lot of local news coverage.

And as a final note I will tell you that between 2002, when this happened, and 2003, Clear Channel increased the money that they spend on lobbying by twenty-fold. The people who have an interest in loosening the ownership rules have an extraordinary amount of influence in this town, and it's growing all the time. So that's another key challenge, and I'll leave it there.

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Kathleen WALLMAN

Thank you, Paul. Susan Ness?

Susan NESS, Former Commissioner, Federal Communications Commission

Thank you. First of all, you talked about Paul, you talked about the toxic cloud in Minot. The toxic cloud right now is hanging over media ownership. And it is so, in part, because the FCC will have to once again, address revision of the ownership rules. It did so in 2002. Those rules were appealed. And by lottery the Third Circuit won the opportunity to review the FCC's rules, and ended up remanding with requiring modifications of a number of them because the FCC had not adequately explained how it had arrived at certain restrictions.

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So, this year we will be presumably beginning, once again, a very toxic debate on media ownership. And this will probably occur after the FCC gets two additional members, Republican members. One currently is leaving. There currently are four members on the FCC out of the normal five; two are Republican, two are Democrat. One will be going off - one of the Republicans will be going off - two more Republicans will be coming on, and the expectation is one of the Democrats currently serving will be confirmed for a second term.

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So, there'll be a lot going on with new changes that will enable the chairman to have, once again, a majority of Republicans. The expectation is that those coming in will support, once again, the relaxation of some of the ownership rules - in particular, the newspaper-broadcast cross-ownership, I think, is going to be one of the first ones that will be addressed.

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Now, why does ownership diversity matter? Even the FCC did say in its opinion that ownership diversity of ownership does matter. And the court reaffirmed that that is in fact the case today. Notwithstanding, all of the new media that are out in the marketplace, not withstanding the access to information on the internet, most of the information that one gets, for example, a cable channel, there are very few local news channels on cable. Generally speaking, they are owned by the same players who are owning major broadcast facilities in the marketplace.

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And so, essentially, while there is a huge number of new sources of information, and I think we beginning to see dramatic changes, particularly among younger demographics, to how they get news and information. Notwithstanding that, there still is a huge dependence on broadcast for local news and information, and certainly on a declining but still avid readership of newspapers, for that local information.

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In my view, diversity of ownership matters greatly because of the very reasons that Vic was commenting about earlier. Essentially, I see it as a prophylactic way of keeping government out of content. To the extent that - particularly broadcast, which uses a scarce resource, which is the airwaves, which is spectrum, and the courts have repeatedly

upheld the notion that the broadcast spectrum is scarce— there are far more players who would love to have a broadcast license than who can get a broadcast license. To the extent that that exists, and the public owns this medium, it makes sense to have it widely held. To the extent that it is widely held, you have less reason for government to go in and control content. To the extent, as we heard with some of the consolidation issues with Clear Channel and the like, and Sinclair, that there is a heavy concentration within a marketplace, then at some point government may have to step in and say, ‘wait a minute, voices are not being heard. The public has a right to hear a lot more voices than are currently available out there.’

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And in my view, I would like government stay out of the content arena. An example of this recently, the UCC came out with a series of ads – that’s the United Church of Christ – came out with a series of ads on, basically, diversity and religion, talking a little bit, without saying so, about folks who are different, gay rights, gay marriage, and the like, and not precluding all of these people from participating in the church and in life. That ad was stricken from Viacom and NBC stations because they felt it was too controversial.

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Now, they have the right to decide that they don’t want to carry those ads. I don’t disagree with that whatsoever. I would defend their right to do it. But I am relieved that there are a lot more stations with different owners out there in the marketplace who decided, ‘we will carry those ads,’ so that the public had an opportunity to hear that voice. There are different decisions, people are making different decisions.

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Those who would argue in favor of relaxation of the rules really don’t give any substantial reasons why this is in the public interest, why this benefits the public. For example, the FCC in its ruling said that in some of the major markets, which cover about 25% of the population, that there could be three television stations owned by one player. Now why would you want to do that? Why would that benefit the public?

There’s no economic reason why a company has to have three television stations in a market like New York or Los Angeles and the like. There’s no societal reason. There’s no public benefit. If there’s a failing station, then there are far more players who would love to be able to pick up that station in that market. It doesn’t have to be a player that has two other stations. So while we talk about relaxation of the rules, there has to be a real justification in the public interest. And I think that the court pretty well established that as well.

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Also, the FCC, in its explanation for its rules, had certain cross-media limits. And its rationale said basically that a small college station – television station in New York – was the functional equivalent of WABC in New York. Well, that doesn’t really make a lot of sense, and the court faulted it for that.

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There have been many arguments that, even with ownership, that the viewpoints do not necessarily track the ownership. For example, a study was done by the FCC, which showed that you could have a newspaper and a television station owned by the same

company in the same market, and they might have taken very different editorial perspectives. That's true.

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But there have also been studies that show... for example, Pew Research Center did a study of TV journalists and executives, and found that 25% of those journalists purposely avoided newsworthy stories, (and almost as many softened the tone of those stories) to benefit the interests of their news organizations. And a 2002 study found that outlets included more references to their own products and services, and treated them more favorably than those of a competitor. Now that doesn't surprise anyone, but nonetheless these are very valid reasons why you don't want to have concentration levels that have been permitted under the rules.

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There was also another survey of news directors that found that media owners and sponsors pressured reporters to slant the news. Once again, you don't want to have government entering into this fray, but you do want to have a multitude of voices that have some power within the marketplace - not teeny tiny little stations, not blogs, but real outlets and voices in those markets to be able to counter some of those charges.

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It seems to me one of the main areas that we are going to see change, and that's the newspaper-broadcast cross-ownership rule. Currently, it precludes newspaper-broadcast cross-ownership, leaving intact some relationships that pre-dated the original rule. When I was on the Commission, I believed - and so wrote - that there would be markets in which it might make sense to have some cross-ownership, that this would not be harmful, and indeed, it could be beneficial to the public. The problem is trying to figure out how to write a rule that captures the good and precludes the bad. Extremely difficult to do. And to the extent that there is so much concentration in a market that makes it more difficult to be able to discern at what point there is a benefit.

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Agreed, economically, Victor, that newspapers are having huge problems. Notwithstanding what Paul said about the profitability, a lot of them have gone under in the past. They are losing readership. They are finding ways of getting their messages across as well, on the internet. Nobody is precluded from owning or creating newspapers. We have, for example, in this market some of the daily shoppers that you find lying at the end of your driveway everyday that have just come into the marketplace.

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All that is good. Where there is a restriction on newspaper is simply when it is going to be owned jointly with radio or television. It's from that perspective - the broadcast perspective, not the regulation of newspapers - that this comes into play and provides, I believe, a valid control on the ability of the public to have a diversity of voices. In most markets, once again, it's really just the newspapers and the broadcast media that cover the local, political scene. If you have both of those owned by the same players, then the potential harm that could come from that vastly exceeds any beneficial opportunities that might flow from so-called "economies of scale" that an owner would have.

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And, as we have seen in so many instances where there has been ownership concentration, a lot of the public-interest programming has gone by the wayside. There's

been the concentration that Paul talked about, where they've eliminated the reporters, the local reporters, and basically broadcast your local news from a studio that may be thousands of miles away. And we saw in one study in Los Angeles where the amount of children's educational programming has gone down in that market. And it was predominantly in those companies where they have duopolies, two television stations in the market. So there are a lot of reasons why holding the line on ownership concentration makes sense from the public's perspective. Thank you.

Kathleen WALLMAN

Thank you, Susan. Ron Cass?

Ronald CASS, Cass and Associates

Well, as Victor said, I'm here on the far right of the panel. And I intend to uphold that role. A friend of mine, when I was a child, went into a convent. She became a nun in an order that, in addition to taking vows of chastity and poverty, also took a vow of silence. So she was only allowed to speak two words every three years. And after the first three years went by, she went to the Mother Superior, she was told she could say her two words, and her two words were 'cold food.' The Mother Superior said, 'We'll look into that.' Three years later she came back and her two words were 'hard bed.' And again, the Mother Superior said, 'We'll look into that.' Three years later she came back and her two words were 'I quit.' And the Mother Superior said, 'good riddance, you've done nothing but bitch since you got here.'

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Laughter

Well, in the media concentration world, we have a series of complaints about media concentration we've been dealing with for most of the last century. Ever since the advent of radio and television, we've had concerns about media concentrations. Starting in the early 1940s, we've had rules regulating, and the rules have been revised periodically. But the truth is there really isn't any reason to be worried about media concentration. Notwithstanding that a lot of us obsess about what's on television, what's on radio, what's in the newspaper. We have, over the last 70 years, an enormous explosion in media outlets. We have an enormous change in how people get news, where they get it from, who they look to.

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There are more TV stations, by far, than there were when these rules were first adopted. There are more radio stations, by far. There are more other outlets. There are more print media. There are more magazines. People turn to the web. They go online, they find news from many different sources. They don't just find news from people they agree with. They also check out people they disagree with because we enjoy being outraged. You invite people from the right wing to gatherings such as this to enjoy being outraged. We find enormous opportunity now to get news very quickly and easily. And we find a way to do it around the regulatory frameworks we've put in place.

The regulatory frameworks actually restrict what we get; they don't enhance it. The easiest way to get government out of the business of telling us what is going to be on the airwaves, is to get them out of the business of handing out licenses and regulating who owns what. If you are worried about the laws of investigative reporting in newspapers, look at the rise of investigative reporting on the web. The Drudge Report and other web-based reporting actually provoked a lot of the stories that were the big stories in mainstream media. There are every day, new outlets being created that put news out there for people to get. Newspaper readership is declining not because ownership is too concentrated, but because there are other alternative ways of getting information faster, cheaper, more timely.

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You want to know what's happening with the London bombings. You don't want to wait for the next morning's paper to read about it. Those of us who grew up with papers still like them, find them comforting, like getting the newsprint on our hands. But a whole generation of people will turn to their iPod or to their handheld PDA and get their information that way a lot faster wherever they are around the world. And they'll do it from an enormous array of sources we never had before.

There are people who also worry about the public interest. And I believe there is a public interest. I don't believe we are best served by having government officials tell us what that is. When we talk about the spectrum being scarce and there being a need to regulate who owns the spectrum, the spectrum is scarce because we deemed the government would own it, carve it up, and tell us who has what.

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Of course more people want broadcast stations. We hand out the licenses for free. But people buy and sell those licenses all the time.

We want to have more things published than can be published for free. A lot of people want to have op-ed pieces out there that can't get them placed. But we don't want the government telling us how many people can write them, what they can write them about, who ought to be publishing them in what outlets. Victor is right when he says that even if fairness is a great idea, we don't want the government telling newspapers what to print when. We don't want them telling us how many papers there can be, and we don't want them telling us who ought own which paper.

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The same ought to be true of broadcasting as well. We have this fiction that this is special because back in the 1920s the government said the spectrum belongs to the government, not to individuals. Prior to 1927, there was a market developing in the spectrum. And had we allowed it to develop, we would have had cell phones much faster. We would have had alternative radio much faster. We would have had a lot of different media outlets much earlier than we did. And we'd probably have much more information available than we have today a lot sooner.

The worries about media concentration and tying it to the political process also seem out of keeping. Of course there are some ties between who owns something and what gets carried. On the other hand there's an awful lot of what gets carried that's completely

divorced from who owns the vehicle carrying it. It's very profitable a lot of times to have stations carry information that you don't care about or don't agree with. Beyond that, the bigger an organization gets the harder it is to control what happens with it.

For many years, I ran a law school. And people who aren't in academia would refer to it as if I controlled what the professors did. No one who is an academic would ever think of a dean that way. And any dean who actually thought he controlled the professors would be out of the deanship very quickly. Professors often think they control what the students are going to think. And after you've been a professor for a few years, you're disabused of that notion as well. But we maintain that fiction with respect to the media. I think we would all be better off if we got past that.

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Now, there are people getting past that because if you're not worried about media concentration, you could worry about the other half of the panel topic, which is media balkanization. If we don't have too few owners, we probably have too many. If we don't have too few outlets, we probably have too many. And people like my friend Cass Sunstein in Chicago can worry that we don't have the appropriate dialogue we would have if we were all watching the same newscast or the same show.

Back when we had only three television stations coming into the typical American home, the number-one-rated TV show, "I Love Lucy," could capture two-thirds of the audience. And we could all say we were really focused on the same thing. I'm not sure "I Love Lucy" promoted better political dialogue than having a lot of different people searching the web and getting information that way, and arguing with one another over what we should do, or talk radio, where you have people arguing about what we should do. There's probably a higher level of political awareness today than there was back when two-thirds of the American population was tuned into "I Love Lucy."

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I don't think we have an awful lot to worry about, but I'm happy to hear the "Sister Mary Catherine complaints" on an ongoing basis.

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Kathleen WALLMAN

Thank you, Ron. Well, I think you can see why this is such a rich and recurring debate. Thoughtful people bring entirely opposite viewpoints here. So I am glad we were able to deliver on viewpoint diversity in this panel this morning. So, I have about a million questions, and I'm sure that our panelists might like to talk with one another. But first, an opportunity for audience participation and explanation.

I recently heard about the Internet Engineering Task Force. Now they have a way of voting, arriving at consensus on different propositions. And they do it by humming instead of raising hands. So, I'm going to ask for an audience hum on the following proposition.

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We have two diverse groups of viewpoints here. One is, I would characterize as, 'Don't worry, Plenty of diversity out there. Be careful what you wish for in government regulation because you might get a lot more than you bargained for.' Proposition one.

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Proposition two: 'The bus is going over a cliff, and we had better find a persuasive way to explain to people why this matters.'

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Alright? So, I'm going to ask to ask you first, hum if you agree with proposition one. But if you're sitting in front of a microphone don't hum because it will skew the vote.

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Laughter

Hum if you agree with proposition one, 'don't worry.'

Very Light Humming

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Now hum if you agree with proposition two.

Very Loud Humming

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Laughter

I think that the hummers have proposition two.

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Susan NESS

Music to our ears.

Kathleen WALLMAN

So let me start with one question to Paul Waldman, and congratulations on bringing vocation diversity to our panel too. It's good to have non-lawyers worrying about the legal issues. I think it does enrich the debate. So you were talking about, you were making a case for, if we want to be persuasive on this proposition that there is a problem that needs to be fixed, we need to demonstrate the way that concentration affects content. And you offered a couple of examples. But I think you really have put your finger on the loose part of this machinery.

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One of the things I thought was fabulous about Senator Biden's speech yesterday was he, in a very concrete and passionate way, explained why, what might seem to a lot of people in America as an abstraction, the views of a Supreme Court nominee; 'why do they have to be nailed down?' He explained exactly why that mattered. And I think that's a real gap, for those agreed with proposition two, I think that's a real gap in explaining why it matters. And I wonder if you can expound a little bit on how one would do that.

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Paul WALDMAN

I'm not sure I really have a good answer to that question. If I had, maybe I would have, I probably would have laid it out in my earlier talk. But I do think you have to — it does have to be concrete. That's sort of a general rule of political persuasion. You have to be able to tell stories. And the story that is going to be persuasive to this audience, which is steeped in these kinds of issues and has legal training and things like that, is not going to be persuasive to ordinary people. You have to be able to find a way to talk about it in a way that connects to what they do in their daily lives and what they actually see in their media.

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I don't know, this is probably not a very satisfying answer, but it has to get down to what an individual thinks that they are getting, and whether or not they are getting the truth. People tend to be angry when they feel like they are being lied to, which happens a lot. But the trick is to connect that to what to most people is a very kind of arcane issue about whether or not a company should be able to own three stations, or five stations, or ten stations in a market.

So I don't know that I have an answer, but I do want to add one thing to something Ron sort of mentioned in passing. People actually aren't any better informed now than they ever were. It's something that political scientists have been struggling with, basically, since the 1960s, that the American people are shockingly uninformed when it comes to politics, even on sort of the most basic things. For instance, if you asked them which party is the pro-choice party and which party is the pro-life party — kind of, one of the most basic, unchanging facts of American politics — only about 60% would be able to tell you.

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You know, I could offer you a dozen little factoids like that. But, although there has been this multiplication of voices, the people who are reading blogs and looking at ten different news sites every day, those are the same people who, in previous years, were reading two different newspapers, and are really interested in politics. For most people, political information comes at them in a very kind of passive way. They watch the local news while they're making dinner for their kids. They don't know a lot about what's going on in the political world, and they have, actually, very few sources. And the sources that they do have, tend to be the ones that have the least kind of information in them.

So, that may be part of it too, is to focus on the things that people see most commonly; what's on their local news; what's on their network news; and what's in their local paper. If you get it down to that kind of ground level and talk about what's happening in those sorts of outlets, then you can begin to make that case and connect it to their own lives in a way that would be persuasive to them. I wish I had a better answer for this.

Kathleen WALLMAN

Ron, did you want to have a word?

Ronald CASS

I do think that we often have people who worry about making sure that people get the information we want them to have. And we get it to them in a way we want them to have it. We could just as well worry that the printing presses are being used too much to churn out romance novels. They're not being used enough to publish law books. And that not enough people read the books that we write. We ought to make sure that people have more access.

Paul WALDMAN (?)

That's what's most important, I think...

Ronald CASS

Absolutely. And I know David would agree with that as well. But I think that there is a real benefit to letting the people decide what it is *they* want to see and read and hear, and not have the government trying to decide who ought to get which novels, how many novels they ought to get at any point, and which ones we ought to make sure they're reading.

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Kathleen WALLMAN

Victor?

Victor KOVNER

First, I wanted to thank Kathleen for demonstrating yet another advantage of the new technology, the internet world. My partners, who keep track of all these gadgets, — they're dizzying — but I'd never previously heard of the "hummmmmm," the humming test, which is significant. It gives everyone an opportunity to participate, and to participate anonymously. None of us here could tell who was humming.

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When I hear about — this is a newspaper point — when I hear about the access to news, you know, there's an all-news station that says, "give us 22 minutes, and we'll give you the world." Well, not quite. And what's on the 22 minutes, is of course, I think Paul has described it fairly. You can't get serious information. The principle source of serious information, unfortunately, is still the newspapers who have the ability to set it forth clearly. And the newspaper industry — again, contrary to Paul's view in this instance — is not flourishing. Just look around the country; it's in great trouble. And that is a threat to, I think, all of our values. And there are so few multiple newspaper towns.

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There is nothing we can...our reaction to it should not be focused on particular regions or particular markets, but on the industry as a whole. And it comes, by the way, not from the public so much, but from the new technology. The new technology has taken, has

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sucked out, classified advertising, away from newspapers. And it's now online. And that has drastically reduced the economic base for the newspaper industry. It's just a reality of the world, but we ought to, and I hope that those who do regulate will keep it in mind as they examine the future of communications.

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Kathleen WALLMAN

Why don't we invite some questions from the audience? In the front here?

Audience Member

Rupert Murdoch. He was largely responsible for Tony Blair being elected in England. Now, when it comes to auctioning off the spectrum of radio airwaves, and you have a Clear Channel who's gobbled up, basically, our public commons, what happens when someone with a political axe to grind jumps in there during an election? Isn't that a danger, and isn't that why it's important to have diversity of ownership? Mr. Cass?

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Ronald CASS

I'm happy to answer that question. First, I'm not sure at all that Rupert Murdoch is the reason why Tony Blair was elected. We have a number of media barons who, over the years, have thought they could be king-makers. William Randolph Hearst thought he could not only be a king-maker, but be a king. We've had a number of failed efforts in this regard. The public is enormously resistant to management of that source. And, in England, while I would prefer to have Margaret Thatcher there to Tony Blair, I think we can credit the public with their dissatisfaction with some of the conservative policies and their attraction to some of Tony Blair's policies, rather than Rupert Murdoch, with his election.

As to whether the ownership itself matters to that, ownership clearly has something to do with content some of the time. But it doesn't have as much to do with content as much of the time as people like to imagine. And if you look at what is carried on channels owned by Viacom, which is owned by Sumner Redstone, who is a serious, committed Democrat, you will see that there's very little in most of Viacom programming across the board that would tell you what the politics are of the owner.

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The same thing if you look at what Disney carries, or what General Electric and NBC carry. Sort of across the board, although there are conspiracy theories from left and right, they rarely bear out. Most of what stations carry is determined by economics, by the confidence of reporters, by what it is the public wants to see.

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Victor KOVNER

I would just like to add, I don't like to say anything for Mr. Murdoch, but it should be pointed out that for many years, he was the owner and publisher of both *The New York*

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Post and *The Village Voice* in New York. And, well, one of the two reflected perhaps, many of his views. The other continued un-interfered with, as long as it was profitable.

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Kathleen WALLMAN

You had your hand up earlier. Sure, in the front here.

Audience Member

If I could, I'd like to put my question in the form of an observation, and ask you to react to my observation. The problem is not just that a lot of American people are uninformed. But even if we discounted that, let's say we're not worried about the vast majority, like people that Jay Leno embarrasses every night, asking them stupid questions that they can't answer. Let's say we're only interested in the informed people who read and try to follow it. It seems to me that there's a deficit there, too. Not only do many people not get accurate facts, but the explanation of what the facts mean or how to process the facts are elusive and not really available.

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Like many acts of Congress, bills are attached to appropriations bills so they have to pass and they don't go through a normal process. Sometimes there are amendments on the floor that there's no hearing. Conference committees make policy in private and the public really has no inkling of this. I mean, not only do they not know it, but they don't know that they don't know it because it goes on in a subterranean way. And, you know, taking a political science course 20 or 30 years ago doesn't really do it for us.

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I consider myself, maybe an average or better than average informed person, but I'm constantly reading things I don't understand. And I think I know what to look for, but it still isn't there. I mean, there seems to me there has to be an ongoing educational process. And I think – this is my main observation, forgive my speech – that the media, in covering the news, especially political news, operates under a fallacy that policy is made as the result of a debate between liberals, conservatives and sometimes Democrats, Republicans. And that's about 95% a fallacy. It's not really a debate at all. It's really a power struggle with an eye to elections and an eye to interest groups, and money, and all these things are going on.

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And if we read the paper we think, 'well, liberals believe this and conservatives believe that, and somehow, you know, that the winner is the one with the best argument in the debate.'

Kathleen WALLMAN

And so your observation is that no matter how good a job news outlets try to do, they really can't get at the real story.

Audience Member

Well, they aren't really. I mean, it seems to me there ought to be an ongoing educational process as well as an informational process.

Kathleen WALLMAN

Why don't I ask the panelists to react to that? Is there – does the media have a responsibility to educate beneath, behind, around the stories that bring issues to a head?

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Paul WALDMAN

Well, I would actually disagree. I think the problem is that there isn't enough reporting of the substance of the debate. And I say this as someone who enjoys reading about political strategy and thinking about it. Too much of the news media's perspective is that it is all a cynical power game and that the only thing that matters is the hidden intention, and who's going to better positioned for the next election, and what sort of power play is going on.

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And what you read all too often – it is particularly true of television, but it is true of newspapers, too – is this kind of cynical stance that only reports on the political motives and on the power plays and never allows the citizens to actually get a reasonable picture of what the real issue is and what the substance is. And if they don't have that then they can't possibly make an informed choice. All they know is that one side is fighting with the other side, and one side is out-maneuvering the other side.

And that's all important information, but I think we have to realize that it's going to be impossible for us to expect that even a substantial number of citizens, forget about everyone, is going to carefully look at all the details of every policy and come to an understanding and be able to make an informed choice. That's just not going to be possible. So the question is, can they, in their natural distillation of all that information, are they giving us something that is most helpful to us as citizens? And I think, unfortunately, most of the time, they aren't. And that's only partly related to issues of who owns what.

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Kathleen WALLMAN

Another question? Yes. Need a microphone over here.

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Audience Member

Mr. Cass, I apologize if you feel like you're being attacked, but...

Ronald CASS

Well, that's why I'm here.

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Laughter

Audience Member

I mean, most of us are progressives, and we do like to sometimes step out of the echo chamber. But anyway, my question is you make a point of saying that deregulated media is in the hands of the people. But what I'm seeing with this media consolidation is it's really in the hands of corporations, large corporations, which are just as bureaucratic and top-down-management as the government. How is that putting the media in the hands of people?

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I mean, I'm thinking also of the model of the criticisms of record companies, for example, of having executives decide what music you'll like as opposed to letting the people decide. I guess I am just wondering what's going on with your rhetoric?

Ronald CASS

First of all, there is a fallacy in thinking that media are becoming more concentrated. There is less concentration in ownership of media today than there was 10, 20, or 30 years ago. But secondly, there is a difference between having firms, companies decide, and having the government decide. The point of the First Amendment is that we don't want government deciding what we hear, what gets said, what gets written.

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Yes, someone somewhere in a company will decide what goes on a station, or what goes in a newspaper, the same way someone in a company will decide what shirts get carried in Nordstrom's, or Macy's, or Lord and Taylor's. But the decision being made on what shirts get carried in Macy's or Lord and Taylor's is based on an assumption or an expectation about what will sell. And the complaint that we were hearing earlier on the panel about companies being profit-driven, profit-driven means responding to what the companies think will sell. It does involve an expectation about what people want to see and hear.

That isn't all good. We know that with respect to news, what is happening is not that we're avoiding covering the Telecom Act of '96 because we want to suppress information about it. Paul was right: it *is* boring. It is deeply boring to most people. What gets carried on the local media is what has an exciting graphic more than anything else. So there is an interaction between the decisions of business folks and consumers that is not there in quite the same way when the government is making the decision.

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Kathleen WALLMAN

Another question? All the way in the back?

Female Audience Member

[Inaudible at first] What Mr. Cass is talking about is an idea that those of us in policy and in law need to do a better job of talking about things, or explaining things, or selling

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things so that the people are interested in buying them. Now that's with the understanding that I would suspect we are never going to get rid of some aspect of market control and sorry Mr. Cass, some aspect of government regulation.

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But I'm intrigued, given who's sitting in this audience, what you all would have to say about and I suspect Paul does this more than anybody else but what you all would have to say about us doing a better job of talking about these issues or finding ways to communicate them in such a way that those interested in them can sell it.

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Kathleen WALLMAN

So you're talking essentially about a demand-side issue.

Audience Member

I think there's no doubt that there will continue to be a demand-side issue. We may not be watching 'I Love Lucy,' but, along the way, if I turn on the television at any hour slot, we may all, more than 60%, be watching some version of reality TV. I mean it might not be 'I Love Lucy,' but I'm not sure that it's any more interesting or wholesome or intriguing than...

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Kathleen WALLMAN

As a matter of fact, you are on a reality TV show now.

Audience Member

Exactly.

Laughter

Audience Member

Did I win?

Laughter

Kathleen WALLMAN

We can't tell you yet.

Ronald CASS (?)

Does this mean I've been voted off the island?

Laughter

Audience Member

You're still on the island.

Kathleen WALLMAN

Who would like to react to that?

Pause

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I guess we all agree with you.

Audience Member

But I want to know about the how. I mean, we wouldn't all be sitting here listening to panels if... A lot of them are talking about ideas. I feel like this is stuff that I'd love my family to be thinking about and my friends to also be thinking about. But the way we talk about a lot of this stuff, which involves fundamental issues that affect everybody's lives, is inaccessible to a huge percentage of the population.

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Victor KOVNER

It takes effective journalism. It's hard work to communicate subtle, nuanced issues to the public so they can comprehend them. And if it is successful, people will buy or watch that media, and that media will sell more advertising, and it will be more successful and will grow. That kind of journalism, which needs to be nurtured, exists, unfortunately, only in limited areas of what people generally characterize as news sources.

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Susan NESS

I'd like to respond a little bit to this in two ways. Number one: there is the...we've heard today a lot of, basically, an army of straw men that have been created and set out there, knocked down. And one of those is the notion that if corporations put out programming it's because that programming is going to be watched by lots of people, and therefore it's going to be profitable, and that's why it's done. Sometime that's right. But, there's an awful lot or programming out there where the nexus is questionable at best.

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Within that context, more often than not, what you've seen, for example, in radio with ownership concentration, there was a reduction of competition within specific local markets for different forms of music programming. It used to be back in the, even in the '80s, that companies would go head-to-head with each other on format. And the one that had the most striking format, the most edgy, or live, or vibrant format was going to win. Or if it had the best signal, it was going to win, it had a better chance of winning. But there was a lot battling back and forth in the marketplace, and radio was live - alive, not that it was necessarily live.

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Today, what's happened with ownership concentration is, within a market, basically there are two main players, and they have — I'm not even arguing that this is an antitrust question — they've essentially divided up the format so there is very little head-to-head format competition within the market. A lot of people are finding that the playlists are national playlists. There's really not a lot of excitement in the music, and a lot of people are leaving radio as a result of that. Listenership has dropped, and this is one of the reasons. And you'll find broadcasters admitting finally that — that concentration has affected the quality of the radio experience.

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So there are some things that are going on there that are not necessarily all driven by the bottom line for popularity, and also that there are negative consequences in the marketplace for radio, as we've seen where concentration has reduced the experience for the public. Now whether or not they are going to do anything to change that question, a couple of the companies are now looking to sell some of their stations because they are finding that it's not as profitable to own that many. Maybe we'll have a little bit of a reversal, but not much.

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Kathleen WALLMAN

Sir, on the aisle, dark shirt?

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Audience Member

Yes. I have heard a lot today about today about helping interest as a rationale for regulating in this particular area. Don't we tend to fall prey to the other side of that because the argument always made for content regulation is it's in the public interest? We have to have indecency regulation because it is in the public interest. So if we are relying upon the public interest as a basis for saying that we need to regulate the media here, don't we fall into the trap, then, of essentially agreeing with those who argue that we need censorship because that's in the public interest?

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Kathleen WALLMAN

Susan, I know you had to wrestle with that question in the children's programming issue.

Susan NESS

Right. We had at the FCC, obviously, a lot of issues that come up with indecency, and other content regulation. And what is interesting, I'll refer to someone who of you probably know, Peggy Charren, who was Action For Children's Television, who fought against the indecency regulation but fought for increasing the amount, the requirement for children's educational television on radio and television, actually on television. And the notion behind that logic, which I subscribe to, is, basically, you want not to be looking at specific content and whether this is too flagrantly obscene, or whatever. Rather, what you want to do is to make sure that where there is a market failure — that is with the

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amount of educational children's television available for kids, very little on over-the-air television – so, unless you subscribe to cable, and even with cable, there are a lot more offerings of educational television, some of them better quality than others.

But the notion, basically, was to try to increase, to provide a service to those kids out in the marketplace who might not have access to pay services. And I subscribe to that concept that you want to limit the amount of government intrusion into content. But if you are serving the public, that you have to provide some actual service to the public, and that's the distinction that I have drawn. But it is an awkward one. And that's, once again, why I firmly believe that if you have some limits on who owns the media, how many stations you can own, then you're more likely to not have government intrusion into content, and I would argue against government intrusion. I was always very uncomfortable with anything to do with First Amendment issues.

Kathleen WALLMAN

Another question, in the white shirt on the aisle, yes.

Audience Member

I was wondering if you all had an idea why it is, – at least it seems to me – that the media is so much more passive now than it has at least sometimes in the past. For example, in the Clinton administration, it seemed like he was always being pursued about some scandal, real or more often imagined: "Travel Gate," "Hair Cut Gate," Whitewater, which never went anywhere, at least as to President Clinton or Hillary, whereas with the Bush administration you've got, at least, it seems to me and probably most people in this room, scandal after scandal after scandal, which goes largely unreported, and the progressive point of view gets unreported.

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Like with the run-up to the Iraq war, I, and probably most people in this room, greatly questioned the justification or need for that war...

Kathleen WALLMAN

So, are you asking for a reaction to the perspective about whether the media has gone a little passive recently?

Audience Member

Right.

Paul WALDMAN

Well, I can answer that, as it's not really about regulation. But basically just in the recent years there are basically two reasons. The first is that because Republicans control both Houses of Congress, Democrats have no ability to create media events. And reporters

don't report on conditions or on things that are ... they report on happenings. And so if Bill Clinton stubbed his toe, three different congressional committees would have hearings about it. And those hearings would create something that the news could be pegged to, an event that would provide the structure for a news story. Democrats do not control either House of Congress. They do not have the ability to call hearings. So even though there are plenty of things about the Bush administration that could be scandals, the Democrats don't have the ability to create news around them. That's the first part.

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The second part is that conservatives have been very, very successful in putting pressure on journalists by charging them with being biased. And this, I've talked to many journalists who feel this. They feel this pressure all the time. And as a consequence, it does make them a little gun shy. And it's more so sometimes, less so with others. When there is a war coming, they definitely become hesitant to criticize the President because they are going to be charged with being unpatriotic. And conservatives have been extremely effective in using that hesitancy in applying those levers of pressure, particularly with the charge that there's a liberal bias in the media, to get reporters to prove that they're not biased by bending over backwards to be tough on Democrats and not be as tough on Republicans.

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And you see this from top to bottom. It's one of the reasons it's so effective. It's not just somebody like Media Matters for America making this case on the right. It's not only organizations like ours on the right, but all the way up to, and including, the President of the United States who charges the press with being biased. They hear this from everyone, from members of Congress, elected officials, political hacks, every single Republican, just ordinary people; they are constantly charging the press with being biased. And the way they deal with that is to prove that they aren't by bending over backwards to show that they don't have a liberal bias. So that's my bias. It doesn't have much to do with regulation or anything like that.

Ronald CASS

I'm shocked, Paul, that anyone would accuse the media of having a liberal bias. Here you have mainstream media, where only 80% to 90% of the reporters and editors are Democrats or liberals. And I don't see how anyone would think that would result in media bias.

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The fact is that if you talk to any conservative, they will have exactly the opposite view from that of the questioner in a poll. They will not think that the media has been particularly tough on the Democrats and easy on the Republicans, and they will not think that the absence of an opportunity called "hearings" is an issue because you have in every instance where there is a statement made by the President, a response from the Democrats. You have the President nominating someone to the Supreme Court, and there's a Democratic response being carried by the networks the same night, something we've never had in the past.

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There's an awful lot of reporting about anything that seems to be a scandal that will interest the public. Bill Clinton just created an enormous amount of more interesting scandals than most Presidents.

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Laughter

Female Panelist

Whitewater was interesting?

Paul WALDMAN

The thing is if you go back and look at those scandals, "Travel Gate," Whitewater, "File Gate;" they all added up to nothing. And yes, of course, conservatives do believe that the media are biased against them. This is what communication scholars refer to as "the hostile media effect." You can take two different groups of people, a group of liberals and a group of conservatives and hand them the same article and have them read it, and the conservatives will tell you it's biased in favor of liberals and liberals will tell you it's biased in favor of the conservatives.

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So, the fact about the fact that most reporters are more liberal, particularly on social issues, not so much on economic issues. Well that's true. But that doesn't answer the question of whether or not there is a liberal bias in the media. In order to see that you have to look at the content, and there have been dozens upon dozens of academic studies that have tried to locate bias, and the conclusion that they have all, virtually all of them, have come to is that there isn't any. But this is kind of a complicated question. We could probably go back and forth for an hour. And maybe it's a topic for another day.

Susan NESS

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I think the irony is if there were a liberal bias then you would be so surprised to see so many of these organizations wanting to limit the ownership of these so-called "liberal media." We have been trying to keep ownership concentration to a minimum. That affects all of the so-called "liberal media." So, it just seems to me, to counter that argument fairly well,

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Victor KOVNER

I'd just like to add that if a majority of the reporter may be Democratic – I think there is some statistics – that's not true of the people who own the media and who hire the reporters, on the one hand. Two: for those large companies, unfortunately, who may not have any politics and whose owners and boards may indeed be Democrats and not Republicans, I don't know, a great many of them have matters pending before the government, before the FCC, and they are respectful, shall we say, of those in office.

So that when the government is in the hands of an all-Republican line-up, the likelihood ... we should not be surprised if, unfortunately, if many media are wary given other developments that may affect their companies. And it's an unfortunate fact that as we get convergence where traditional journalism is provided in the context of predominantly entertainment companies, a lot of corporate decisions are made where the traditional journalistic values are not don't receive the primacy they used to.

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Kathleen WALLMAN

One more question in the back. Yes.

Audience Member

I have a question for Mr. Cass, and it goes to things at the very beginning that I think – it relates to our...

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Kathleen WALLMAN

Why don't you grab that microphone so we can...?

Audience Member

I have a question for Mr. Cass that I think relates to all the things that have been said since the beginning, it goes to something you said at the beginning. You drew an analogy between the owners of media conglomerates, the control they have, and when you were a dean, and the control you had over the content of what professors say. And the analogy really struck me because, not to sound rude about it, but I didn't see how, It struck me as being particularly inapplicable because universities are first, for two reasons, one: non-profit, not driven by profit motives, so it's a different kind of structure. But, perhaps even more importantly, number two: they are very carefully structured so as to ensure academic freedom.

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So, deans are hired by professors, they have self-governance, they serve on committees, hiring – you know, search committees, hiring committees, they can fire them. Deans are often one of their own, and often go back to being professors. So it strikes me as a structure that was created very carefully so as to ensure the academic freedom of the professors, and that they could say what they want. So, I'm curious as to why you chose that analogy.

You know, you have talked about how regulation means government telling us what to say. To me what regulation should mean, hopefully, is government creating a structure where freedom of expression can flourish because I don't think that just happens in the state of nature. And I don't think that just happens in a free-market economy, which is not the same as a state of nature, but I don't think it happens in either of them. So, I'm curious to why to chose that analogy and how you saw the applicability to the situation that we are discussing.

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Ronald CASS

When you talk about government creating a structure in which freedom of speech can flourish, the best way for government to create a structure where that happens is for government not to be saying who owns what media outlets, how many they can own, and how they can use them. The best way to keep government out, and this goes back to the question the gentleman asked on the aisle here, the best way to keep government out of regulating content is to keep them out of regulating the media all together.

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In terms of the relationship between ownership and what actually gets said, if you have a large profit-seeking corporation, it is going to be driven mainly by what creates profit for the shareholders. It's not going to be driven mainly by the personal views of the owners. And the more opportunity you have for people to come in and out of the market, the more opportunity you have for people to own stations, sell stations, create stations, the more you're likely to have a situation where the profit-seeking motive creates pressure to provide information and programming that is going to be seen and listened to, is going to be attractive to advertising, is going to bring money to the company. Not something where the personal views of the owner will translate into what happens in providing information and entertainment to the viewership.

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And one last thing there, the analogy to "deaning" is simply that anyone who controls a large organization, whatever it is, even if you set salaries, even if you hire and fire, you realize that there is a structure to the enterprise. You're delivering a product: education. You're delivering a service to the students. You're delivering easier registration. A lot of different things that you need cooperation with people who work in the organization for, that is what drives the organization much more than any personal bias or view of the person who is nominally in charge.

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Kathleen WALLMAN

Well, with that I'd like to acknowledge the sponsor of this panel, the Democracy in Voting Interest Group, and thank the panelists for their contributions. And thank you all for your lively participation.

Applause