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HISTORIC DECISION WXUR



Released December 13, 1968

Washington, D.C.

Printed and distributed by
20th Century Reformation Hour
Dr. Carl McIntire, Director
Sponsored by Christian Beacon
Collingswood, N.J. 08108

NEWS

Federal Communications Commission
1919 M Street, NW.
Washington, D.C. 20554
Public Notice



Report No. 4846

ACTION IN DOCKET CASE

25335

December 13, 1968 - B

WXUR, WXUR-FM, MEDIA, PA., LICENSE RENEWAL
PROPOSED IN INITIAL DECISION

A grant of the applications of Brandywine-Main Line Radio, Inc., for renewal of the licenses of Stations WXUR and WXUR-FM, Media, Pa., has been proposed in an Initial Decision issued by Federal Communications Commission Hearing Examiner H. Gifford Irion (Docket 17141).

The renewal applications had been designated for hearing on January 25, 1967 on issues including compliance with the Fairness Doctrine. Also to be determined were efforts the applicant had made to ascertain community needs, whether the Commission had been informed of the applicant's program plans when control of WXUR and WXUR-FM was acquired; whether the station served the sectarian and political views of the principals; and whether Brandywine-Main Line had misrepresented to the Commission its program plans, its intent to comply with the Fairness Doctrine, and the nature of its service to the community when applying for transfer of control.

In determining that the renewal application should be granted, the Hearing Examiner said that WXUR and WXUR-FM "performed what would normally be considered a wholesome service in providing an outlet for contrasting viewpoints on a wide variety of subjects. To impose the fell judgment of removing WXUR from the air...could only have the consequence of admonishing broadcasters everywhere that they would act at their peril in allowing robust discussion because penalties would be meted out in rigid compliance with the exactions of the rules."

The Hearing Examiner stressed that his decision was shaped by "ultimate objectives rather than isolated instances of error." Since there are penalties available for failures to observe the rules, Examiner Irion said, "Draconian justice" is inadvisable.

The Hearing Examiner pointed out that the Fairness Doctrine requires "an honest and good faith effort by the licensee to air contrasting, conflicting and varying attitudes towards subjects of important controversy. In the broad perspective of this record, it is almost inconceivable that any station could have broadcast more variegated opinions upon so many issues than WXUR." He noted that the main cause of the station's difficulties was "not that it was narrowly partisan but that it sought and received too much controversy."

(over)

Conceding that the station had a very poor record in its handling of personal attacks, Examiner Irion stated that the function of a renewal hearing was to examine the entire record "rather than dwell upon some singular deficiency."

He said that WXUR had made "a creditable record of serving local needs and interests, of balancing its own viewpoint with viewpoints in contrast, in declaring its main purposes to the Commission before the transfer of control and in giving vent to positions sharply opposed to its own." He stated that following the resignation of a moderator of a controversial telephone call-in program--a concededly mistaken assignment by the management--there was less friction with the public.

"The American scene has always been characterized by rough-and-tumble and fervent rhetoric but of such stuff is free, robust controversy fabricated," the Hearing Examiner stated. "...if the licenses of WXUR and WXUR-FM were to be denied on the grounds that a number of isolated infractions really did occur, it could very conceivably result in silencing all controversial discussion on American radio and television. Or, as an alternative, it could mean that discussion would henceforth be a diluted parlor chat in which such restraint was exercised that the outcome would be insufferably dull and totally unenlightening."

The renewal was opposed by The Greater Philadelphia Council of Churches; American Baptist Convention, Division of Evangelism; American Jewish Congress, Delaware Valley Council; Anti-Defamation League of B'nai B'rith, Pa., W. Va., Delaware Region; Board of Social Ministry, Lutheran Synod of Eastern Pennsylvania; Brith Sholom; Catholic Community Relations Council; Catholic Star Herald; the Rev. Donald G. Huston, Pastor of First Presbyterian Church of Lower Merion; Jewish Community Relations Council of Greater Philadelphia; Jewish Labor Committee; Media Fellowship House; NAACP; New Jersey Council of Churches; Philadelphia Urban League; Women's International League for Peace and Freedom, U.S. Section; American Jewish Committee, Pa.-Delaware Area; Fellowship Commission; AFL-CIO of Pennsylvania; and the Broadcast Bureau of the FCC.

In a petition to the FCC they contended that programming on the stations was "one-sided, unbalanced and weighted on the side of extreme right-wing radicalism...on most controversial public issues, the station has represented only one side--the extreme right radical viewpoint--and has failed to apply to those issues a 'reasonable standard of fairness and impartiality'."

Hearings in the WXUR renewal case began on October 2, 1967. The record was closed on June 26, 1968. Hearing sessions were held in Media, Pa., as well as the Commission offices in Washington, D.C. The final record totalled almost 8,000 pages and contained several hundred exhibits.

(over)

WXUR and WXUR-FM were licensed to Brandywine-Main Line Radio in 1962. WXUR operates on 690 kc with a power of 500 watts daytime. The station provides services to Delaware County, Philadelphia and nearby areas of Pennsylvania, New Jersey and Delaware. Media has a population of 5,800. Delaware County, southwest of Philadelphia, has a population of 553,000.

The stations were transferred in March, 1965, to Faith Theological Seminary, whose president, Dr. Carl McIntire, is heard on a syndicated religious program "20th Century Reformation Hour." The program is a regularly scheduled feature on the stations. John H. Norris, the station manager, is also manager of WGCB, Red Lion, Pa. WGCB is a party in a Fairness Doctrine case presently before the Supreme Court.

- FCC -

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

68D-70
25270

In re Applications of)	
)	
Brandywine-Main Line Radio, Inc.)	DOCKET NO. 17141
for renewal of licenses of Stations)	File Nos. BR-4178 and
WXUR and WXUR-FM, Media, Pennsylvania)	BRH-1320

Appearances

Benedict P. Cottone and Joseph A. Fanelli for Brandywine-Main Line Radio, Inc.; Thomas Schattenfield, Carl Roberts, Michael Valder and Sol Rabkin for Greater Philadelphia Council of Churches, et al. (Intervenors); and William A. Kehoe, Jr. and D. Biard MacGuineas for Chief, Broadcast Bureau, Federal Communications Commission.

AMERICAN JEWISH ARCHIVES
INITIAL DECISION OF HEARING EXAMINER H. GIFFORD IRION
Issued December 10, 1968; Released December 13, 1968

Introductory Statement

1. On January 25, 1967, the Commission designated for hearing the applications for renewal of licenses of Stations WXUR and WXUR-FM, Media, Pennsylvania. The order of designation also specified that the Broadcast Bureau and the Intervenors, represented by the Greater Philadelphia Council of Churches through a single attorney, were to be parties. The following issues were specified:

- (1) To determine what efforts the applicant has made to ascertain the needs and interests of the public served by its stations during the license period;
- (2) To determine what the applicant has done to serve the needs and interests of the public served by its stations during the license period;
- (3) To determine whether the applicant failed to inform the Commission fully of its program plans in connection with its applications for acquisition of control of Stations WXUR and WXUR-FM;
- (4) To determine whether the applicant has complied with the Fairness Doctrine and Section 315 of the Act by affording a reasonable opportunity for the discussion of conflicting views on issues of public importance during its license period;

- (5) To determine whether during its license period the applicant has complied with the personal attack principle of the Fairness Doctrine by furnishing copies of pertinent tapes, continuities or summaries to persons or groups attacked, with specific offers of the stations' facilities for responses, where discussions of controversial public issues have involved personal attacks;
- (6) To determine whether during its license period the applicant has utilized its stations to serve the sectarian and political views of its principals and to raise funds for their support rather than to serve the community generally and to serve impartially all the various groups which make up the community;
- (7) To determine whether the applicant in connection with its application for transfer of control of Stations WKUR and WKUR-FM misrepresented to the Commission its program plans, its intent to comply with the Fairness Doctrine, and its intent regarding the discharge of its obligation to serve the community generally and the various groups which make up the community rather than its private sectarian, political, and fund raising interests, and whether it misrepresented to the public during its license period its intent to comply with the Fairness Doctrine.
- (8) To determine whether in light of all the evidence a grant of the applications for renewal of the licenses of stations WKUR and WKUR-FM would serve the public interest, convenience, or necessity.

Hearings were commenced on October 2, 1967, and proceeded with several adjournments through June 26, 1968, when the record was closed. During this time a record was compiled consisting of nearly 8,000 pages and several hundred exhibits. Although there was no direction by the Hearing Examiner for filing of proposed findings and conclusions, these were filed by the Broadcast Bureau. Reply findings from the other two parties were filed on October 18, 1968.

2. This has been a proceeding marked by many unique characteristics and it would be impossible to see any single aspect of it in proper perspective unless related to the entire picture. Much of the evidence in this very voluminous record turned out to be cumulative or, when seen in the perspective of the whole case, immaterial. But the Examiner was motivated throughout the proceeding by an intention of permitting each party to present whatever facts would support its position. Thus, wherever there was a prima facie showing of relevance and materiality,

the Examiner inclined toward receiving the testimony. In a case where so many of the issues explored new and unfamiliar areas of fact, it was inevitable that the presentations by counsel involved a certain amount of experimenting. In the final review of the case, however, there has been an attempt to condense the factual showings into manageable dimensions by omitting that which is repetitious or trivial.

3. The story of WKUR (and WKUR-FM) since that day in late April, 1965, when Faith Theological Seminary (FTS) acquired control of the licensee, is one of fitful efforts and frequent frustrations but it is not wholly lacking in moments of courage and even humor. It presents a spectacle which must be painted on a vast canvas so that each detail can be seen against the whole. Inasmuch as the actors will appear and reappear in different context, it will be a service to those who wish to understand the case to begin with a recitation of the station's history and to identify the actors as they perform in the drama.

4. The story to be told has what may be described without exaggeration as possessing epic proportions. Inevitably this has meant that there is a frequent overlapping of events, personalities and categories of fact. To avoid tiresome repetition, however, it will be assumed that any one portion of the tale will be taken in relationship to its entirety.

Findings of Fact

Early History of Station Under Faith Theological Seminary (FTS)

5. Media is a community of some 5,800 persons^{1/} and it is situated on an eminence in the heart of Delaware County, a rolling suburban countryside southwest of Philadelphia. As the county seat, Media is the location of the county court and it was in this courthouse that nearly all of the present proceeding took place. The county is one of considerable size (553,000) and its largest city is Chester which lies some five miles south of Media.

6. Station WKUR was licensed in 1962 to Brandywine-Main Line Radio, Inc. Its signal on 690 kc provides primary service not only to Delaware County but to Philadelphia and nearby areas in Pennsylvania, New Jersey and Delaware. This extensive coverage of the general Philadelphia area made the station attractive to the directors of FTS and especially to its President, Dr. Carl McIntire. The acquisition came about in this wise.

7. John Norris, president of the licensee, is an experienced broadcaster and sometime before the transfer application was filed he learned that WKUR might be available. The previous owners were not enjoying the financial returns they had hoped for so word got abroad that the station

^{1/} 1960 U. S. Census.

was for sale. At about this time an event occurred which set in motion the efforts of the Seminary to purchase the property. Dr. McIntire's program "20th Century Reformation Hour" was canceled by WVCH in Chester where it had previously been carried. McIntire and his loyal followers believed that the program should have an outlet in the Philadelphia area and the loss of WVCH was a severe blow.

The Transfer of Control to Faith Theological Seminary

8. Norris learned through his brother-in-law that WXUR was for sale at Christmas time in 1963. A little later he was talking with his father and Dr. McIntire on an entirely different subject when McIntire asked how plans were coming along for organizing a broadcast applicant. Norris confessed that he was having trouble raising the needed capital and then McIntire "out of a blue sky" suggested that the Seminary might purchase the station. The elder Norris promptly agreed.

9. The record leaves no doubt that one of the purposes -- probably the main purpose -- for acquiring WXUR was to furnish Dr. McIntire with an outlet in the Philadelphia area for broadcasting "20th Century Reformation Hour" and McIntire was very candid about this. Norris personally expected no monetary rewards for himself since the Seminary would get the profits, if any, but he did expect the stations to make money. (Tr. 3586-88)

10. Negotiations were eventually commenced and an agreement reached with the existing ownership of WXUR. This resulted in the filing of an application for consent to the transfer of 100% of the stock in Brandywine-Main Line Radio, Inc. to Faith Theological Seminary and the application was filed with the FCC on October 16, 1964 (BTC-4682). This application sought Commission approval of transfer of control from George E. Borst, Dr. M. John Boyd, Joseph B. Fisher and Miss Stella B. Proctor (majority stockholders in Brandywine-Main Line Radio, Inc.) to Faith Theological Seminary (FTS). The filing was followed by a series of letters to the Commission objecting to a grant of the application. The names of many of these complainants and the substance of the letters are recited in the Memorandum Opinion and Order which granted the application on March 17, 1965. Borst et al., (4 RR 2d 697).

11. In order to finance the purchase, FTS placed a mortgage on its property in the amount of \$425,000.^{2/} All of the outstanding stock of WXUR was placed with the bank as collateral and the transfer was consummated on April 29, 1965 with the new ownership commencing operations the following day. It was that day, April 30, 1965, that the McIntire program "20th Century Reformation Hour" was first broadcast and it has been carried regularly ever since.

^{2/} In the beginning, at least, there was also an insurance policy on Dr. McIntire's life in the sum of \$100,000.

12. As expressed in the application, the purpose of the assignee was to operate the stations "For the principal purpose of broadcasting the Gospel of our Lord and Saviour Jesus Christ, for the defense of the Gospel and for the purposes set forth in the Charter of Incorporation." The application did not mention the 20th Century Reformation Hour by name but there was certainly no concealment of the fact that carrying this program was one of the main objectives. On December 9, 1964, Dr. McIntire had written a letter to former Chairman Henry in which he expressly stated, among other things, that "If the FCC approves of the purchase by Faith Theological Seminary of WXUR, I propose to contract for time on that station just as I do on all my other stations." This representation was recognized by the Commission in its Memorandum Opinion and Order granting the application and it also recognized that the transferee had specifically stated that it would abide by the requirements of the Fairness Doctrine. Borst et al., supra.

13. Rightly or wrongly, Norris believed that there was a genuine need for 20th Century Reformation Hour and after WVCH cut it off in 1963 the importance of the need grew in his mind as well as in the mind of Carl McIntire. Another reason for Norris was the relative proximity of Media to his home. He had been born in Lincoln, Nebraska, but had lived in Chester, a scant five miles from Media, and had later moved to the York-Red Lion district. Thus it is not wholly implausible that he felt a kinship with Delaware County where he had dwelt for 16 years. It would require endless quotations from the record to show what, without mincing words, was predominant in the minds of the brethren of FTS. They are all essentially religious men of the conservative fundamentalist persuasion, a concept which will be developed later, and they felt, no doubt profoundly, that their ways of worship were being neglected by broadcast stations in the general Philadelphia area. This sentiment attached particularly to the programs of Dr. McIntire but it was not confined to them. The theme will recur again and again. Matters such as the Virgin Birth or preaching the "infallible word of God" were of paramount importance to these gentlemen and their integrity and convictions about those subjects must not be disregarded. McIntire's home base, as it were, is in Collingswood, New Jersey, a short distance from Philadelphia. He sends tapes to some 600 stations throughout the nation. It is not remarkable that he felt abused at being denied an outlet in his own bailiwick. What was more plausible than his wishing -- and his followers wishing -- for an outlet like WXUR?

14. There was no myopia, however, as to the climate of popular opinion. The record leaves little doubt that McIntire's faithful are legion but he also had the power to generate strong feelings of hostility. Whether this was due to antipathy in certain quarters to hearing McIntire "preach the infallible word of God," as Norris put it, or whether it was due to the doctor's conservative political views is impossible to detect. Even Dr. McIntire tied the two together so that they became inseparable and the Hearing Examiner professes no competence to determine where one stopped and the other began. At all events it was clearly an intention of FTS to use the facilities of WXUR for the propagation of McIntire's views, be they religious or political.

15. The applicant, however, like all broadcasters from time immemorial, observed the rituals of the trade. Norris proposed to operate in accordance with the NAB code although WXUR never became a member of that august association. He explained that WCCB in Red Lion paid its dues to NAB but WXUR could not afford to do so. He also promised to comply with the Fairness Doctrine.

16. We have already noted the religious objectives of the transferee and in the present context, religious means fundamentalist, conservative religion. No derogatory insinuation is intended here but the definition of this theological concept will be reserved for discussion in a later phase of the case. For the moment it need only be said that the witnesses for FTS were more than candid in expressing their faith and their desire to propagate it to the general public. This fact must be kept in mind as the narrative unfolds since it is the very heart of the case. We are now at the point where FTS has applied for transfer of control of WXUR and WXUR-FM and the matter is pending before the Commission.

17. Almost immediately after FTS applied for the transfer of control, storm clouds appeared on the horizon. Numerous expressions of disapproval were filed with the Commission and, quite clearly, a body of opposition was crystallizing.

Ownership and Management of Licenses

18. At this point, the narrative must be interrupted to show the situation with regard to ownership at the point where the transfer was eventually consummated. Faith Theological Seminary (FTS) owns all of the stock in Brandywine-Main Line Radio, Inc., which is the licensee of Stations WXUR and WXUR-FM. The Seminary is situated at Elkins Park, Pennsylvania, where it educates young men for the Protestant ministry. A Board of Directors consisting of 9 to 12 members (11 at the time of hearing) is presided over by the Chairman who is Dr. Carl McIntire but this Board has taken no active role in the management of WXUR except to delegate operating authority to a Radio Board of 3 members. The Radio Board (which Mr. Roper sometimes referred to as the Operating Board) includes John H. Norris, Edward Roper and J. Wesley Smith, with Norris serving as president and a director of the licensee corporation. None of these gentlemen resides in Media but Roper and Smith live in the general area; Norris, whose participation in station affairs will be discussed at length later on, is a resident of York, Pennsylvania, which is some 75 miles from Media.

19. Norris is a member of both the Seminary Board and the Radio Board and is the acknowledged repository of final authority over the broadcast stations which, for convenience, will henceforth be known simply as WXUR unless there is to be special mention of the FM facility. Although the station's local manager has on occasion hired personnel, there is no question that Norris has had the final authority over hiring and firing. His activities at WXUR will be examined presently in detail but at this point Mr. Roper's position may be noted.

20. Roper is not an experienced broadcaster but has managed a family dry cleaning and laundry business in Coatesville, Pennsylvania, for many years. By his own admission he had no knowledge about the operation of a radio station prior to the transfer of control to the Seminary. As Roper put it, "we were more or less babes in the woods in this radio business with the exception of Mr. Norris." His testimony indicated, however, that he has taken his duties as a Board member conscientiously and has several times acted as a substitute for Norris when the latter was unavailable or was engaged in other matters. It was Roper, for example, who wrote letters to the Intervenor offering time on the station, a chore he performed at Norris' request, and there have also been times when the station manager sought Roper's counsel.^{3/} He from time to time has expressed his views on programming and, in particular, on the conduct of Mr. Thomas Livezey. Mr. Smith, on the other hand, has played little part in station affairs and the record suggests that his sole function of any consequence has been to sign company checks. It is noteworthy that, although Norris testified at great length in the hearing and Roper was a witness for one entire day, Smith did not appear on the stand at all.

21. Nothing is clearer than that the central authority over WXUR has been vested in Norris by the Seminary's Board and not even the awesome presence of Dr. McIntire has usurped that authority. On one occasion early in the operation, Norris tendered his resignation as General Manager when his authority was challenged by McIntire but the resignation was quickly refused. The incident will come up later but, for convenience, it will be called the affair of Reverend Rhodes of Stroudsburg.

John H. Norris

22. While it is not customary for an opinion of this sort to indulge in the nature of personalities, a complete understanding of WXUR and all it stands for, all it has done, could not be obtained without some insight into the individuals involved. There will be and, indeed, must be considerable restraint in such a diversion but vignettes will be drawn of the major figures.

23. John H. Norris is the son of a conservative fundamentalist^{4/} minister whose name is John M. Norris. The elder Norris is the major stockholder in Station WCCB, Red Lion, Pennsylvania, a community approximately the size of Media, which is to say about 5,500 persons (1960 U. S. Census). It is in the neighborhood of York where John H. Norris lives and this is approximately 75 miles from Media. Norris is

^{3/} Roper attended Board meetings once or twice a week at first but in 1967 his attendance fell off due to the demands of his own laundry business.

^{4/} For an explanation of this term which recurs constantly, see paragraphs 107-119, post.

general manager of his father's station and devotes a considerable amount of time to that enterprise. It was estimated that he spent about a day or a day and a half per week at WXUR and his visits to Media, apart from the hearing, seem to have been on a weekly basis. In most cases, he stays in Media for only a single day.

24. For 18 years Norris has been actively engaged in broadcasting and he is, in fact, the only member of the Radio Board of WXUR -- or of the Seminary Board for that matter -- who has had any operational broadcasting experience. While he has lived in Delaware County, of which Media is the seat, for 16 years, Norris has never dwelt in Media itself nor did his testimony suggest any intimate knowledge of that city. This, it may be observed in passing, is by no means exceptional in American broadcasting operations.

25. There is no question as to Norris' zeal for his religious faith which he characterized as "fundamental conservatism" as did others associated with WXUR. This will be dealt with later but, in brief, it is a branch of Protestant worship which lays special stress on a literal acceptance of the Bible and Norris, from the time he assumed the helm at WXUR, was dedicated to broadcasting the preaching of scripture. He was responsible for instituting new religious programs on the station and indicated in his testimony an inseparable union between programming and religion. (Tr. 3595)

Q My question again to you is did you anticipate problems in the operation of WXUR because you would be carrying Dr. McIntire's 20th Century Reformation Hour?

A Not necessarily Dr. McIntire. I have been in this broadcasting business for many, many years. We started to encounter problems in Red Lion. I anticipated similar problems. But I never expected to have the voluminous problems that I have encountered. In two years I have had more problems than in the rest of my life.

Q Why did you anticipate that you would have these problems? Because of the nature of the programs?

A Because when you stand up for the Bible, you are bound to have problems.

Furthermore, he was personally familiar with most of the preachers or commercial religious broadcasters whose programs were soon to appear on WXUR. Most of them had previously appeared on the Red Lion station.

26. It has already been stated that Norris was in command at the station and there is every indication that he wielded supreme authority as General Manager. His station manager was entrusted to handle ordinary commercial accounts but Norris handled those of the religious broadcasters. (Tr. 3689-90)

27. The Examiner has had some difficulty in assessing the testimony of Norris because of its tendency toward vagueness and a lack of certainty about matters which, one would normally suppose, could have been answered readily. This was all the more surprising because there was no ostensible reason for evasion. The following colloquy will illustrate what is meant. After being asked about his writing a response to Mr. Spencer Coxe of the Philadelphia ACLU, Norris said: (Tr. 1971-72)

A I was able to answer it a little more promptly than recent letters.

Q Do you mean the 12-day lag was a little more promptly?

A It has been three or four weeks that I am behind with letters, even more so with the hearing going on.

Q Does this exhibit refresh your recollection as to whether this is a matter you discussed on the telephone with Mr. Coxe?

A I believe so.

Q This is the matter you discussed with Mr. Coxe?

A I know that it was Pastor Bob that was referred to.

Q You believe this is the matter?

A I believe so. Again, I am not sure.

Q After writing this letter, did you take any steps to get in touch with Pastor Bob and make sure that he honored Mr. Coxe's request?

A Yes, I have been in touch with Pastor Bob.

Q Did you tell him to send a tape or transcript?

A I asked him to invite him on if he didn't have the exact tape preserved. I wasn't sure at the time whether he had or not. He usually kept a script. There were several at one time that I had asked him about which either were misplaced or he had not been able to dig up. But, I am sure that I asked him in talking with him if he didn't have the exact tape or if we did not have the tape at the station, if he didn't have the exact transcript, that he should give us a reasonable account of what was said.

Q Now, did you take any steps to follow up with Pastor Bob to make sure that he made this time available to Mr. Coxe?

A Right at that particular time? No. Later on I did.

Q You did? At that time?

A Later on I did, not right away.

Q How long later?

A It could have been possibly as much as a month later. I just don't know offhand.

And again: (Tr. 1924-25)

Q Are you familiar with the broadcasts of Kent Courtney? Have you heard him?

A I think he and his wife have something to do with the Independent American broadcast.

Q That has been presented over WXUR, has it not?

A Yes.

Q I would call him a political commentator, but what would you call him?

A If I had known you were going to ask me that question I would have thought about it. I don't know how to characterize him because I have not heard enough of his broadcasts. He has been off for a while.

Q It was not a religious broadcast?

A No.

Q How about Life Line with Melvin Munn? How would you classify that?

A Quite a bit of talk, education.

Q Are you using the Commission's definitions now?

A No, I am using my own. It is educational.

Q What does he educate on?

A Maybe I am confused.

Q When you said educational, do you mean people listening or going to get an education?

A I would say both ways.

Q Do you listen to that frequently?

A Yes, once in a while.

Q What is the nature of that broadcast? Give me typical subjects discussed by Mr. Munn.

A Now you are asking me off the top of my hat, like asking me if my father preached a sermon last Sunday and what it was about.

28. In these and other instances it is quite likely that Norris was sincerely attempting to tell the truth but the indecisiveness of his testimony sometimes makes it difficult to base findings of fact upon it. Another representative statement is on pages 3718-19 of the record:

Q Did you do anything personally, Mr. Norris, to get opposing views to Dr. McIntire on the issue of Social Security?

A I don't know.

Q Did you issue any instructions to members of the staff at WXUR to get views in opposition to Dr. McIntire's on the issue of Social Security?

A Yes.

Q To whom did you issue those instructions?

A I don't know.

Q Did you do anything personally, Mr. Norris, to get views in opposition to those of Dr. McIntire on the issue of Government spending?

A Yes.

Q What did you do personally, sir?

A I don't recall.

Q Did you do anything or did you issue any instructions to members of the staff at WXUR to get views and opposition of Dr. McIntire on issue of Government spending?

A Yes.

Q To whom do you issue those instructions?

A I don't recall.

Q Do you recall the nature of the instructions?

A To put some views on.

Q Did you do anything personally, Mr. Norris, in your capacity as president of Brandywine-Main Line to obtain views in opposition to those of Dr. McIntire on the issue of the Poverty Program and Aid to Foreign Countries?

A What were Dr. McIntire's views? I forget.

Q I don't know, sir.

A In that one, I am curious. I don't know.

29. Having said this, however, it must be acknowledged that the criticism is more directed toward Norris as a witness than toward Norris, the man. On the stand he was nervous, as well he might have been. He was unquestionably under severe strain and, in fact, his appearance had to be interrupted for consultations with his physicians. Furthermore, he could not have been expected to remember at point blank notice every detail of the station's operation. Yet if we had nothing but his testimony to go by there might be reason to doubt whether we had the whole story. On the other hand, such facts as were drawn out from him -- punctuated as they were by endless objections and arguments of counsel -- were generally supported by other evidence produced subsequently in the hearing room.

30. One of the chief difficulties in comprehending how Norris managed the stations lay in his constant inability to locate documents or critical correspondence. He would be certain that a letter had been written but was not sure whether it was in Media, at WGCB or in the trunk of his car. His difficulty in this respect was unquestionably related to his dual role as manager of both WXUR and WGCB. Norris had been at Red Lion before coming to WXUR and he made it evident time after time that his heart still remained at his father's station. While this no doubt overtaxed his energies, it probably constituted the gravest fault about the operation of WXUR. In a nutshell, Norris was simply not always on the job in Media.

31. Because of his general absence, there was no steady, full-time supervision of what was going on. For example, if an attack -- or an alleged attack -- were made on an individual, Norris was frequently not available to handle the situation promptly and his delegation of authority, as will be seen, was not always as clear as the situation demanded. The testimony of Fulton, Barry, Broadwick and others substantiate this finding. At no place in the record did Norris ever outline a definitive, coherent mode of operation, setting out guidelines for monitoring particularly provocative programs or making time available for divergent views. These things will receive detailed scrutiny in other sections of the decision but one fact must be noted here. WXUR is a small station by national standards. It operates daytime only (the FM station is full time) and its staff is extremely limited. With these observations, it is now in order to resume the story of the station.

Fulton's Managership

32. In the days when the former licensees owned WXUR, Mr. Robert Fulton was the manager and in this capacity he had, by normal standards, a wide latitude in directing the affairs of the stations. The record is almost silent as to any specific instructions given to him or as to any interference with his judgment. At the time of transfer, Norris retained Fulton's services and, in fact, kept the existing staff but Fulton's position underwent a subtle change. It became ambiguous in that Fulton was not clear about the limits of his authority. The areas which are most material to this proceeding are the right to hire and fire and the enforcement of the Fairness Doctrine. As will be seen in the matter of Mr. Thomas Livezey, Fulton's authority to hire an employee was not as complete as he had assumed.

33. While Fulton claimed to be generally familiar with the Fairness Doctrine, it is obvious that his was a layman's knowledge. He testified that FCC "documents" on the Doctrine were kept in the engineer's office at the transmitter which was a singular circumstance in that the evidence does not show the Chief Engineer had any monitoring duties other than purely technical ones. Fulton had taken no particular steps to enforce the Doctrine under prior ownership and he did not consider it part of his duties under Norris who, in fact, told him that he need not be concerned with the matter. Norris assured Fulton that he, Norris, would handle problems arising under the Doctrine. On one occasion, Senator Clark of Pennsylvania was invited to reply to a presumed attack but, other than this, Fulton knew of no instance where a tape or summary had been sent to anyone in connection with an attack. Nevertheless he did tape numerous programs on his own initiative and he retained the tapes for a period of five days. As mentioned above, he recalled no instance of sending a tape to any individual during the period of his employment of April 30 to September 27, 1965, and this was the time when Mr. Livezey was conducting Freedom of Speech.

34. With the advent of Seminary ownership, Fulton found difficulty in renewing old commercial accounts and in obtaining new ones. He testified that this was, in part at least, because the merchants did not like the controversial tenor of the programs which were being introduced under Norris. There was also a particular problem in selling spots during the prime commercial hours of 7:30 to 9:30 a.m., an especially important period in broadcasting because of the widespread use of car radios by persons driving to work. These hours were now entirely devoted to new religious programs which, according to Fulton, sometimes ran over their allotted segments and left no intervals for spots. At times he said he was obliged to "cut the tapes" of a program before it was finished.

35. The nature of the new programming will come up later but for the present it needs only to be noted that much of it was religious in character and nearly all of it was controversial in some way or other. After about three months under the new operation, Fulton undertook to make a percentage analysis which showed a heavy increase in religious and news programs which evidently included the commentaries carried on tape. He reported this information to Norris who replied: "I don't think we will need to worry about that right now. What we will do is to carry this on and at renewal time make the changes."

36. Probably the most significant event in the period we are discussing, namely the late spring and early summer of 1965, was the presentation of a new show called Freedom of Speech (FOS) which began on WXUR on June 1, 1965. The format of FOS had been used at Norris' Red Lion station and Norris had his heart set on repeating what he believed to be a cardinal success. Having been informed of this, Fulton undertook to interview candidates for the job of moderator of the show and one of these was a Mr. John Franklin. Fulton said he had previously interviewed Livezey for a different job and had found him unsatisfactory. Livezey later denied this but at all events Fulton determined that Franklin should have the job and accordingly hired him. Preparatory to this Fulton had checked with several former employers of Livezey and his information was that Livezey was a "rabble rouser". This intelligence was reported to Norris but it apparently had no effect. Norris had already made up his mind to have Livezey conduct FOS.

37. As seen through the eyes of Fulton it happened this way. Shortly before the program was to commence -- and after Fulton had engaged Franklin -- Norris came into the Media office and presented Livezey as the new moderator of FOS. Fulton explained that he had already hired Franklin. Norris then said Franklin would have to go but agreed to give the customary two weeks notice. Other accounts of the episode will be given presently.

38. Fulton testified as to changes which were made in the program schedule after FTS took over. The music format was changed from what he described as "middle of the road" to light classics or "lush" music which was identified as Mantovani style or good "background" music. The news format was also altered. Although there had never been a news staff, the station had previously supplemented its wire service by employing "stringers" who would call in items of local interest. By the time of transfer, however, only one of these was still engaged by WXUR but this one ceased her services after the transfer, apparently as a voluntary action. From that point on, the newscasting was purely "rip and read" from the A.P. wire service. Thus local news would not be carried unless it happened to come over the wire. At no time did WXUR have a news staff but Fulton indicated that this was not unusual in a small station such as this one.

39. The most dramatic change was the significant increase of commercial religious programming. This included the 20th Century Reformation Hour (April 30), the Bible Presbyterian Church (May 2), Christian Admiral Hour (May 2), Life Line (May 3), Gospel Hour (May 4), Church League of America (May 8), Inter-faith Dialogue (November 28) -- all in 1965. The Sunday morning service of Media Presbyterian Church was continued on the same basis as carried under the prior owners. There were also added a number of talk programs which were in the nature of commentaries on current events. These were Manion Forum (May 3), America's Future (R. K. Scott - May 4), Independent American (Kent Courtney - May 6) and Dan Smoot Report (May 7).

40. It was Fulton's testimony that no instructions were ever given to monitor the tapes of programs coming in from the various new "sponsors" on WXUR. These programs were mostly on tape and were syndicated, that is, they were sold to many stations by the party who made them. An example was the program of Billy James Hargis. The tape came into Media and was played at the appointed time. No one at the station listened to it beforehand and Fulton testified that it would have been physically impossible for any single individual to monitor all of these tapes prior to their transmission over the air. Norris had an understanding with each of his sponsors whereby they assumed responsibility for keeping out objectionable matter. The programs delivered by Dr. McIntire were of somewhat different format. He delivered them live and made his own tapes which were provided or at least offered to individuals or organizations who might have been concerned with the text.

41. In September of 1965, Fulton learned of a job opportunity which he considered more promising. His financial arrangement with WXUR had involved a percentage of the gross income of the station and since that income was falling he became interested in going elsewhere. When he learned of a new position in Philadelphia, he applied for it but word came that he must accept the job by September 27, 1965. He attempted to get in touch with Norris to give his two weeks notice but Norris was unavailable. This is completely plausible since Norris was wearing two hats as manager of both WGCB and WXUR, but with time lacking, it finally came to the point where Fulton had to terminate his stay at WXUR in less than a week's time. He then sent telegrams to both Norris and Roper.

42. Roper gave an account of the resignation which had every appearance of truth. He recalled that Fulton had personally assured him of not intending to leave WXUR about three days before the telegram of resignation was received. Actually there were two telegrams, one making a demand for money alleged to be due and the second setting forth his resignation. On the stand, Fulton was vague about the dates and especially that on which he was assured of his new job but the telegram of resignation was sent on September 23, 1965. (WXUR Ex. 24)

43. The event is not really important. Fulton left WXUR and doubtless his departure caused momentary frustration since the station was temporarily without a manager. It was easy to see that he resented Norris and the feeling may have been reciprocal but the matter is material only as background to the difficulties now mounting at WXUR. After Fulton left, Livezey remained as commentator on FOS until November 19 and during that time matters came to a head.

44. Before taking leave of Mr. Fulton we must review his conversations with Mr. Norris on the subject of the Fairness Doctrine. It has already been mentioned that he talked about the high percentage of religion sometime in July, 1965. He also held discussions whenever there was a large number of complaints by mail or telephone but most of these arose out of FOS. Norris gave instructions that all complaints of this sort were to be turned over to him. During Fulton's tenure, however, he could recall no instance where anyone had been given a chance to reply to a personal attack. (Tr. 3824)

45. A word must be added about Fulton as a witness. While he gave the impression of being completely candid, his testimony was marred by frequent lapses of memory. This was not remarkable in view of the fact that he was being requested to give evidence on events which had occurred more than two years previously but it left some lingering doubts in the Examiner's mind as to whether the entire picture had been presented by this witness.

The Early Crisis in Media

46. The early weeks of operation were characterized by two things: A drop in the amount of commercial advertising by local merchants and a vast increase in commercial religious programming. Under the prior ownership, the format had been mainly music and news with only the Sunday services of Media Presbyterian Church in the category of religion. That program was carried sustaining with only line charges and engineering services being paid for and it was continued under the new ownership on the same terms. On all other religious programs, however, it was the firm policy of Norris that each should pay at card rate with, of course, the usual discounts for frequency. It was from this source that the bulk of the station's revenues have come. Even so, WXUR experienced hard times in the summer and autumn of 1965. Norris testified that monthly income from merchant advertising dropped from about \$7,000 to \$500 by December, 1965. At one point he reasoned that this was what made him seek out his friends in the commercial religious broadcasting business but the time sequence does not support this. As has been shown, the commercial religious programs and the commentaries arrived at a very early stage and it is scarcely to be doubted that Norris had them in mind long before he became manager. Nevertheless there was a falling off of customary commercial revenue -- the kind which is derived from the sale of spot announcements -- and the loss had to be offset by such programs as Dr. McIntire's 20th Century and Christian Admiral Hours and the Billy James Hargis series. Before entering into this phase of the narrative, however, certain related facts ought to be noted.

47. The opposition which had been expressed prior to the transfer of control was becoming even more vocal and, although the precise formulation of this remains somewhat nebulous, it is apparent that Dr. McIntire himself, together with Tom Livezey, had much to do with it. The distinctive personality and opinions of Dr. McIntire are of a nature which tend to generate strong reactions, both pro and con. He is not a man one can witness passively and his broadcasts have tended to polarize public opinion in the service area. Indeed there is evidence that they extended an influence far beyond that area. Yet one fact must be noted. Both the station's management and Dr. McIntire were insistent upon an affirmative policy of promoting free speech and airing diverse opinions. It will be seen as the story unfolds that the policy was frequently unsuccessful but in the case of McIntire personally there was a consistent effort to challenge opponents to debate or at least to bring them forth in some sort of confrontation. Notwithstanding his repeated attempts to invoke replies

from his enemies, McIntire's style, quite evidently, has been to arouse intense feelings of approval on the one hand or animosity on the other. Thus there came a time when opposition to WXUR was voiced in the complaint against renewal of its license and also in a local boycott in Media. Such hostility provoked a passionate defense which took several forms, one of them being the formation of "Friends of WXUR".

The Boycott

48. Events were taking place in the Media area which revealed a widening gulf between the station's devotees and its opponents. Norris was the first to mention a boycott during the hearing but his early account was somewhat vague. Nevertheless various confirmations of it came forth later. While its instigation was attributed to the Anti-Defamation League (ADL), a qualified spokesman for that organization stoutly asserted that ADL is constitutionally opposed to boycotts. Regardless of how it got started, there was a diminution of local accounts beginning in the spring of 1965.

49. Norris testified that soon after the new ownership took over, several local accounts, including the Towne House Restaurant, Media Lockers and the Wawa Dairy, were removed. The Intervenor professed to know nothing of this and endeavored to establish that the merchants were simply displeased by the new programming. While none of the merchants testified, the reality of the boycott was clearly established by later witnesses. One of these was Mrs. Marion Pedlow, whose daily broadcast contained a number of commercial spots on behalf of local merchants.^{2/}

50. Shortly after April 30, 1965, Mrs. Pedlow went abroad for a period of two and one-half months and when she returned to Media she noticed the effect of a boycott on her program. In conversations with businessmen who had been sponsors, Mrs. Pedlow learned that they had been approached by individuals or customers who, in effect, told the merchants not to advertise on WXUR, else patronage would be withdrawn. At least one sponsor stated he was disturbed by the tenor of a particular program but Mrs. Pedlow was quite emphatic in reporting that most of the cancellations were caused by calls from customers who simply threatened not to buy if the merchant continued advertising. In certain instances, such as Scott Paper Company, the reason for cancellation was alleged to be a fear of being associated with a station as controversial as WXUR.

51. On several occasions Wawa Dairy Farm had threatened to cancel because they were getting telephone calls from people who identified themselves as customers and who threatened to boycott the dairy if it continued to advertise over WXUR. A similar instance occurred with Sears, Roebuck and Co. All of these cancellations took place in 1965.

^{2/} As to Mrs. Pedlow's show, see paragraph 213, post.

52. At the Media Borough Council meeting on November 18, 1965, one of the councilmen suggested to those persons who were complaining about WXUR that the best thing for them to do was boycott advertisers. It appears from all the testimony and especially from that of Mr. Burak that the boycott had been set off during Livezey's tenure in charge of a program called Freedom of Speech (FOS). Dr. McIntire also testified that Dr. Felder Rouse, a noted civil rights advocate, had threatened a boycott early in the operation. McIntire added that he was very pleased to learn that Rouse had appeared on WXUR several times. The boycott seems to have reached its peak by late November, 1965 and it was then that the Borough Council matter took place. Shortly thereafter Livezey disappeared from FOS.

53. The testimony of Mrs. Shirley Porter was clear in establishing that there was a boycott. Mrs. Porter was avowedly opposed to the station and, in particular, to Livezey. At the Council meeting, where she was present because of her interest in a zoning matter, she volunteered the information that a boycott had already been started. She testified that she also had approached a sponsor with whom she had dealt for over 10 years and informed him that she would withdraw patronage if he continued on WXUR. Many of her friends had made similar approaches to Wawa Dairies, Media Lockers and Martel Supermarket.

54. Inasmuch as the sequence of events is now a matter of some importance, we must review what happened between the consummation of the transfer on April 29, 1965 and a date which may roughly be placed at November 19 of the same year. The decline in commercial accounts and the increase in religious or controversial programs has already been described. Contemporary with these happenings there was a boycott of the station and the record leaves little doubt that this was caused in main part by the production of Freedom of Speech moderated by Mr. Thomas Livezey. No doubt the other programs, such as 20th Century Reformation Hour, had their influence but the story is more easily understood if we concentrate on Livezey. His personality and the nature of FOS will be discussed in depth presently but for the time being it need only be noted that both were controversial in an extreme degree.

55. The boycott against merchants advertising on WXUR was commenced in the summer of 1965 -- it is impossible to pinpoint the date from the record -- but events reached a head on November 18 with a resolution of the Media Borough Council calling for an investigation of WXUR by the FCC. The exact text of the minutes of the Council is contained in the following excerpt: (BB Ex. 23)

"Mrs. Austin protested to Council about a program on WXUR, which she feels promotes hate and dissension by attacking minority groups. This program is called 'Freedom of Speech'.

"She considers this a malicious act and a disgrace to the citizens of Media.

"Mr. Reed stated that a letter should be written to the Federal Communications Commission.

"On motion of Mr. Baker, seconded by Mr. Loughran, a letter be written to the F.C.C. about this allegedly biased program of radio station WXUR. So ordered."

A letter was sent pursuant to this by the Borough Solicitor saying, in part: (BB Ex. 24)

"1. The Council of Media Borough deplores bias and prejudice, in any of the many forms it takes. In the area of communication it is nevertheless completely dedicated to the principle of free speech. Whether or not then bias alone, if found to exist, is a proper area of the Commission's control, we do not know; but we do assume that a test is applied. If these programs or any others do meet your test, Media Borough recognizes it should not ask for your intervention or investigation.

"2. Within the context of free speech, we do, however, believe that any radio program inviting the general public to respond by telephone should receive with equal treatment all calls placed. We do believe that without some regulation by the Commission, this type of radio program, which is somewhat widespread in its use, can become deceptive, in fact tend to invite controversy unnecessarily, and derogate free speech; most of all, because any program of this type must necessarily involve controls and limitations not inherent in other media of communication, nor so open to public hearing."

56. On January 20, 1966, the Council retracted its request for Commission investigation and it appears quite clear that this was due to the departure of Mr. Livezey from the hotly debated FOS program. A letter of retraction was sent to the FCC on February 2, 1966.

57. The troubles of WXUR were not to end here, however. In the Pennsylvania House of Representatives a resolution (No. 160) was introduced by Mr. Joshua Eilberg and was summarily passed, condemning WXUR and McIntire in particular. The pertinent text of Resolution 160 is as follows: (BB Ex. 22)

"Radio Station WXUR in Media, Delaware County, Pennsylvania, is operated by the Faith Theological Seminary. The president of the Seminary Board is the Reverend Carl McIntire.

"Reverend McIntire began his ministry with the Presbyterian Church in the U.S.A., but was ousted from the clergy of that denomination in 1936. He then built his own house of worship and set up his own church federation, The American Council of Christian Churches. Reverend McIntire immediately began vicious attacks on the National Council of Churches and has continually exhorted the political and economic views of the radical right.

"Reverend McIntire had little success until 1960 when his radio program, The 20th Century Reformation Hour was established. He now broadcasts over some 600 stations and reaches millions of people daily.

"The views which the Reverend McIntire expounds are those which we now equate with the word 'extremism.' The danger of such views to our country is self-evident. That such views are rejected by a majority of our citizens was demonstrated by the election returns in November, 1964.

"The right of the Reverend McIntire to hold or express such views is not in issue. The only issue is whether the Reverend McIntire exercises the degree of social and public responsibility which the law demands of a broadcast licensee. There is a serious question whether Radio Station WXUR, under the operational control of Reverend McIntire, is giving the balanced presentation of opposing viewpoints required of broadcast licensees; therefore be it

"RESOLVED, That the House of Representatives of the Commonwealth of Pennsylvania requests the Federal Communications Commission to investigate Radio Station WXUR, in Media, Pennsylvania to determine whether or not it is complying with the requirements of a broadcast licensee; and be it further

"RESOLVED, That a copy of this resolution be sent to the Federal Communications Commission."

58. At this point tempers had reached a boiling point. McIntire purchased time on WXUR to protest what he considered an attack on his ministry and on the freedom of his religious faith. There will be more said of this later but by this time the men behind WXUR were burning angry. Having given this brief sketch of events, let us turn to Freedom of Speech.

Mr. Thomas Livezey

59. The next figure in the drama is one whose personal attributes must be described for a proper understanding of the events in which he was a participant. Tom Livezey, who appeared as a witness for the Broadcast Bureau, was a speaker of stentorian quality whose vigor and forthrightness suggested a politician or perhaps an actor. Had he been endowed with a more temperate tongue he might well have become one of the most distinguished commentators in American broadcasting. The record leaves no doubt, however, that Livezey's gift for flamboyant speech, a style unrestrained by any sense of prudence, let alone delicacy, were part of his very being. Quotations from his broadcasts, which will be supplied shortly, are amply illustrative of his manner which, it may be noted, was as pungent on the witness stand as it had been over the air. The effect on his WXUR audience must have been electrifying since he generated passionate responses both in his favor and in deep opposition.

60. The history of Mr. Thomas Livezey at WXUR is roughly divisible into three segments: His hiring, his conduct of Freedom of Speech and the events occurring after his dismissal. At the time of hearing he had a record of broadcast experience which spanned nearly four decades and had, according to a number of witnesses, including Roper, acquired the reputation of a "rabble rouser". In order to do justice to Mr. Livezey and still record the facts of record, some general comment is necessary before going into the details. It is abundantly clear that Livezey was a man of intense convictions which, whether right or wrong, were expressed in forthright language and, as such, he held an obvious appeal for Norris. Although the coloring of his opinions is largely immaterial, he would generally be regarded as conservative politically. It might be stated parenthetically that this term has been a baneful one to the Examiner throughout the hearing because, notwithstanding a consensus among most of the witnesses, including those for the Intervenor, a conservative in the philosophical sense is not necessarily a conservative in the popular sense. By way of illustration, the Ku Klux Klan (and Livezey had favorable views about this) is popularly conceived of as a conservative group but the Klan has no more relation to the philosophical conservatism of Edmund Burke or his modern apologist, Russell Kirk,^{5/} than Marxist socialism has to the "liberal" tenets of Jefferson or Lord Acton. Nevertheless, there are certain norms which the witnesses seemed to understand and agree upon and by these norms Livezey was more of a conservative than anything else. His one distinct aberration from classical conservatism was a tendency towards racial bias as will be seen. At all events he was hired to conduct Freedom of Speech and he commenced the program on June 1, 1965.

61. Livezey's turbulent career as commentator at WXUR lasted until November 19, 1965, and in those few months he probably aroused more spirited response than even Dr. McIntire. In May, 1965, Livezey was employed by a Trenton radio station to do a talk show and at that time he learned of the transfer at WXUR through Broadcasting Magazine. He immediately became interested in securing employment at WXUR because, in his own words, "he wanted to join the ranks".

62. Shortly after learning about the new ownership, Livezey made a trip to Dr. McIntire's Bible Presbyterian Church in Collingswood, New Jersey. There he attended a service or prayer meeting and afterwards had a talk with McIntire during which he explained that he was interested in employment at WXUR.

63. The story of his hiring was delivered through several witnesses and each time it varied in details. Norris, with his customary vagueness, could not recall specifically any part that McIntire had played. Livezey was sure that McIntire was aware or became aware of Livezey's dissatisfaction with his current income and with other reasons for seeking a change of jobs. Fulton, on the basis of hearsay, understood that Livezey had talked to McIntire before being hired by Norris. The best account, or at

^{5/} The Conservative Mind: from Burke to Santayana; Regnery, 1953.

least the most credible, since it was related with the utmost candor, was that given by Dr. McIntire himself. While he had some trouble remembering all the details, McIntire said that Livezey had visited him at the service as related above and had accepted Jesus Christ as his Saviour. Later Livezey had brought up his proposed employment at WXUR and McIntire informed him then that Norris was the man who did the hiring. Subsequently Livezey was interviewed for a job by Norris in York. McIntire approved of Livezey at the time but there is not the slightest reason to doubt that Norris actually did the hiring. This is certainly what he told Fulton and all the other accounts corroborate it.

64. In this matter Roper testified that the Radio Board had no real part but relied on the judgment of Norris. At the time of Livezey's employment Roper had never heard of the man. As a sidelight on this episode Roper stated that the Seminary Board had never interfered with the management in any way concerning station affairs except for one dissenting member when Burak was brought to the station. Burak will be discussed later.

65. Fulton's claim that he had interviewed Livezey on a previous occasion and for a different position was later denied by Livezey but the matter is not of particular importance. Naturally Livezey denied the characterization of himself as a "rabble rouser" but there is plenty of evidence in the record to justify it, including the transcriptions of his own broadcasts. Livezey's style consisted of a bold attack; he liked moderators "who aren't afraid to pull their punches" (BB Ex. 30, page 36) as he declared on the Mau show in January after his removal from FOS. (He obviously meant "who do not pull their punches.") In short, Livezey was and probably still is a controversial figure, one who takes pride in his ability to stimulate disputation. As such, he was obviously appealing to Norris and also to Dr. McIntire as appears in the warm reception given him by McIntire when Livezey was later a guest on the "Christian Admiral" show. It was avowedly the policy of FTS and the management to offer robust discussion of controversial issues and without doubt Livezey was the man to promote this. To understand this, let us sample some of the Livezey style:

Livezey: Freedom of Speech - Tom Livezey.

Caller: Hello Mr. Livezey. Yesterday, after you hung up it seemed (Female) that you still had something that you wished to say that you didn't want to say to my face so I thought I would call again today and give you another chance.

Livezey: I have nothing to say to you or your kind.

Caller: Well do you think it's really very Kosher to talk after someone hangs up?

Livezey: Whether it's Kosher, as you put it, or not, I have nothing to say to you or your kind, I repeated.

Caller: Kosher means clean. I guess what I really want to say is ...

Livezey: Well I question ...

Caller: ... that I think it's a little dirty of someone to talk behind someone's back.

Livezey: Well I think some of the stuff you've pulled on all the airlines is a little dirty and I don't want you on the program.

Caller: Well you don't ...

Livezey: (Later - at end of show) Alright, that does it for a Friday afternoon, August the 27th, 1965. Now you may have wondered why I cut that woman off the air. This woman is on every talk show spreading venom, spreading Communist thinking, rabble rousing and everything else; I want no part of her kind on this program. Freedom of Speech or not, she is one person that's not going to take advantage of my airline as long as I do the program and she'll save herself a lot of embarrassment and me a lot of trouble of cutting her off because I want no part of the woman that has the voice that just called me and has gotten on the soap box on every talk show within ten miles of this area and has insulted the commentators, the moderators and everything else and I am not going to take it from her. God bless America -- God bless this great nation. (August 27, 1965, Int. Ex. 46, pages 8-9)

* * * * *

Livezey: Freedom of Speech - Good afternoon.

Caller: Mr. Livezey, I've been listening to your show for the past (Male) week and I see it like a common theme running through you and your listeners. Since you're worried about the Communists, you know, about being over America, I think it would be advisable or would be a recommendation for your listeners to think positive instead of negative about the people who consist of America. I mean, instead of trying to like -- it seems like you're trying to go against talking up somebody else being bad, you should talk about each individual bad person instead of trying to get gruesome and causing hatred and animosity between them. Like you talk about everybody as Americans and not as ...

Livezey: Well, I don't know, up to now if you've made any point. What are you trying to say?

Caller: In other words, like "so-and-so is a Negro and therefore Negroes are like this, and Jews are like this, and Catholics are like this."

Livezey: I see.

Caller: Instead of talking about groups -- if some guy's a jerk he's a jerk, not because he's Jewish, Negro or Catholic, it's the guy's a jerk. If the guy's a Communist, he's a Communist, not because he's Jewish, Catholic or Negro and if you'd think positively instead of negatively ...

Livezey: What faith are you, may I ask?

Caller: What race?

Livezey: Yes.

Caller: I'm white.

Livezey: I didn't ask you that, I said what faith?

Caller: Oh, faith, I'm Jewish.

Livezey: I thought you were Jewish.

Caller: I mean, I'm just talking objectively.

Livezey: I see.

Caller: No, I mean, do you see my point?

Livezey: I see your point, yes.

Caller: But by trying to split the different groups up ...

Livezey: Uh, huh.

Caller: ... causing hatred, this is just what the Communists ...

Livezey: Do you think the Jews are trying to split the Christians up and the Catholics? ...

Caller: No, I don't.

Livezey: ... and the Negroes?

Caller: No, I don't.

Livezey: You don't.

Caller: No, I'm sorry, I don't.

Livezey: All right, fine, I'm glad to hear from you.

Caller: And one other thing - Your show is, you call it "Freedom of Speech" but there were certain things that I've noticed over the last week that you know, just aren't equal ...

Livezey: Uh, huh.

Caller: ... as far as ...

Livezey: Well you leave running the show up to me, will you?

Caller: Can I just say something?

Livezey: How old are you, incidentally?

Caller: I'm twenty.

Livezey: You're twenty - you sound like a teenager to me.

Caller: No, I passed that stage two months ago now ...

Livezey: Did you? Well I'm glad for you. Maybe you'll get thinking some of the conservative way of thinking instead of the liberal vein.

Caller: Well that's why I'm listening to your show but ...

Livezey: Well fine, I hope it's an education.

Caller: Yea, well I mean, I just want to say one thing.

Livezey: Well make it quick.

Caller: Yea, on Friday a teenage girl called, a sophomore from high school ...

Livezey: And a very educated young lady, I think.

Caller: ... well you let her speak, which is fine but then another teenager called up who disagreed with you and you cut him off because he was a teenager. Now ...

Livezey: I knew his ilk, that's why I cut him off.

Caller: I mean, if he disagreed with you ...

Livezey: It wasn't a case of disagreeing with me, it was the way he presented it.

Caller: And you also, if somebody disagrees ...

Livezey: All right, your three minutes is up. (August 31, 1965, Int. Ex. 58, pages 1-3)

* * * * *

Caller: ... there's a picture of a bunch of kooks out there in San Francisco, laying all over General Maxwell Taylor's car, with signs. Now what would happen if I went up to a government official's car in Media, even on a county level, and laid over the hood with a sign. They'd say

Livezey: Well, if you were white, you'd be arrested; if you're colored, you'd get away with it, probably.

Caller: They'd say "this man's from catchment 59," referring to an article I read yesterday about the catchments, 59 mental health catchments.

Livezey: And if I'd been Maxwell Taylor, I'd have picked each one off bodily and tossed them across the street.

Caller: But you can't do that, Tom.

Livezey: You can't, huh. (August 25, 1965, Int. Ex. 28, page 1)

* * * * *

Caller: ... just like in Rochester, there's a man, Saul Alinsky, I don't know whether you're familiar with him, he went to Rochester and he's been shaking up the white community because they've been giving nothing to the Negro, and now he's helping the Negro.

Livezey: What's his name?

Caller: Saul Alinsky.

Livezey: He sounds like one of the crowd. (August 27, 1965, Int. Ex. 28, page 7)

* * * * *

Caller: I say, I don't know of any reason why you should have to apologize for calling someone a Jew.

Livezey: I'm not apologizing. I want to know why Dillon changed his name from a Jewish name to Dillon.

Caller: That's what I'd like to know.

Livezey: Yeah.

Caller: But I also feel that they call Irishmen Irishmen, Catholics Catholics, and I don't see why anyone who is a Jew has to get insulted because you say this. Or I say it I have --

Livezey: Why these are some of the thin-skinned people that when you talk about the Rosenbergs, right away you're anti-Semitic, and I went through this bit in Trenton.

Caller: Talk about Dr. McIntire being a hate club No. 1, that's all right.

Livezey: Oh, if the B'nai B'rith says that, that's perfectly all right though, you see.

Caller: Ginzburg, why in the world can't they take the truth. When Ginzburg gets up there and talks about Barry Goldwater, that's perfectly all right, too. Well, in my book, it isn't. And I'm glad --

Livezey: Well, I don't intend to offer any apology to her or anybody else that's Jewish. I didn't say anything that was anti-Jewish and I'm not anti-Jewish, what's more. But they like to imply that. This is the kind of strategy that's used. (Around July 19, 1965, Int. Ex. 28, page 9)

* * * * *

Caller: (Quoting from a letter)
"Five thousand years ago, Moses said, 'Pick up your shovel, mount your ass or camel, and I will lead you to the promised land,'"

"Five thousand years later, Roosevelt said, 'Lay down your shovel...this is the promised land.' And now if we don't watch out, Johnson will take away our shovel, stamp out our camels, kick us in the ass, and give the niggers the promised land."

"I'm glad I am an American
I only wish I were free
I also wish I were a little dog
And Martin Luther King a tree."

"Integratedly yours, I. H. White, American Farmer."

Livezey: That's a little on the hot side, isn't it, my friend?

Caller: No, I don't think so. Moses, you know, in the Bible, that's not on the hot side. Moses, if you'll read the Bible.

Livezey: Well, there was one place that I took you off entirely, that I didn't think it was for the air.

Caller: O. K.

Livezey: And you know the profanity that was used in the spot it was used in, and I'm not subject to that. I have tried to keep this program in good taste, and I'm glad to have your poem and this is "Freedom of Speech" but I don't want words like that on the air. I'm not any prude, either.
(August 6, 1968, Int. Ex. 28, pages 12 and 13)

Format of Freedom of Speech

66. FOS is an open mike program in which members of the public can call in and speak their piece over the station's facilities. A similar program had been carried at WGCB and in Norris' opinion it was so successful that he determined to institute the same format at WXUR. Accordingly, it was begun on June 1, 1965 with Livezey as commentator but was carried on AM only. The program was conceived as a vehicle -- probably the principal vehicle -- for expression of all viewpoints and it was faith in this concept which led Norris to be insistent on permitting no "censorship" of what callers had to say.

67. In the format of FOS there was to be a moderator who would begin the program by reading an editorial or news item or, in some instances, a letter from a listener. The distinction between moderator and commentator later became an important one but in the beginning there was some ambiguity as to which term best fitted Livezey. Roper admitted he did not understand the distinction at first although he felt in his own mind that a moderator was intended. Livezey, on the other hand, was strongly in favor of uttering his own comments and, in fact, did so.

68. FOS, under Livezey, would begin with a statement such as the following: "Good afternoon. Welcome to the most talked-about program in the Delaware valley, Freedom of Speech, heard Monday thru Friday at this time with your commentator, Tom Livezey. The opinions expressed on FOS are those of the callers and this commentator and do not necessarily express the views of the ownership, management or the advertisers of WXUR. FOS is your program from 3:00 until 4:00 pm daily. Limit your calls to 3 minutes and your subjects must be in good taste."

69. This was followed by the reading of an editorial or in some instances a news report or letter. Livezey testified: "He [Norris] gave me permission to read editorials; we later on got a clearance from the Wall Street Journal to read their editorials. I read conservative editorials, documented them from the publication . . ."

70. Livezey made his own tapes of the program. Following the editorial the 'phones were open and calls were received. WXUR has never

used a delayed broadcast mechanism although Livezey, Burak and others have recommended it. Norris' reply to this request, as described in Livezey's testimony, was:

A He said: this is Freedom of Speech. We are going to have an instantaneous program. That is the way it is in Red Lion.

Q And how did you keep offensive things from being broadcast on Station WXUR when you were the commentator of FOS?

A Pretty fast with the manning of controls.

Q In other words you turned down the volume?

A As Rev. McIntire can attest to, when some of the names were called at he or his wife on the marathon.

Q Did you handle the controls on that program?

A Yes I did, and we got some vile ones.

71. Livezey had a particular aversion to "baiters," persons who would heckle him. He told Norris that he would shut them off but Norris said: "Tom this is Freedom of Speech; everybody is supposed to get their share." The guidelines were that any callers should be permitted three minutes and that Livezey should behave like a gentleman. Otherwise it appears that no holds were barred.

72. In the first few weeks of Livezey's tenure at WXUR Fulton began to get some heated protests. On one occasion he was listening to the program and there was a reference by a caller to police dogs in the Philadelphia subways. It is not clear from the record but apparently there was also mention of Negroes. Fulton stated ". . . the caller had said something to the effect that they are going to take the dogs out of the subways and she or he didn't think that was right. What was your opinion, Mr. Livezey? His answer was 'I think they ought to leave the dogs down there and let them take some bites out of their black butts.'"

73. That this was the sort of spice which Livezey used to season his programs is evident from the testimony of other witnesses. In the testimony of Mrs. Austin, a member of the Media Branch of the NAACP, it appears that a caller asked Livezey if he had ever heard of Philip Randolph. He retorted, "Is he one of the sleeping car porters?" And then he added, "He and his brother are communists."

74. Another account by Mrs. Austin related to a call by a woman who had been to court to evict some tenants and had been awarded a decision by the judge. Livezey wanted to know if the tenants were white or Negro and the woman replied that they were white. "Who was the judge?" asked Livezey. The woman replied, "Judge Gold". Livezey's response was, "Oh, he is the one who is letting all the criminals out on the street to attack our women."

75. Norris was asked what he did to assure himself that Livezey was following instructions to adopt a gentler tone and specifically he was asked whether he listened to FOS. His reply was:

"Yes. It happened to be toward the end of summer. I was on my way to Cape May. I heard this woman come on the broadcast and she would have had to be more on the right side than the other. For some unknown reason, he [Livezey] just cut her off. It sort of upset me a little bit. I was in my car driving. I couldn't get out and say, 'Tom, stop it.' It was in the back of my mind and I kept it in mind."

76. By midsummer it was evident to Norris and Roper that Livezey was provoking more antagonism against the station than was tolerable. It was decided to have a talk with their tempestuous employee. Norris spoke to Livezey on more than one occasion, admonishing him to adopt a "gentler approach" and to be more polite. The complaints which were coming in related mainly to racial slurs and to the abrupt manner of shutting off callers, two facts about which there is substantial evidence. Putting a muzzle on Livezey, however, was not easily accomplished. From the beginning Livezey resisted the passive role of "moderator" and he even disliked the title "Freedom of Speech" for the program. He preferred to call it "What is on Your Mind," a title which he had once used on a show at a station in Chester. He saw himself as a "commentator," an active partisan in the heat of discussion. The management, however, -- or at least Roper -- thought of his role as that of a moderator. With such a basic difference of understanding it was no wonder that trouble began to brew from the start.

77. On October 2, 1965, there was a semiannual meeting of the board of directors of FTS at which Norris, Roper, Smith and McIntire, among others, were present. The minutes recite:

"An observation was made that Mr. Thomas Livezey, commentator on the Freedom of Speech program on WXUR was causing considerable criticism. His choice of words and his views regarding minority groups were described as unfortunate. Mr. Norris has discussed this matter with Mr. Livezey."

78. Subsequent to this action Norris talked again to his unruly servant but urging "a gentler approach" on Livezey seems to have been an essay in futility because the caustic tone of his broadcasts, if anything, became intensified. This is evident from two events which, incidentally, brought matters to a head.

79. One of these events was the Media Borough Council meeting where an investigation of WXUR by the FCC was requested. The other was contemporaneous with it and had to do with Livezey's broadcast on Friday, November 18, 1965. One of the callers on the program made remarks which, to say the least, were uncomplimentary towards Jews by linking them with pornography. Livezey agreed with the remarks and his agreement was enthusiastic. (Tr. 4487) Mr. Don McLean was then monitoring FOS and, of course, taping it. McLean was so disturbed by what

went on that he called Norris, who was in York, and played the tape back for him. Norris, thereupon, gave instructions that Livezey was not to handle FOS the following Monday and McLean was directed to be the substitute. Roper had already received an anonymous postcard which charged that Livezey was anti-Semitic and this, to Roper, was absolute anathema. It was in this climate that Norris and Roper met with Livezey on the Monday following McLean's call.

80. There was a suggestion that Livezey make an apology over the air for what he had said but Livezey, who boasted that he never apologized for anything he said over the air, refused to comply. Roper in characteristic religious vein addressed Livezey: "When God told Abraham, 'those that bless, they will I bless; those that curse, they will I curse'" and then added, "We believe that and we would not do anything in any way to harm a person of Jewish faith by word or by deed or by action."

81. Livezey, then as later, stoutly denied that he was anti-Semitic "or anti-anything" but the members of the Radio Board clearly felt that matters were getting out of hand. Norris informed Livezey that he was being removed from FOS "at least temporarily". It was a sharp blow to the commentator's pride, so much so that he could not later recall whether he had conducted his other programs on that day. While Livezey never returned to FOS, Norris did make overtures to him to accept a similar program at Red Lion but Livezey was not interested.

82. In a later explanation to the Commission, Norris, on February 4, 1966, gave this account: (BB Ex. 33)

"The letters enclosed center on the 'Freedom of Speech' program on Station WXUR, which has been carried daily on the station for several months. Until November 19, 1965, the 'commentator' on this program was Mr. Tom Livezey. The criticism of this program related to the manner in which Mr. Livezey conducted the program, with particular reference to allegations that views with which Mr. Livezey was unsympathetic were suppressed or cut off. The matter of Mr. Livezey's conduct on this program and the criticism that he had generated had become a matter of concern to the ownership of WXUR as early as September 1965, and on several occasions he had been cautioned by the President of the licensee. In fact, the matter was specifically discussed in the meeting of the Board of Directors of Faith Theological Seminary on October 2, 1965, and the Board expressed its disapproval and directed the President of the licensee to discuss this matter further with Mr. Livezey. This was done. Unfortunately, although Mr. Livezey tempered his conduct somewhat, he apparently, perhaps through over-zealousness, continued in some measure in the same way."

"The day after the Media Borough Council on November 18, 1965, adopted its resolution which became the subject of the Borough's letter to the Commission dated November 24, 1965, Mr. Livezey was removed completely from the Freedom of Speech program and was assigned to announcing duties. More recently, he has been made news director with specific direction that all news should be handled on a completely fair, unslanted and unbiased basis. We believe that with the more close supervision that will be exercised by management, Mr. Livezey will faithfully follow these instructions. In view of Mr. Livezey's career in broadcasting which goes back almost forty years, management has felt that it would be extremely harsh to stigmatize Mr. Livezey with any more severe disciplinary measures."

83. Livezey lingered on at WXUR for several months as "news director" and also continued his music programs. In January, 1966 he was given a new assignment, that of reading editorials which were given to him by Roper and Norris. To a man of Livezey's temperament, it must have been galling to play such a secondary role, especially since it had to be performed immediately after FOS on the schedule.

84. Before dismissing Livezey it must be noticed that his removal from FOS almost completely coincided with the first Media Borough Council meeting whereat a motion of protest was carried. That was November 18, 1965. Norris maintained that this was purely coincidental and it may well have been, but there is no reason for doubting that pressure for the dismissal of Livezey had been building up prior to the Borough Council action and the consummation of the removal followed the lines of Greek tragedy. The stage had been set and Livezey had to go.

85. After several months as an obsequious functionary without the means of voicing his opinions, Livezey demanded an increase in salary. This was the opportunity, in Roper's view, for getting rid of him. The station's financial situation was such that a pay increase was out of the question and the demand was accordingly refused. Livezey, thereupon, resigned in April, 1966. To Roper, at least, this was a good thing. "Actually," said Roper, "we didn't want the man around but we didn't want to fire him." Livezey gave them a graceful means of extricating themselves from an awkward situation by simply refusing his demand for a pay raise. Livezey, however, did not entirely disappear from the story although he did not return to WXUR.

86. In the following June or July he attended one of Dr. McIntire's rallies at the Moffitt farm near Pottstown. Livezey was accompanied by his wife and he testified that while he had no desire to see Norris, he spotted that gentleman in the crowd and exclaimed to his wife: "Let's not have words with Mr. Norris. The thing is finished. I came here because I wanted to see Reverend McIntire, not with any anticipation of pleading for a job back but to renew our friendship."

87. Norris saw him, however, and came over to talk. He proposed first to sell Livezey time but Livezey replied, "You are out of your head. I am not buying time on WXUR after you let me go."

88. Then, according to Livezey, Norris came up with a suggestion that he had a possible sponsor who would back the program (which may or may not have been FOS) but Livezey was not interested. The identity of the sponsor did not come out in the testimony but Livezey said it was to have been some sort of "foundation".

89. It is obvious that Norris was infatuated with Livezey's style. This was demonstrated by the offer of a job at Red Lion (WGCB) and later the effort to bring him back to WXUR. Livezey declined both propositions. He retreated to his home in Allentown to lick his wounds but his meteoric career at WXUR was ended. It remains, however, to gather up certain aspects of this story and to explain one of the Examiner's main sources of information. This is Mr. Roper.

90. Roper's testimony was one of the most valuable contributions to the record. Not only was he forthright but his manner had a certain unaffected quality which made it highly credible. Roper had had no experience whatsoever in broadcasting prior to the acquisition by FTS but he learned quickly that it was more than merely playing records and reading commercials. His own words convey an artless simplicity:

"The Fairness Doctrine as I understood it was if anyone was attacked or thought they were attacked on the station that they should be given an equal opportunity to present their viewpoint."

"As I stated in the beginning, I hate to keep saying that John Norris was the only authority but as we finally learned many of these things, learning how a station should be operated, we understood much more clearly than that we should have as many opposing viewpoints as we could possibly get on the air. In fact, we found out that the more opposing viewpoints we got, the better and bigger listening audience we had. And it was to our advantage not only to keep in touch with the Fairness Doctrine but also to have those people on so that they would get their people to listen and then in the question and answer program there could be a -- sometimes discussions weren't too good but there could be -- discussion from the audience of both viewpoints. And that way all viewpoints could be heard."

91. It has already been mentioned that FOS was commenced on June 1, 1965, that it was a vehicle for community expression of varying viewpoints and a means of giving equal time for the utterance of almost any point of view. The telephone was the main instrumentality for accomplishing all this. One of the obstacles towards achieving this ideal was the difficulty many listeners had in getting through on the telephone. This was acknowledged by many witnesses, including Burak, but another troublesome problem was the fact that some callers were "regulars" while others were occasional. A third vexatious problem was the lack of a delayed broadcast (DB) apparatus which would have enabled the moderator to cut off an obnoxious remark or personal attack. Livezey, as heretofore noted, favored a DB apparatus but Norris felt this would invite censorship. Following

Livezey there was a series of moderators -- this is how they were now entitled -- and guest moderators: McLean, Jay Parker, Reuben Jay and finally Mr. Robert Barry who is now station manager. The sharp tone of controversy and, particularly, the racial and personal acrimony, seem to have disappeared. It was henceforth a more temperate program.

92. There was much interrogation during the hearing as to when a change of format took place but it is clear to the Examiner that some change occurred as soon as Livezey left the establishment. Thereafter, the program might have been controversial but it was never dominated by a "commentator" like Livezey. The change was actually announced at the time Barry took over. This was in June, 1966. During its tempestuous course, FOS has witnessed a variety of speakers and sponsors of causes which range from civil rights to Hippies and from Unitarians to Catholic conservatives. Without attempting to recite each and every speaker shown in the record, it is obvious that a multitude of viewpoints were expressed on FOS and the call-in listeners had an opportunity to propound their several ideas which they certainly did. Obviously there was no way of presenting evidence of all of the FOS shows, either in the Livezey regime or later ones but there is enough in the record to support a finding that FOS did perform as a vehicle for the expression of a wide variety of viewpoints.

93. The story of Tom Livezey is in some ways a tragedy, perhaps a tragicomedy. Here was a man of remarkable vocal and histrionic gifts but whose greatest fault was his self-delusion. His concept of controversial broadcasting was quite clearly one which would provoke vitriolic dispute. In his swan-song -- as guest of Carl Mau on the latter's program in January, 1966 -- Livezey declared he liked moderators who do not pull their punches and this was his proudest boast. He professed to believe that he was without bias or bigotry yet this claim is astounding in the light of quotations from his broadcasts. Nevertheless he apparently believed in his own self-delineation. On the evidence of record there is no reason to doubt that Tom Livezey was the spark which set off the emotional explosions which produced this hearing and which especially triggered the Borough Council action. But at that point he was laid to rest. After Livezey's demise, things became relatively quiet but life at WXUR has never been pacific. There was still Marvin Burak to be reckoned with, not to mention a galaxy of other incendiaries.

94. The record of course does not contain the full history of Freedom of Speech but there is sufficient testimony to find that "liberal" viewpoints were expressed by callers and by guests and that they were fairly frequent. Some indication of this is to be found in the Bureau's witness, Mrs. Williams, who stated that she had called Freedom of Speech about twelve times. Mrs. Williams considered herself as being on the liberal side especially since she had been a member and representative of the Media Fellowship House which is one of the Intervenor's. A witness for the Intervenor, Mr. Richard Clayton, who had monitored and taped FOS as well as other programs emanating from WXUR, professed to be a regular caller. He stated that he rebutted anti-Semitic remarks and was always permitted to speak freely on FOS. Clayton was a self-avowed liberal and

his affiliation with such organizations as the ACLU, the IAD and United World Federalists would support this. It is quite noticeable from the record that the complaints relating to FOS were almost exclusively concerned with the conduct of that program under Livezey whose tenure as moderator was terminated many months before the expiration of the WXUR license. It is a matter of interest that subsequent to that tenure there seemed to be no objections to the program on the grounds of abusive language, intemperance toward callers or shutting callers off. In one instance when Reverend Kibby, a Unitarian minister was guest on the show, some of the callers referred to him with sharp language. The moderator at that time was Mr. Barry and he intervened several times to restrain these callers when their language became objectionable.

95. A wide variety of opinions and subjects were represented by guests who were invited and who in some instances did appear. There was a suggestion in the position of the Intervenor and the Broadcast Bureau that the invitations sent out by Mr. Roper were in some way timed to assist the station's position in connection with its renewal application. Roper's transparent honesty has already been noted and it needs only to be said that at that time he was not aware that the renewal application was being prepared.

96. In assessing the balance of viewpoints, one example may be recited in order to illustrate the problems involved. Monsignor Salvatore J. Adamo, Editor of Catholic Star Herald which is one of the Intervenor's, was one of those invited to appear on FOS. 6a He did so on June 20, 1966. In the course of this appearance, he addressed himself to the basic Catholic concept of social justice, to the enlightened social legislation of the New Deal, to the differences between Catholicism and Communism, to the Papal doctrine which left "room for possible cooperation" with Communism despite "basic philosophical disagreement," and to a number of similar matters including an attack on any viewpoint which confused his social position with Socialism or Communism. Beyond making the safe characterization that Monsignor Adamo's position was "liberal" -- an identification which he doubtless would accept -- no more can be said since the purpose of this opinion is obviously not to evaluate the merits of the position. Suffice it to say that the opinions expressed over FOS by Monsignor Adamo, Dr. Felder Rouse, Reverend Kibby, Stanley Branch, Dr. Aspaturian and others who appeared on FOS were manifestly contrary to the views of Mr. McIntire. Dr. Rouse and Mr. Branch were both Negroes who were in the vanguard of the local civil rights movement. Reverend Kibby and Monsignor Adamo have already been identified. Dr. Aspaturian is a Research Professor of Political Science at Penn State University whose talk concerned the antagonism between Russia and China and who expressed the view that the antagonism had tended to check the spread of Communism.

97. In one other respect, there was an attempt which has every appearance of sincerity to present contrasting viewpoints by having the moderator commence the program with the reading of a selected portion of an editorial. Many of these were clearly of a conservative character but in other instances they were of a contrary nature such as the expression of views against the Vietnam war, advocacy of integrated education, advocacy of world federalism and an article captioned "Minister Says Peace Marchers Bare Facts of Racial Conflict". A special attack by the Bureau was made on receiving certain of these selected editorials into evidence on the ground that they were incomplete. This argument merely serves to highlight one of the serious problems encountered by the Examiner. It is obvious that in assessing whether this or any other station has accorded fair time to contrasting viewpoints, there must be some evaluation of the viewpoints themselves, that is whether they are liberal, conservative or something of that kind. To go beyond them and make a detailed study of the degree to which such viewpoints were expressed in qualitative terms would come so close to being a surveillance of free speech as to be terrifying. The finding in this instance is that the conduct of FOS following the departure of Livezey, so far as this record shows, was one marked by a prudent and honest attempt to permit the utterance of all viewpoints in so far as that was practically possible but the finding must be limited to that since any other would encounter constitutional objections.

Staff

98. WXUR is a small operation and its personnel are expected to perform a variety of functions. For example, Mr. Broadwick has at times taken a turn on the controls, done announcing and moderated "Inter-faith Dialogue". The ultimate authority may technically reside in FTS or, perhaps, in the Radio Board but as a practical matter it lies in the hands of John H. Norris. His is the responsibility for programming, for monitoring and for all the facets of station operation. On occasion he has delegated authority or permitted its exercise by the manager, either Fulton or Barry. Fulton, for example, hired Mrs. Powell as secretary and Barry admitted that he thought he had authority to schedule programs but in the last analysis Norris could and did override his subordinates.

99. After the resignation of Fulton there was a hiatus. Don McLean was engaged as Sales Manager and was kept in a kind of trial period prior to being named manager. Other employees were brought into the station during the autumn of 1965, a Mr. Jay Parker (who is a Negro) and Mr. Reuben Jay. Each of these gentlemen served a term as moderator on FOS. Somewhat later in 1966, a Mr. Conway served in this position. The station also employs two engineers.

100. In June of 1966, Norris brought Robert Barry from WGCB to Media to be station manager and Barry has remained in that position ever since except for periods when he was in the hospital. Barry also moderated FOS at the time of the hearing.

101. In general, Norris' instructions were to broadcast divergent viewpoints and on the FOS program he was especially sensitive about letting any opinion go out over the air. Even Livezey was more circumspect about this than Norris since Livezey would occasionally cut off a ribald or name-calling person on FOS. It cannot be stated dogmatically but it appears as the only possible deduction from all the testimony that Norris wished to permit anything which came in from the telephone calls and that he was for this reason opposed to any delayed-broadcast device or what is commonly known as a DB device. This is a mechanism which delays the actual broadcast of a call by several seconds so that an engineer or someone on the controls can prevent slanderous, obscene or similar language from going on the air. Norris disapproved of this and, in any event, WXUR did not have the device.

102. Many of the sponsored programs on WXUR, such as Billy Hargis, Dan Smoot Report and Manion Forum come into the station on tape. Programs such as that of Pastor Bob are read over the air from a written script. Barry explained that in a station as small as WXUR it was impossible to audit the tapes or read the scripts before broadcast time. The method of monitoring them at WXUR was to notify each sponsor of his obligations under the Fairness Doctrine and, in the case of Pastor Bob, to have an auditor listen. In simple terms, the station assigned its own obligations to each sponsor, requiring the latter to notify any individuals attacked in the course of a controversial discussion of a matter of public importance. The word "sponsor" in this context has a special meaning. Most of the programs which will be described hereafter were paid for by the persons or group which presented them. This, indeed, is how the station received most of its revenue. It is in sharp contrast to the normal practice of stations which sell spot announcements or time to commercial enterprises.

103. Returning now to the staff, we have seen that Bob Barry was made station manager in June, 1966. His duties, however, included sales, news broadcasting and the moderating of FOS. In contrast to his predecessor, Tom Livezey, Bob Barry was reserved in speech. By his own admission he is a conservative fundamentalist in religion and his only hobby seems to be UFO or unidentified flying objects. In fact, he conducts a five-minute program on this subject. Barry's family resides in York -- he was previously manager at the Red Lion station -- and he spends his weekends there with the five weekdays in Media. In view of his busy schedule, reading newscasts, moderating FOS and conducting the multitudinous tasks of daily supervision, it is not surprising that Barry on the witness stand was frequently vague as to programs which had been carried on WXUR.

104. Mrs. Peggy Powell was hired by Fulton in the spring of 1965 as secretary, a post she still holds in addition to being traffic manager. Mrs. Powell is the station's general factotum and her duties range from normal secretarial work to typing letters for the station's consultant, Mr. Victor Parker. She makes up the daily logs and classifies the programs under Barry's instructions. The station does not seek out publicity material from such groups as United Fund but Mrs. Powell schedules public service announcements when they come in. If there is a telephone complaint she reports it to Barry. According to her testimony, all her functions are performed pursuant to instructions from Norris or Barry.

105. The staff also includes Mr. William Broadwick who is a student at FTS. When asked if he would be a minister upon receiving his bachelor's degree, he replied: "No, then I will be a graduate of Faith Theological Seminary." He has been employed by WXUR since June, 1965 and is a full-time employee as an announcer-engineer. In addition to these duties, he ran Inter-faith Dialogue for a period. Under verbal instructions from Norris he listened to programs for anything which might be unusual and reported to either Barry or Norris. Depending on who was doing the broadcast, Broadwick listened more to some than to others but he was specifically asked to monitor Pastor Bob Walter. Broadwick testified that Norris had "heard there were rumors that Pastor Bob made strong statements about other organized religious groups and . . . was concerned about that."

106. On one occasion when Broadwick had not heard the Pastor Bob program, he learned through hearsay that something derogatory had been said so he listened to the tape. The interrogation goes as follows:

Q How long ago was this?

A I think it was probably June or July, 1966.

Q When you listened to the tape did you find anything derogatory?

A Yes.

Q What was it and what did you do about it?

A Pastor Bob had attacked the station, WXUR.

This singular event was reported to Mr. Norris. It seemed that Pastor Bob was critical of the station for employing persons who were not fundamentalists. WXUR, however, did not ask for reply time.

Conservative Fundamentalist Philosophy

107. In the portions of the findings to follow, there will be the necessity of frequently alluding to what was described in the record as conservative fundamental religion because many of the persons who appeared on WXUR were of that persuasion. In order to understand this, the Examiner is going to quote from several witnesses who purported to speak for such fundamentalism and to distill from their definitions a working definition.

108. According to Barry: "they take the Bible as it is from beginning to end. What the Bible says, they accept, they believe." (Tr. 2656) And again: "My opinion of a conservative fundamentalist is one that believes the Bible from Genesis to Revelations and believes what the word of God says." (Tr. 2657)

109. Mr. Broadwick, who is a Seminarian, offered this as a definition: "the fundamentals [are] the essentials of the Christian religion, the inspiration of the Bible, the Virgin Birth of Christ, the Deity of Christ, the bodily resurrection from the dead, the atonement, that is, that Christ died for our sins, justification of faith in a literal heaven and a literal hell. These ideas we would consider essential to Christians."

110. Dr. Cohen, a professional theologian and professor at FTS, made interesting distinctions with respect to some of the speakers on Inter-faith Dialogue. Contrasting certain guests on the program with Dr. McIntire, he said: "Plymouth Brethren . . . have the same Westminster Confession. Faith Seminary has a broader base of Protestantism."

111. About a Dr. Edmond Clowney: "Theologically very similar but a different denomination from Dr. McIntire . . . They have certain differences which led to a split actually from Dr. McIntire's group in 1937. They have a wider latitude toward Christian liberty, drinking, things like that. They have also a more cooperative, and shall we say, a friendlier stance toward liberalism. Dr. Clowney himself received his Master of Divinity from Yale Divinity School which is very opposite to Dr. McIntire."

112. Regarding Dr. Whitcomb of the national fellowship of Brethren churches: "Their theology is on, shall we say, what we consider the great truism of the Protestant faith. But . . . they believe in dipping three times. Dr. McIntire believes that dipping is not necessary."

113. Mr. Roper seemed to equate fundamentalism with Christianity when he said: "the fact that Christian broadcasts were being put off the air. I don't know whether it was because they were Christian broadcasts or because the radio stations wanted to get maybe higher paying programs."

114. When fundamentalists speak of the Bible they apparently mean the King James version as was shown when Norris spoke of certain liberals as upholding "other versions" or translations. He went on to say: "We believe that the Bible contains and is the infallible word of God and we believe it literally and we believe it has been inspired."

115. When asked if it was his position that this was the traditional fundamentalist position, he replied: "It is the Christian position."

116. As to Roman Catholic, Episcopalian, Quaker and other faiths, Norris had this to say: "All I can do is go to the Holy Bible itself here and it says, 'Many name the name of Christians who are not really Christians.'"

117. After reflection on his definitions of liberal and conservative theology, Norris testified:

"These would be beliefs in the fundamentals of the faith. By that I mean, I have five points here that I would like to go over.

"First of all, an infallible Bible would be inspiration of the Scriptures. No. 2 would be the Virgin Mary, that Christ would be born of a virgin. No. 3 would be death on the Cross for our sins. No. 4 would be the bodily resurrection from the dead. No. 5 would be His coming again for the power and the glory. I think that these would be the five fundamental points that I am referring to.

"PRESIDING EXAMINER: This is the conservative approach?

"WITNESS: This would be the conservative approach and they would take the historic position of the Bible. I mean the one two thousand years ago."

118. When asked was this the fundamentalist position, Norris replied: "I guess I use the word conservative because some might object to the word fundamentalist since it has been attacked so viciously . . ."

119. Fundamentalism thus is a literal acceptance of the Bible and it is unalterably opposed to modern liberal trends in church circles. These are the main lines of demarcation between Dr. McIntire and the fundamentalists on the one hand and the National Council of Churches on the other.

Dr. Carl McIntire

120. Dr. McIntire is pastor of the Bible Presbyterian Church of Collingswood, New Jersey. He is also President and a member of the Board of Directors of FTS. For several years, he has been a broadcaster of considerable renown although, as this record shows, not in any managerial capacity. By his own testimony, the FTS stands for teaching the Christian faith as summarized in the Westminster Confession of faith and catechisms; it also exists to train ministers, workers, evangelists, missionaries, chaplains, for the service of Jesus Christ. He is a member of Beacon Press Corp. and a director of its conference. (Tr. 4231)

121. The Christian Admiral is a hotel in Cape May, New Jersey, which is owned by the Beacon Press, a non-profit religious corporation whose purposes are to teach and present the Christian religion and to evangelize. Shelton College is a Christian college with a four-year liberal arts course. McIntire is its president and a member of its board of directors. (Tr. 4231)

122. The American Council of Christian Churches (ACC) is an agency for cooperation among Protestant churches, consisting of 17 denominations and Dr. McIntire was its first president. At the present time he is president of the International Council of Christian Churches (ICC). He is an avid traveller and during the course of the hearing was abroad in Asia or Europe several times.

123. His program "20th Century Reformation Hour" has been broadcast over many stations for over a decade and at the time of the hearing was carried over 600 stations. He also creates the "Christian Admiral Hour" which is carried over WXUR-AM and FM at 12:30-1:00 p.m. and is sponsored by the Christian Beacon. The Bible Presbyterian Church is a denomination which has certain doctrinal standards, the primary one being the Westminster Confession which prior to 1967 was also the Confession of the

United Presbyterian Church, the latter being a constituent of the National Council of Churches. The distinctions between these various religious groups and their several creeds will be discussed later in relation to other segments of the hearing. At this point, however, Dr. McIntire's personal history must be related.

124. The son of a Presbyterian minister, Carl McIntire was graduated from college and entered the ministry of the same denomination as his father. In 1936 he renounced the jurisdiction of the Presbyterian (now United) Church over questions of doctrine and in his own words the dispute centered on liberalism, modernism, socialism and communism. McIntire professes a conservative religious viewpoint which is also mentioned in the record as fundamentalist. In a political sense, he is a vigorous opponent of communism and socialism or anything resembling them. His encounter with the United Presbyterian Church, however, seems to have related primarily to such matters of faith as the Virgin Birth and the literal resurrection of Christ. On these points, McIntire took the position that the Bible must be believed literally while the "liberals" were inclined to reject such strict interpretation.

125. McIntire had become pastor of the Collingswood church where he is located now but the governing body of the national church in 1936 directed that members of the Independent Board for Presbyterian Foreign Missions be placed on trial. McIntire was a member of that Board but he refused to resign. He said "that, as a Christian who believes in God, I must obey God rather than the general assembly where their orders conflict with my conscience." There ensued a trial and he was suspended from the ministry and from the communion of the church because he would not resign from the Independent Board. On June 15, 1936 McIntire and his Collingswood parish renounced jurisdiction of the national church and the Bible Presbyterian Church thus came into existence. In the light of this sequence it is understandable that McIntire was particularly vexed by the charge in Resolution 160 of the Pennsylvania House of Representatives that he had been ousted from the clergy.

126. Resolution 160 also stated that McIntire had enjoyed little success until 1960 when his program "20th Century Reformation Hour" was established and his comment on this is illuminating:

" . . . Well, I think maybe that is true, but we found a way in which we could reach the public under the liberty which we have in our Constitution. I found that we could not get our story before the public through the networks. We found that the press was generally blocked against us and we discovered that by the private radio stations spread around the country, the little stations, that we could get on and talk about these matters in the free exercise of religion, and it was in that area that we were able to spread across the country, and, as the report goes on to say, broadcasts over 600 stations reach millions of people. The views of the Reverend McIntire expounded are those which we now equate with the word 'extremism.'"

2/ There will be comment on the various Confessions in paragraph 168.

"I got up and said my views were not extremism. My views as expounded are those which conform to the teaching of the historic Christian religion before the higher critical or liberal assault entered in to present an alteration and a change of these concepts.

* * * * *

"... our opposition to this was based upon our religious concepts and upon our concepts of the relationship which the state in this republic sustains to the religious groups where the state should not favor one above another or come to the defense of one against another. These matters of religious doctrine insofar as the First Amendment are concerned are not the province of the states to in any way enter into or to take sides upon."

127. McIntire's relationship to WXUR is of a dual nature. On the one hand he is president of FTS which owns the licensee corporation and on the other he is a broadcaster who buys time for his programs. He has not directly engaged in the hiring or firing of station personnel although he did recommend Livezey to Norris and, at the time Livezey was removed from FOS, McIntire was abroad. The other possible exception is the Rhodes of Stroudsburg incident. Following that incident, according to Roper, McIntire never interfered in the operation of the station.

Rhodes of Stroudsburg

128. Shortly after the transfer to FTS, Mr. Fulton, who was then the manager, received a call from an evangelistic minister in Stroudsburg whose name was Ross Rhodes. Rhodes wished to buy time for a religious service and Fulton referred the request to Norris who approved it. It was to be a remote live broadcast so telephone lines were installed in Rhodes' church but the day before the program was to commence Norris called Fulton and said it could not be carried. Fulton was nonplussed since he had made all the arrangements and was uninformed as to the reasons for the sudden cancellation by Norris. Nevertheless he called Rhodes who was likewise distressed by the turn of events. Rhodes was referred to Norris whom he called. Evidently Rhodes was appeased because he subsequently used the installed lines to carry his church service over Station WVCH in Chester.

129. Norris, on the stand, was very hazy about this incident but there was no reason for concealing anything since McIntire later described it quite clearly and candidly even from memory. After the arrangements had been concluded for the Rhodes program and the lines had been installed, Norris mentioned the matter to McIntire. The latter promptly objected to having Rhodes on the air immediately before his own Christian Admiral program and the objection was compared to one which any advertiser might raise against being back-to-back with a similar type program. Whatever the reason, Norris felt strongly enough about McIntire's interference that he sent in his resignation. This was rejected and in Norris' own words he then assumed complete control over operating the station.

McIntire (continued)

130. Upon the instructions of Norris, McIntire's 20th Century Reformation Hour was added to the WXUR schedule on April 30, 1965 and it has been carried on the station ever since. It is conducted live on WXUR except when McIntire is on one of his foreign journeys when it is taped. On some occasions he has interviewed guests but the normal format consists of prayers and a dissertation by the speaker on a great variety of subjects. The program is classified by Norris as religious and the record shows a manifest tone of religion throughout the talks but it has also dealt with political, economic and other secular topics. The program is carried from 7:30 to 8:00 a.m., Monday through Saturday, and is repeated by tape on WXUR-FM in the evening.

131. Shortly after FTS took over, McIntire's program called the "Christian Admiral" was placed on the schedule where it appeared from 12:30 to 1:00 p.m., Monday through Saturday. It is not carried on FM in the evening. The Sunday morning service from McIntire's Collingswood church is recorded and rebroadcast at 12:30 to 1:30 Sunday afternoon. The reason for the delayed broadcast is that WXUR chose to continue its live broadcast of the Media Presbyterian Church service at 11 o'clock Sunday mornings. McIntire has never requested that this service be removed from the air.

132. McIntire's daily programs are paid for by the Christian Beacon (of which he is president) and McIntire frequently solicits funds in his broadcasts. The programs are paid for at regular rates shown in the WXUR rate card with what is called in the trade a frequency discount. Christian Beacon acts as a house agency and an agency discount is deducted. Contributions from the public are sent to Christian Beacon and not to WXUR.

133. In order to assist WXUR in its financial difficulties and in order to help FTS pay off the mortgage, McIntire has supplemented his broadcasts by conducting rallies and marathons. The primary purpose of the rallies, however, has been to arouse public opinion and this was especially evident in those conducted at Harrisburg, the state capital, and at the Moffitt farm. These were protest rallies against Resolution 160 which McIntire tried unsuccessfully (so far as the record shows) to have repealed.

134. On several occasions the financial resources of WXUR were in such a strained state that McIntire, after discussion with Norris, decided upon a marathon. Time for the marathons was purchased from the station but their objective was to raise funds which were then turned over to the Seminary. A marathon was also conducted in June, 1967, on behalf of Israel which was then engaged in its brief war with several Arab nations. A sum of \$5,000 was raised and sent to Israel.

135. In the first of the marathons on behalf of WXUR, about \$50,000 was raised in contributions. The first marathon in March, 1966 ran for five afternoons from 2:00 to 6:00 p.m., a second was staged in September, 1966 and a third in March, 1967.

136. Some further observations are required on Resolution 160 which we have seen was a direct attack on McIntire personally. McIntire and his followers attempted to present petitions to the House of Representatives of the Legislature but there was no one to receive them and the doors to the chamber were locked. (Tr. 4316) After the first rally on Lincoln's birthday, 1966, he personally invited Joshua Eilberg, author of the resolution, to meet with him and discuss the matter but the offer was ignored. The record shows that numerous invitations were given to Eilberg to meet McIntire on the station or to present his position but there is no indication that any of these were acknowledged. Besides speaking on WXUR, McIntire stumped the state, speaking in "fields and cow pastures and on the backs of trucks." A second rally was held in Harrisburg on September 24, 1966; it was taped and broadcast on WXUR at the card rate. The time was purchased, according to McIntire, to present to the public the religious issues involved and, in particular, the alleged infringement of the constitutional separation of church and state which McIntire believed was implicit in the resolution. In the course of these speeches, McIntire discussed and criticized the National Council of Churches (NCC) but then offered to buy the latter equal time to reply. He wrote to Mr. Carpenter of the Philadelphia Council (which is not identical with NCC) and made this offer. (Tr. 4323) McIntire also sent tapes of his broadcasts to Dr. Blake who was at that time President of the NCC and has since become General Secretary of the World Council in Geneva. Dr. Blake was many times invited to appear on the 20th Century Hour. The normal practice was for McIntire to advise the individual (Eilberg, Blake, etc.) that he had mentioned them, to send a tape of the broadcast and to extend an offer to debate whatever the subject was on 20th Century Reformation Hour.

137. McIntire frequently discussed his doctrines over the air and whenever this involved mention of an individual or group in opposition, he wrote to them and sent tapes on most if not all occasions. This was done on his own responsibility and the management and staff of WXUR regarded these actions as fulfilling the station's obligations under the Fairness Doctrine. In this connection, McIntire's own understanding of the Doctrine is important. He said: (Tr. 4247-48)

"I have studied the Fairness Doctrine to the best of my ability and I have studiously sought not to engage in what you call personal attacks. Nothing can be gained by it anyhow. But I have gone beyond any such thought where these questions are raised and the big problem in my mind, sir, has been, 'What is a controversial question of public importance?'

"What I consider a controversial question of public importance and what the FCC considers it may be entirely different. The plague in my mind has been at what time does a question become a controversial question of public importance?

"Furthermore, the personal attack provisions apply, as I understand, only during the presentation of controversial issues of public importance.

"Now, our policy, since this area has been somewhat nebulous, and I am certain, has been to try to go completely over and eliminate any possibility and just ask people to appear whenever these questions are raised of any kind. That has been my policy on WXUR and on my program."

138. With the codification of the Fairness Doctrine in the rules in August of 1967, the whole matter became much more than an academic question to Dr. McIntire. Many of the stations which had been carrying his program suddenly felt that their licenses might be in jeopardy or that they might be subject to a forfeiture of up to \$10,000 for any infraction of the personal attack rules. WXUR placed in evidence a good many letters which McIntire had received from station managers all over the country and which showed the prevailing mood of apprehension. The following selected letters are typical:

WRIB, Providence, Rhode Island, September 20, 1967: (WXUR Ex. 207-7)

"According to the 'fairness doctrine' I must notify all those which are attacked on your program or any other, within 7 days, following the broadcast, and allow them time in which to answer charges.

"Failure to comply with the above is subject to a \$10,000 fine.

"In order to stay away from what I consider unnecessary trouble, I must ask that you refrain from mentioning names on all future broadcasts."

WMEN, Tallahassee, Florida, September 21, 1967: (WXUR Ex. 207-8)

"Cancel shipment of tapes to WMEN Radio here in Tallahassee. We are off the air due to a change in station ownership. The new owners have stated that your program does not fit their type of broadcasting.

"I am trying to get the program on one of the other stations, but it seems that the management is frightened about the new doctrine of the FCC, in that any party that is criticized in a broadcast must be notified two weeks in advance. These people here are afraid to do anything that might upset the FCC. The stations are aware of your popularity here, and realize that the program would be an asset, but I am yet unable to get a commitment for radio time."

WUNS, Lewisburg, Pennsylvania, September 8, 1967: (WXUR Ex. 207-9)

"It is with regret that we at WUNS have to announce the discontinuation of the program 'Twentieth Century Reformation Hour.' Our relationship has continued amiably for nearly six years, and we are sorry to have to terminate your broadcasts.

"However, in view of the fact of the recent FCC ruling, which causes many, many man-hours of work over and above the regular weekly chores of an already understaffed small radio station, we find we have no alternative. The ruling about which we speak, of course, is the one regarding equal time."

139. In an effort to present viewpoints other than his own, Dr. McIntire has invited individuals and representatives of many organizations, offering them time on the 20th Century Hour at no cost to themselves. He has also made it a practice to notify any individual whom he discussed on the air in an abundance of caution, to be sure that he complied with the personal attack portion of the Fairness Doctrine. The list of names is extremely lengthy but the following will be sufficient to indicate the variety of viewpoints and individuals invited: Dr. Eugene Carson Blake, NCC; former FCC Chairman E. William Henry; FCC Chairman Rosel H. Hyde; President Lyndon B. Johnson; Dr. Franklin C. Fry, United Lutheran Church of America; Vice President Hubert H. Humphrey; Reverend Edward A. Dowey, Princeton Theological Seminary; Alfred Zack, AFL-CIO; Drew Pearson, Syndicated Newspaper Columnist; U. S. Senator Gale McGee; Joshua Eilberg, Majority Leader of the Pennsylvania House of Representatives and principal sponsor of Resolution No. 160 and to other sponsors of the Resolution; Reverend Francis Hines and Reverend Carpenter, Greater Philadelphia Council of Churches; Louis Cassels, United Press International; Wes Gallagher, Manager, Associated Press; Milton Shapp, Democratic candidate for Governor of Pennsylvania; Samuel R. Seeman, Christian Social Relations Department of the Diocese of Pennsylvania; U Thant, Secretary-General, United Nations; Gus Hall, head of U. S. Communist Party; Institute for American Democracy; U. S. Post Office Inspector; Norman J. Brugher, General Brotherhood Board, Church of the Brethren; John W. Gosnell, Church of the Brethren.

140. It has also been Dr. McIntire's practice to read statements of opponents on his program. Such statements have frequently contained attacks on Dr. McIntire or organizations with which he is sympathetic. (BB Exs. 1-B, page 29; 1-C, page 31; 1-D, pages 20 and 24; and WXUR Ex. 82.) Much of the McIntire correspondence concerning invitations to appear on the 20th Century Hour was placed in evidence but it would be repetitious to quote extensively from it. A typical situation occurred in connection with Mr. Albert J. Zack, Public Relations Director, AFL-CIO. On November 1, 1965, Dr. McIntire wrote to Zack with the information that he had read two issues of certain labor union journals and was reporting certain stories therein to his radio audience. Evidently the articles had made reference to McIntire's religion in a derogatory fashion and McIntire invited Zack to appear on the November 15th program to discuss the question. He said "You will have full freedom and all our stations will be available to you without cost." (WXUR Ex. 62) Zack replied, declining the invitation and concluding, in part, as follows: (WXUR Ex. 62a)

"Day after day, program after program, you expound a point of view which is not only contrary to mine, and to that of most Americans, but which grossly offends the basic concepts of Christian ethics. You now propose to set everything right by asking me to come to Collingswood and speak in reply to anything you may say concerning me.

"It simply will not do, Dr. McIntire. This not only does not meet the legal definition of 'fairness'; it does not meet the far more significant standards set by the conscience of men."

The reply of Dr. McIntire dated November 13, 1965, was lengthy but a portion of it must be quoted since it is highly revealing of McIntire's whole approach to his program and to the persons standing in opposition to him: (WXUR Ex. 62b)

"Most assuredly I do expound on my broadcast day after day what I believe to be the Word of God and the application of God's commandments to our personal, family, and national conduct. When you talk about my 'grossly' offending 'basic concepts of Christian ethics,' I assure you that what I am doing - at least I believe I am doing it in obedience to the commandments of our Saviour, the Lord Jesus Christ, and surely my invitation to you to come to the broadcast without cost and discuss the very question you raised about me was an expression of the very kindest and highest Christian ethics. I want to talk to you with all our people, and this has always been our American way of resolving questions and understanding one another.

"You have completely misrepresented and misunderstood my invitation, as I did not imply even that your appearance in response to your attack upon me would 'set everything right.' As to the FCC's 'fairness doctrine' and its legal definition, the FCC has made it plain that this so-called fairness doctrine comes into play on a specific broadcast only when an individual's character and integrity are attacked, but the discussion of one's views and the position which he holds in our national life is a proper and legitimate subject for debate under the protections of the guarantees of freedom of speech and the free exercise of religion in the First Amendment. My offer to you actually went beyond any 'legal' definition of fairness. Moreover, when you appeal to the conscience of men and talk about love and hate, you are way, way over in an area which is beyond the province of law to control, regulate, or determine."

General Philosophy of Dr. McIntire

141. Underlying all McIntire's beliefs and ideals there is an emphatic religious foundation. On this he has constructed his political philosophy. As he explained: (Tr. 7108)

"I am a religious man. Faith Seminary is a religious institution. And what I have tried to do in relationship to the station, so far as being connected with the Seminary, is to help in the over-all understanding that we would observe the Fairness Doctrine to the very best of our ability and give other viewpoints. And we have sought to do it."

142. He has written several books, including two which particularly express his views. These are "Author of Liberty" and "The Rise of the Tyrant". Rather than attempt to paraphrase or condense these views, however, it is the fair thing to let Dr. McIntire speak for himself as he did on the record: (Tr. 7109)

"I relate all of our responsibility as individuals to the Creator who made us, gave us our minds, gave us our tongues. And my whole approach is the position of the historic Christian religion in that the individual must live in a society where he is free to serve God and worship God. And this involves freedom of conscience and it involves the protection and shielding of the individual from governmental interference or restraint. And it is that type of freedom that I have sought to defend in the Christian world and on the radio."

A very similar position was stated by two other clergymen, each of whom held ideas quite contrary to those of McIntire. Reverend Kibby, a Unitarian, said:

"There is hardly an issue that is before the public today that doesn't have moral and ethical implications, including the War in Vietnam, religion in the schools, bus transportation for private school children, separation of church and state. All these things are called political. . . ."

Reverend Lilley, a United Presbyterian, testified:

"When does a minister be a minister and not a minister? You mean do I get myself unordained each time I step in front of the microphone? Obviously this would be fallacious by virtue of the fact I have to conduct myself in a manner consistent, whether in ecclesiastical activities or not, with conduct expected by the Presbytery."

"I can be said to be a member of the Presbytery. My activities have their sanction, but they do not pay my salary. They do not send me into a situation like this. So, you asked questions that are hard to give a simple answer to."

143. In the area of theology and faith, Carl McIntire is a self-styled conservative as contrasted with what he and other witnesses described as liberal. It appears that this distinction is not necessarily associated with political liberalism and conservatism although in McIntire's case there seems to be an identity. In his steady opposition to the National Council of Churches and its international counterpart, the World Council, McIntire has decried the "liberalism" of those bodies and the same is evident in his encounters with the United Presbyterian Church of which he was once a minister. In the latter conflict the main bone of contention was a statement known as the Confession of 1967 which was contrasted with an earlier summary of faith known as the Westminster Confession.

144. One last matter must be mentioned before concluding the delineation of Dr. McIntire and it relates to an insinuation that he was anti-Semitic or otherwise racially prejudiced. In the Bureau's proposed findings one of the Livezey FOS programs was quoted extensively and it concerned an anti-Semitic document known as "The Protocols of the Learned Elders of Zion". Livezey expressed approval of the Protocols but when McIntire appeared much later on FOS as a guest (of one of Livezey's successors) he denounced the document as a fraud. McIntire roundly denied any racial prejudice and there is nothing in the record to contradict his statement on the subject.

Various Religious Councils

145. There have already been references to various Councils of Churches and an interjectory comment on the meaning of these descriptive terms may be helpful. One of the Intervenor's in this proceeding is the Greater Philadelphia Council of Churches (GPCC) which was defined by Father Hines as "an independent agency set up by various cooperating churches and denominations to do work . . . in areas that no one of these denominations or churches feel they could undertake on their own. This work can be done because of the pooling of resources and there are various departments. There are actually some 600 member churches of the Council and 27 denominations, of which the six major denominations represent the bulk of the area."

146. He then listed these as: "United Presbyterian Church, Methodist Conference of Philadelphia, Philadelphia Baptist Association, United Church of Christ, Eastern Pennsylvania Lutheran Church and the Diocese of Pennsylvania of the Episcopal Church. (Tr. 269)

147. There is also a Pennsylvania Council of Churches and a New Jersey Council of Churches and for convenience each of these will henceforth be known by their initials. On the national scene there is the National Council of Churches (NCC) which, according to Father Hines and Reverend Carpenter is not organically related to state or regional councils. Then again there is the World Council of Churches which has its headquarters in Geneva, Switzerland. Each of these bodies is made up of Protestant -- or perhaps one should say, non-Catholic -- churches. They are, in the eyes of Dr. McIntire and the fellowship of WXUR, "liberal" in their theology although it was made clear that the Councils do not necessarily speak for each and all of their member churches, let alone the individuals who compose them. This has importance only in attempting to differentiate between opinions and groups who figure in the program structure of WXUR. The "conservative" Christian groups which McIntire represents are assembled in the American Council of Christian Churches (ACC) and the International Council of which Dr. McIntire was the erstwhile president. Without venturing into the fascinating debate regarding theological differences -- which, incidentally, crept into the record willy-nilly -- there is no mistake that a wide gulf exists between the NCC (and its related organizations such as GPCC) and the ACC. For our

purposes here it is important only that the so-called "liberal" councils (GPCC and NJCC) do work together and are at apparent harmony with NCC. One must add here this one caveat that the word "Protestant" has esoteric meanings to the theologian. For example, Greek Orthodox and Episcopalians (Anglicans) do not always consider themselves Protestant but they belong within the flock of NCC. Beyond this, the Hearing Examiner does not dare to tread.

Inter-faith Dialogue

148. In its application for transfer of control, the Seminary made a commitment to carry varying shades of religious opinions and an amendment to the application specifically mentioned a program called "Inter-faith Dialogue". Its quest to accomplish this objective, however, has been a narrative of frustration, misunderstanding and disappointment. The principals in this part of the saga were Dr. Gary G. Cohen, Professor of New Testament at Faith Theological Seminary, and Mr. William Broadwick, a Seminarian at FTS. These men were unquestionably sincere and there is every reason to believe that they acted according to the dictates of conscience but their accomplishments fell far short of what they had intended and hoped for. The first appearance of the program was in late November, 1965, and at that time Mr. Norris acted as moderator. Thereafter, he entrusted the program to Dr. Cohen who was largely responsible for securing guests with the exception that Norris undertook to secure ministers through GPCC. The Dialogue was explained by Dr. Cohen in this way: (Tr. 5479)

"In December 1965 Mr. Norris contacted me and requested that I be the interviewer on the program Inter-faith Dialogue. He explained at that time that the station had made a commitment -- I believe it was to the Federal Communications Commission in connection with the procurement of their license -- to represent the opinion of other religions' viewpoints besides that represented by our Seminary on the air. And one of the vehicles of this was the program to be called Inter-faith Dialogue, where members of different religions, different viewpoints, would be able to express their own viewpoint. . . ."

149. Originally, the intention was to have a program on Sunday afternoon from 3:30 to 4:00 p.m. on which representatives of Protestant, Catholic and Jewish faiths would conduct a discussion of some controversial religious topic. The format was variously referred to as a forum or dialogue but the latter seems more descriptive since it comes closer to Dr. Cohen's concept. He explained that it would consist of a discussion by two or more persons whose views were "more or less different" but he was quite emphatic that the discussion would be conducted with complete courtesy and respect and after observing Dr. Cohen's demeanor on the witness stand the Examiner has no doubt that Dr. Cohen meant these intentions sincerely.

150. Dr. Cohen is a Professor of New Testament at FTS, a full-time job. He has a Bachelor of Science degree from Temple University, a Master of Theology degree from Faith Theological, and in 1966 he received the degree of Doctor of Theology from Grace Theological Seminary. During his career he has taught geometry, physics, biology, sociology, church history and Greek. Upon taking over the program on December 5, 1965, Dr. Cohen wrote letters to a number of representatives of different religious faiths and apparently expected that there would be a ready response. It must be borne in mind that Cohen's association with the program was entirely on his own since he had no secretarial help from the station. His own explanation gives the best picture:

"To my best recollection in the beginning when I sent out the letters I did not give some invitations because I had anticipated at that time a better response to the letters. But when this response was not forthcoming near, shall we say, the latter half of my moderation of this program, unless I forgot and it slipped my mind, I would give one or two general invitations each time. And to my best recollection I believe a few times I said, 'If you have heard the broadcast today, you see that the person interviewed was not bothered in any way. He got in his viewpoint.' And I think it was a very sincere and cordial invitation for anyone of any group to come and present their view."

H. Francis Hines

151. Before going further, however, we must return to Father Hines. Reverend Hines is an Anglican priest who was currently employed by the Greater Philadelphia Council of Churches (GPCC) as director of its Department of Broadcasting.^{8/} Father Hines handles requests from broadcast stations for church services and religious speakers. His job might be described as coordinator of all broadcasting activities for the constituent members of GPCC. As such, he was the proper official to secure guests for the Dialogue.

152. From the beginning, relations between WXUR and GPCC showed a lack of harmony. Free spot announcements had been carried by the station under the prior ownership but it was the policy of Norris -- with the one exception of Media Presbyterian Church -- to require payment at card rates for all religious broadcasts. Inasmuch as Dr. McIntire had broadcast observations which were in opposition to the National Council, Father Hines, on behalf of that body, wrote to Fulton (then station manager) on September 1, 1965 and offered a series of one-minute spot announcements made by John Cameron Swayze concerning the work and purposes of NCC. (BB Ex. 10) Norris replied to this on October 5 and enclosed a rate card with the suggestion that GPCC pay for the spots as did other religious broadcasters. In this connection, it may be noted that the fundamentalist churches had experienced great difficulty in getting their own services broadcast

^{8/} See paragraph 145, supra.

non-commercially by stations in the Philadelphia area and this seems to have been a primary reason for the policy of Norris to require payment for religious broadcasts. Returning to the letter which Norris wrote to Hines, it also made the suggestion that Hines cooperate in setting up what was to become Inter-faith Dialogue.^{2/} (Tr. 3792; BB Ex. 11) Hines' response was somewhat cool but not unfriendly. (BB Ex. 12) He stated that it was unlikely the spots would be sponsored by GPCC because of a limited budget but he added that every attempt to cooperate with the Dialogue would be made. A meeting was held on December 21, 1965, at which Norris, Roper and Hines were present and the Dialogue was discussed. It is quite clear that different concepts of the program's format were carried away from this meeting but on January 14, 1966, Norris followed up by sending Hines a list of topics for discussion together with suggested dates as follows: (Tr. 426-27; BB Ex. 13)

February 6 - What Is Peaceful Coexistence, and Should Christians Accept It?

February 13 - What Is the Kingdom of God?

February 20 - Will Christ's Return Be Visible and Personal?

February 27 - Is There a Literal Hell?

153. At this point, it is apparent that a misunderstanding was being engendered. To Father Hines the idea of Dialogue meant a discussion by clergy from different faiths such as Catholic, Protestant and Jewish. Dr. Cohen originally intended the same format and he sought conscientiously to bring in viewpoints other than those associated with fundamentalism but he encountered difficulties. Meantime, Hines did make efforts to line up clergymen, sending identical letters to six ministers, all Presbyterians and affiliated with GPCC. Most of them "telephoned regrets" but Reverend Di Gangi telephoned that he would be available on ten days' advance notice. On February 4, 1966, Hines again wrote to Norris, saying: (BB Ex. 17)

"As I recall our conversation of some weeks ago in my office you gave me to understand that this program was to be an interfaith dialogue with clergy of the major faiths participating. I assumed that to mean that on each program there would be representatives of the Roman Catholic, Jewish and the Protestant communities; and it is on the basis of this understanding that I wrote you to say I would do my best to provide participants from the major Protestant denominations. Indeed, I have lined up several who are willing to cooperate.

^{2/} The Bureau has attempted to show that this was a misrepresentation in announcing that the program had already commenced. Norris' language may have been ambiguous but it could reasonably be interpreted as meaning the program was about to commence.

"Professor Cohen informed me that the format he was using was one in which he interviewed one individual, discussing with him the various aspects of the topic decided upon. This format does not seem to me to be one which might appropriately be described as an interfaith dialogue.

"In the light of this confusing change of plans, we are withholding from committing our people to participation in this series until we receive from you, or your representative, a definite format of the series."

154. Norris' reply of March 21, 1966 is indicative of the strain that was beginning to appear: (BB Ex. 18)

"We have given your letters of January 26 and February 4, 1966 considerable study. You will remember that when Mr. Roper and I met with you in your office you indicated that you did not want to come on WXUR because of the way you would be treated. Our Sunday afternoon program has indeed been featuring religious leaders in the discussion of vital problems from all different viewpoints. However, we have had considerable difficulty with speakers not showing up or refusing to appear on the program.

"In view, therefore, of this situation, and of your current objection to the present moderator, we hereby offer you this time for the months of April and May. We request that you provide your own moderator and speakers as you desire. Our one stipulation is that you deal with controversial religious questions, as the program is designed to make possible the airing of various viewpoints and opinions. The station, of course, will announce that the Philadelphia Council of Churches is in charge of the program. We assure you of the station's full cooperation."

155. On March 25, 1966, Hines replied to Norris: (BB Ex. 19)

"Thank you for your letter of March 21st. First of all, let me say I do not ever recall discussing with you and Mr. Roper my personal appearance on WXUR. What we discussed, I believe, was the participation in a particular program by clergy who are members of the Council of Churches. It is the nature of my job to put other people on the air and not myself.

"Secondly, let me say that in my last letter to you concerning this Sunday afternoon program I made no objection whatever to the present moderator-- only to the confusion there seems to be about the format. You had told me one thing about the format; he told me another, as is pointed out in my letter. For that reason, I declined to line up specific clergymen for participation until there was some agreement on the format.

"Thirdly, with regard to your present proposal to utilize this time for the month of April and May, I am not sure that we can accommodate you. We are presently providing live program material and people for approximately six series on radio and television on different stations in this market area and our staff and budget are at their limit. However, I will bring your suggestion to the attention of our programming committee for discussion and determination. Unfortunately, this committee does not meet until after Easter; therefore, the April and May dates are probably out of the question because this is much too much short notice. Nevertheless, I will inform the members of this committee individually of your proposal and attempt to bring some early resolution."

156. This letter suggested that Dr. Cohen had altered the format of Dialogue and Hines, in his testimony, made it clear that the alleged change made him fearful of exposing ministers from GPCC to embarrassment if they appeared on the program. Cohen's testimony, however, makes it perfectly evident that any changes in the format were due to circumstances rather than intentions. He was at that time attempting to secure spokesmen for the different religious faiths by letters and telephone calls but as already noted he was experiencing considerable difficulty. He was never certain how many guests, if any, would show up at broadcast time and was thus put in the position of having to conduct an interview with a single individual. There was no evidence that Dr. Cohen ever abused his guest and he was quite emphatic in denying that such would be his intention but Father Hines nevertheless succumbed to the impression that Dialogue would be a kind of trap for clergymen of other than the fundamentalist faith.

157. Despite this disappointment, Norris continued in his efforts to engage the cooperation of GPCC and on April 7, 1966 he wrote to Hines as follows: (BB Ex. 20)

"I am in receipt of your letter of March 25th and regret that you were unable to accept the months of April and May as we suggested. I now offer you the month of June, and we can consider another month later.

"There has been no disagreement on our format. The topics originally outlined were all handled and discussed. Our problem has been that we have been unable to obtain the co-operation of individual clergymen. Some have refused; others did not want to be on this type of program; and some just did not show up. Our offer of the time to you was to enable you to present your own men in your own way and in your name. I hope that the June month will be acceptable and we will await further word from you. All broadcasts will take place alive in the studios of WKUR, Two South Avenue, Media."

No response to this last offer was shown in the record but the fat was now in the fire. Some of the suspicion and ill will which unquestionably lay behind the refusals of time can be seen in a letter to Hines from Reverend Oursler: (BB Ex. 21)

"Thank you very much for your letter inviting me to participate in the Interfaith Dialogue presented on radio station WKUR. I am flattered by your invitation, and wish I could help. I regret to say, however, that I am unable to accept.

* * * * *

"At the same time, I am unwilling to put myself in what might well be an anomalous position. I have such little confidence in the integrity of Carl McIntire and his organization that I am sure their asking for cooperation in this program is calculated to turn out to their advantage. In view of the topics they want to discuss, I feel that they will use every means to embarrass the guest minister and the church he represents.

"Furthermore, although I would like to assist you in making it impossible for the McIntire organization to say that he was refused cooperation in putting on a program intended to serve all the community, there is the other side of the coin which makes our cooperation a means of satisfying FCC requirements. I am utterly out of sympathy with McIntire's position and don't want to further his cause even indirectly."

158. A further exchange of letters in 1966 is deserving of mention. On August 12 Mr. Roper sent invitations to each of the Intervenor or their representatives and this included an offer of free time which was sent to Reverend Carpenter of GPCC. All of the invitations were answered in a letter dated August 22, 1966, written by the then counsel for the Intervenor, and the invitations were declined. Notwithstanding this, Dr. McIntire on September 28, 1966 invited GPCC to appear on his program at no cost to the Council in order to reply to his criticisms of NCC. This offer was also declined by Hines in a response of October 12, 1966. While the letter is quite lengthy, a substantial

part of it must be quoted for an understanding of the division which had by now occurred: (WXUR Ex. 2)

"Your letter indicates two areas of apparent misunderstanding:

"1) It is clearly indicated in a letter from our counsel, Mr. Sol Rabkin, dated August 22nd, 1966, to Mr. Edward Roper, Vice President of WXUR AM FM, Media, Penna., why we cannot accept an invitation to appear on that radio station. . . . in sum, it is improper for us as parties to proceedings now before the Federal Communications Commission against the renewal of the license of a station owned by your organization, to participate with you or representatives of your organization, also parties to the proceedings, in public discussions. When matters are sub judice it is improper for the participants to undertake, at the same time, to argue issues in another public forum. Engagement in arguments with you at this time could only interfere with careful, reasoned consideration of the issues in the most appropriate forum, the hearing rooms of the Federal Communications Commission. . . .

"2) You appear to be under the misapprehension that this organization is part of the National Council of Churches. This is a completely erroneous assumption. Although we hold the National Council of Churches in high esteem and cooperate with them as we can, there is absolutely no organic connection between our organization and that most worthy enterprise. . . .

"We note that you are willing to pay for three hours of time over the facilities of WXUR AM FM. We are curious to inquire whether or not you would be similarly willing to pay for three hours of broadcast time on any other radio station in the Philadelphia market area?" (Emphasis supplied.)

159. To this amazing request, Dr. McIntire on October 14, 1966 nevertheless replied affirmatively, offering to pay for three hours of time over any other station in the Philadelphia market. This offer, however, was not accepted.

160. Before leaving the subject of Father Hines, reference must be made to Dr. Cohen's testimony regarding a telephone conversation he had had with Hines. At one point, Cohen had explained that if he could not secure more than one guest, the program might have to consist of an interview of the guest by himself as moderator. At this point, Hines became very excited and declared "I cannot subject these men to such abuse." Cohen attempted to explain that he would not abuse anybody nor embarrass them

but Hines terminated the conversation. Cohen, on the witness stand, admitted that he subsequently learned things which inclined him to sympathize with Hines as is clear from this: "But can I understand why he got excited? I mean, although I really disagree, I mean I can sympathize. Apparently he felt that something had been altered. And although I disagree, I can certainly understand why he got excited, just like we disagree with someone and we understand why they are getting excited although we disagree." But it was by now evident that no member of the Protestant community represented by GPCC would appear on Dialogue except for a few who came voluntarily, including Reverend Lilley and an Anglican clergyman, Dr. Aulenbach.

161. Cohen's vocation was teaching and in this endeavor he had full-time employment. He was not paid for his services on the Dialogue and he soon found that they were making too many demands on his time. Furthermore he was growing discouraged over the failure to get differing views on the program so he was allowed to depart and was replaced in April, 1966 by Seminarian Broadwick who was already employed at the station. (Tr. 5504)

162. Broadwick experienced the same problems in securing speakers as had Dr. Cohen but there were some instances when a true dialogue did occur. In Cohen's opinion this was true for the appearances of Reverend Joshua Licorish (Methodist), Reverend Aulenbach (Episcopalian), Mr. MacRae (Dutch Reformed), Dr. Whitcomb (Fellowship of Brethren Churches), Mr. Walker (Quaker) and Reverend Clowney (Presbyterian). On many other occasions, however, Cohen admitted that there was no real dialogue because both the moderator and the guest were of the same fundamentalist faith. Form letters were sent out and invitations were extended over the air by both Cohen and Broadwick but the moderator was often reduced to welcoming a personal friend or someone from the Seminary in order to stage the program.

163. Any request to appear was honored but the record indicates that few aside from the fundamentalists were anxious to be heard on WXUR and even they were hard to capture as time went on. The evidence on all this is somewhat fragmentary since neither Cohen nor Broadwick kept detailed records and neither one anticipated that their performance on Dialogue would someday be a matter of judicial scrutiny. (Tr. 5583) They telephoned friends to appear, they sent form letters and they issued invitations over the air. But it was not truly the Inter-faith Dialogue they had hoped for. Ultimately it became simply an interview between the moderator and what was usually a fellow fundamentalist or someone of conservative religious persuasion. Broadwick picked the topics for discussion but testified that he would accept those offered by a guest. (Tr. 5581, 5878) On some Sundays, when he had no guest, Broadwick would play a tape of an earlier Dialogue or simply play religious music. (Tr. 5821-26)

164. Both Cohen and Broadwick were obviously amateurs in broadcasting as is shown by the fact that originally they kept no records and even when tapes were made of a show they were mislaid or lost. The fact is that they were both performing a labor of love. Cohen was a professor and Broadwick

a student as well as a station employee. Neither one had the time, let alone the needed staff assistance, that an ideal production of Dialogue demanded. Norris tossed the job first to one and then the other without making any concentrated effort to follow up. It should be observed, however, that this was one of the inevitable vexations of operating WXUR. As a small station on a limited budget, it had promised a standard of programming which few broadcasters -- even the more affluent -- are able to realize. Thus on a promise versus performance accounting, the result at first blush looks bad. The efforts to acquire speakers on Dialogue were certainly bumbling but they were not wholly absent. While Broadwick admitted he had not made any attempt to secure clergymen from the Roman Catholic, Disciples of Christ, United Brethren, Lutheran, Methodist, Episcopal, Baptist or Quaker faiths, he did indicate that he had made some informal contacts with clergymen and, in fact, did secure a few guests such as Reverend Aulenbach. Although he seems to have suggested the topic for discussion he earnestly protested that he would accept any topic the guest wanted. As he put it: (Tr. 5859-60)

"... I was so anxious to have people come on this program, even though I did not have time to devote to going out and finding them as I would like to have had, that I would have taken anybody who would give a fair representation of any point of view no matter if it was far from mine or whether it was my own, close to my own, or whatever.

"Now, I went -- I did two things that I did not really have to do to get people to come on this program. I tried to eliminate two basic problems that a lot of people had. One is they had a fear of going on radio live. To eliminate that I pretaped programs. A lot of people even on tapes did not want to have a tape run for a half hour straight without stopping for fear they could not retract something. In other words, they wanted to rephrase an answer.

"If they wanted to -- not to answer a question that I asked them, I bent over backwards by telling them, 'Now, if I ask you a question you are not prepared to answer or you think is loaded, you tell me and I will back up the tape and we will just eliminate it.' Time and time again that is what happened. I made the tape convenient to the person so that they did not have to come to the station at 3:30 in the afternoon. I did it on tape so that they did not have to do it live. I was willing to back up the tape recording any time the person gave an answer they did not like or thought I asked a question that was not fair."

165. A representative of Jehovah's Witnesses appeared on one broadcast and there was a taped response from a speaker for the Assembly of God which believes in speaking in "tongues". (Tr. 5824, 5832, 5873-74)

166. In a final gesture -- apparently desperate -- a general invitation was sent out by Norris to the United Church of Christ, offering two months of time on Dialogue to express whatever religious viewpoints they wished. (Tr. 5855-56, 5891, 7567; WXUR Ex. 81)

167. It was the opinion of both Cohen and Broadwick that the show was not fulfilling the purpose for which it was intended and eventually Broadwick suggested to counsel for WXUR that it might be well to take it off. This was agreed to with the concurrence of McIntire and Norris. (Tr. 5821, 5826, 5829, 5844-46) Although Dialogue was given up in 1967, Norris expressed the hope that it might be revived if WXUR could ever get speakers of divergent religious faiths, assuming that the license is renewed. (Tr. 5885)

168. Before leaving Dialogue several miscellaneous facts must be recorded. One of the major questions discussed was a purely Presbyterian matter arising out of the new Confession of 1967. Broadwick explained that this was a doctrinal statement which was adopted by the United Presbyterian Church. Broadwick's description of the Confessions was as follows: (Tr. 5840-41)

"... the Confession of 1967 is now the Confessional basis of the United Presbyterian Church. Therefore, other confessions in the church's history have been kind of put in a museum. In other words, they have not thrown them out but they have put them on a shelf.

"One of the confessions they have put on the shelf is the confession which is The Westminster Confession of Faith. The Westminster Confession of Faith is a very specific doctrine of Reform Protestants -- 'Reform' meaning system of theology, 'Protestant' meaning anti-Catholic or protestor.

* * * * *

"The Confession of 1967 says that we have to seek reconciliation with our national enemies, even with the consequence of creating a national danger to our freedom.

"The Confession of '67 takes a great deal of time to talk about sociological problems like the race problem, which is very well known. Its conclusions I don't necessarily agree with. It kind of makes the mission of the church one of fair housing, anti-bomb, anti-chemical warfare, anti-war, period. It seems like a pacifist document to me."

Other Religious Programs

169. In addition to the McIntire programs and Dialogue, there are others on WXUR of a religious nature. Of those which are regularly scheduled, the most discussed in this proceeding were those of Pastor Bob Walter, the Media Presbyterian Church, the Gospel Hour and Church League of America.

170. Pastor Bob, as he is familiarly known, was regrettably not a witness during the hearing but he was obviously a figure in his own right. A vigorous fundamentalist and political conservative, he was the individual who attacked WXUR on its own facilities for not employing all fundamentalists. He was caustic, however, about other groups and persons. His targets included the IAD and the ACLU which will be mentioned elsewhere. On one occasion he had words to say about Reverend Kibby, a local Unitarian minister. In the transcript of this broadcast, he lamented Mr. Kibby's failure to believe in Jesus Christ and gave a passionate closing in which he, in effect, prayed that Reverend Kibby would be shown the light and become a minister of the true faith. To a secular mind this is, perhaps, amusing, but to any kind of mind it is difficult to find in it a personal attack. Reverend Kibby heard of the incident and asked for a tape. Pastor Bob sent him a script and Kibby was later given time on WXUR to speak his piece. He also appeared as a witness at the hearing and, judging from his testimony, he was evidently satisfied that justice had been done. The whole episode smacks of opera bouffe and can be dismissed by saying that neither Don Quixote nor the windmill suffered any serious casualty.

171. Reverend Oliver Green conducted Gospel Hour and the most that can be deduced from the evidence is that no one was very worried about him one way or another. Major Bundy, who produced Church League of America, was more controversial although not because of theological reasons. One gains the impression from reading the record that Dr. Carl McIntire was the lodestar in this galaxy of theologians and the lesser lights were a somewhat inconsequential breed whose utterances did not create much disturbance. At all events, no findings of consequence regarding Major Bundy can be made and he must float in space as a minor star in the stellar organism of WXUR.^{10/}

172. There were others: Reverend Rones, who is described as a Jewish evangelical preacher; Pastor Floyd, a Negro who occasionally uttered blasts which had overtones of personal attacks but were relatively harmless. Then there was the Conversion Center. This had something of a Shelleyian naivete about it. Reverend Dunlap and his associate, Pastor Bob, were both attracted to the idea of converting Roman Catholics to what they doubtless considered the true faith. Oddly enough, both men had been what the Quakers would call "birth-right Catholics" but at some time in their religious evolution they had been converted to fundamentalism. Apostates are usually the most passionate of advocates and this seems to be true of Dunlap and Walter. There is certainly nothing wrong in this from any legal point of view but the production of a program called "Conversion Center" which addresses itself to converting nuns, monks and priests from the Roman Catholic faith to what these individuals considered Christianity has a comic character which escapes all legal analysis. In so far as this opinion is concerned, the verities which were expressed have nothing to do with the case but in the context of the Fairness Doctrine -- which cannot ignore philosophical disputations -- they are at worst harmless.

^{10/} One exception will appear in the discussion of personal attacks.

The Conversion Center was not regularly monitored but in the whole context of the case it can hardly be supposed that this really mattered. No one can ignore the fact that the Roman communion is a vast and respected institution, unconnected with the blissful vagaries of a 500 watt station in Media, Pennsylvania.

173. The Media Presbyterian Church presents a different aspect. It had been carried by the prior owners on terms which prescribed only that it pay for line charges and engineering charges for its Sunday morning services and this arrangement was continued under the stewardship of FTS. Ever since the change in ownership, the church in question has continued to have its Sunday worship carried on the air on the same terms although this meant even that Dr. McIntire's Collingswood services had to be taped and carried later in the day.

Ton O Anthropon - Reverend Ernest Lilley

174. One exceptional excursion from the diet of religious fundamentalism was the program called "One Nation Under God" conducted by Reverend Ernest Lilley, whose pseudonym is Ton O Anthropon. This, according to Lilley, is New Testament Greek and in a free translation it means "Behold the Man". It commenced in June, 1966, when Reverend Lilley, a Presbyterian minister, for reasons of his own, sought a place on WXUR. Mr. Lilley is a graduate of Yale with a Bachelor of Divinity from Union Theological Seminary and a Masters degree from Columbia. He became aware of the situation at WXUR which, as he understood it, was one where the station was supposed to be overloaded with fundamentalism and conservative programs. Being neither fundamentalist nor conservative -- he declined to classify himself precisely -- Lilley offered his services to broadcast a program which he believed would be mutually beneficial to himself and to WXUR. This offer was accepted by Norris but Lilley neither pays nor does he get paid. While he is a Presbyterian clergyman, he seems to operate in a secular vacuum where he is neither cleric nor layman, or perhaps he is both.

175. For this reason his program is considered secular and it sometimes carries commercials. On the other hand, Lilley still remains a minister on call for any parish. His reason for choosing the name of Ton O Anthropon was to retain a measure of anonymity and on the show he was addressed by callers as "Ton" or "Mr. Anthropon". The format is again a call-in show where, following editorial comment, the audience may telephone him and be heard on the air. Very rarely does he have a guest but there is always free and sometimes spirited discussion in which Lilley is receptive to the statement of viewpoints contrary to his own.

176. While Lilley refused to classify himself in terms of liberal or conservative, either religiously or otherwise, it would appear that he is to the left of Dr. McIntire in theology. At all events, Barry and Roper considered him a liberal in this area and on the controversial Confession of 1967 Lilley is on the liberal side.

177. As a member of the GPCC, Lilley admitted that he was nonplussed by the fact that this organization was one of the complainants against WXUR. Although he had not heard of half of the complainants, he took to the air and offered time to any of them who wished to appear as guests. This was on July 23, 1966. Specifically he invited the President of Ohev Shalom Temple in Chester who was a personal friend and who belonged to the Chester branch of B'nai B'rith, and the invitation was given both personally and over the air. It was occasioned by a report that someone -- presumably Marvin Burak -- was going to "say some dire things about B'nai B'rith" and Lilley forewarned his Jewish friend. "Subsequent to that," said Lilley, "we listened to the two broadcasts that were supposed to be so astonishing and shocking. And in my personal opinion it did not shake me up. . . . It was quite dull in my own personal opinion." Evidently this reaction was shared by his rabbi friend who declined the invitation with the remark that he did not think there had been anything said worth rebutting. As to Lilley's other invitations to the complainants, he received no responses.

178. During the Pennsylvania gubernatorial campaign, Lilley admitted that he sharply criticized both the Republican and the Democratic candidates but no charges of personal attacks have arisen therefrom. In contrast to either Livezey or Burak, Lilley was assuredly a moderate in tone.

179. With regard to FTS and McIntire, Lilley considers his own broadcast as "balance" rather than "contrast" and he stated that at the station he had never run into a more polite group of people. He differs with Dr. McIntire but respects him and his point of view. Lilley appeared on the Carl Mau show but on that occasion not as a theologian. He has also appeared on Inter-faith Dialogue as an advocate of the Confession of 1967.

Delaware County Today - Carl E. Mau

180. In the proposed program schedule filed with the transfer application, there was a half-hour midday show called "Noonday Chatter" and this, according to Norris, was supplied by the program now under discussion. Carl Mau has been a resident of Delaware County since 1951 and he currently resides in Media. His claim to extensive knowledge of the county and various facets of its life was not disputed by any witness. In Media, he owns a printing business and publishes both a weekly newspaper and a Yearbook of factual information which bears the same name as his program. Prior to 1965 he conducted a show of the same name and same format for Station WEEZ in Chester but this was dropped by that station when it altered its general format. Mau was approached by the then program manager of WXUR in the autumn of 1965 to conduct Delaware County Today for the Media station and he accepted. Under the verbal arrangement, Mau receives no salary but is paid a commission on spots which he is at liberty to sell and also he receives a talent fee. In addition to "Delaware County Today" he broadcasts sports events such as Penn State and University of Pennsylvania football games where the expenses, including line charges, etc., are borne by the station.

181. The general idea of "Delaware County Today" is to focus attention on some topic of local or regional interest and, as Mau repeatedly said, he always tries to get persons in the news as his guests. The guests are invited by Mau himself although he has occasionally taken suggestions from Norris or one of the staff. Individuals have from time to time requested an appearance and Mau has received them as guests. They have reflected a wide variety of subjects and personalities. In the beginning, Mau interviewed his guest at the Towne House Restaurant just as he had done when he was broadcasting for WEEZ. The Towne House is a hostelry of distinction in Media and Mau would customarily introduce his show as originating from "the fabulous Anvil Room" of the Towne House.¹¹ The guest normally arrived early enough to have a luncheon at the bounty of the Towne House and, although Mau's testimony on the point was somewhat confused, this appears to have been the only payment by that institution for its advertising. Mau would arrive about five minutes before air time and there was seldom any rehearsal with the guest. The one exception Mau made was when the subject was "music or grand opera" since he confessed ignorance of these topics although he did not explain the distinction between them.

182. Mau regards himself as the WXUR special events director and there is evidence to substantiate this. For example, he taped a program at a local hospital where Mrs. Hubert Humphrey was appearing in the interest of retarded children and the tape was subsequently run on the show. When the Peace Walkers came through Media on their way to Washington, Mau arranged to interview them. It came about through a telephone call to him in his capacity as publisher of the local weekly newspaper but he used the opportunity to create a program. This will be described later. Mau has invited candidates of both parties prior to elections for borough and county offices as well as for state offices. One of his proudest accomplishments was the staging of "Law Enforcement Day" when law enforcement officers from the entire area were flown in by helicopter at the expense of local merchants and were interviewed on Delaware County Today.

183. The format of the program is relatively simple. Mau asks questions of his guest or guests as the case may be. He always insisted that the microphone belonged to his guest but on certain occasions the guest did not feel he or she had enough time to expound whatever it was they wished to say. In this context Mau's manner and the type of questions asked have been put in issue by the Broadcast Bureau. The first and, perhaps, most controversial of these performances was the interview with Mrs. Olmsted in late November, 1965, just before Thanksgiving.

184. It came about this way. Shortly before the broadcast in question, Mau had entertained a Mr. Bartholomew of the VFW who is a "conservative Delaware County industrialist," according to Mau. This gentleman made some comments about Mrs. Mildren Scott Olmsted, the wife of former county Judge Olmsted. Among other things, Mrs. Olmsted was a

¹¹ A change in the place of broadcast occurred in June or July of 1967.

member of the Women's International League for Peace and Freedom (WIL) and although the Bartholomew broadcast was not placed in evidence, it apparently contained an allegation that the WIL had communist leanings. Accordingly, Mau called the lady and asked her to appear. At that time he promised to provide her with the gist of Bartholomew's remarks but when she arrived at the Towne House she was still in the dark as to what had been said. Mrs. Olmsted was accompanied by her husband on this occasion. Mau arrived late for lunch so there was no time for giving her a briefing of Bartholomew's broadcast but he did indicate a number of questions he would like to ask. These had been supplied by Bartholomew himself who, however, was not present at the time. The transcript of the program shows that Mrs. Olmsted was afforded what seems to have been a reasonable opportunity to explain the nature of the WIL and its founder, the renowned Jane Addams, but she testified that she did not have sufficient time to say all she wanted.

185. Mrs. Olmsted was a member of a great many other "peace" or liberal organizations, including SANE, the American Friends Service Committee and ACLU. Several years previous to her appearance on the stand she had been associated with a group known as the American League for Peace and Democracy but Mrs. Olmsted (and the WIL) withdrew after it had been identified as a Communist-front organization. She made it clear that WIL has no Communist connections and was, in fact, congratulated by Congressman Martin Dies, then Chairman of the House Un-American Activities Committee, for withdrawing from the League for Peace and Democracy.

186. According to Mau, Mrs. Olmsted answered most of her suggested questions in short order and he then proceeded to those proposed by Bartholomew. This was one of the situations which raised a serious question on the application of the Fairness Doctrine. In order to understand what happened we must refer to the transcript: (BB Ex. 28)

Mau: . . . first of all, how much membership does the Women's International League for Peace and Freedom have?

Mrs. Olmsted: Well, we don't count on sizes and we don't give out because we find that various people really make things uncomfortable, difficulties for individuals. We give the names of the officers and the names of the sponsors, which I think you have seen, and the names of the headquarters and we stop at that because we have found that it makes it uncomfortable for other people. They're misused.

Mau: I am glad you brought the word 'sponsor' up. You had a pamphlet that was distributed at the Wayne Baptist Church, what was two weeks ago or three weeks ago. On the back it showed a list of your sponsors. I think there were a hundred and eleven. We checked and researched that out and do you know that fifty-four of them have some kind of Communistic leanings.

Mrs. Olmsted: I don't...

Mau: Fifty-four out of a hundred and eleven sponsors!

Mrs. Olmsted: I don't believe it, if you take the correct definitions of Communism. Now I understand that some people are saying that anybody who doesn't believe in the fundamentalist interpretation of the Bible is considered a Communist, but I don't think we have any as far as I know. But people say Norman Thomas, for example, or Roger Baldwin who are some of our most eminent citizens, but some people call them Communists. I think you will find that they are not Communists. If I had the list in front of me or you did, I'd be glad to go over each one.

Mau: I am sorry I didn't bring that pamphlet here, but we researched it out. Incidentally, another question that Mr. Bartholomew wanted me to ask, well, no, he brought it up that your name has been in the Communist Daily Worker, the official Communist paper, and they spoke of you in very glowing terms on quite a number of occasions, is that true?

Mrs. Olmsted: Indeed, I don't know. I don't read the Communist Daily Worker. It might be in any paper. I don't know. It quite probably is. I know President Johnson's is quite often, I understand, and all sorts of people, but I have no idea what the answer to that question is.

[apparent break in tape]

We really are in the middle of three simultaneous revolutions. There is the scientific, there is the political, and there is the social, and all revolutions are going on at once, and they require many, many changes and it's very much easier for people just to blame this on Communism. It would happen if there weren't any Communism. But I'm not saying that Communists don't fish in troubled water, I think they do, but this is not the reason for all this unrest in the world, including our own country, and this is what people don't understand. You know, way back in the old days, the people who tried to introduce steel plows were persecuted. Anybody that tries to bring in radical changes is likened to be or is a spokesman for radical changes that are really happening. Now, neither we, nor the Communists, nor any other one group were responsible for what is happening in the world. This is the inevitable result of changed conditions, and people all over the world whose parents used to die of starvation now know as a result of radio and so on that they don't have to. They know that people in America have a prospect of living, say, seventy years. Their prospects with their children are thirty years and so they are asking why, why don't we have the same thing that they have in America.

They know that their children are dying of diseases which could be cured with one injection, and they're saying why don't we have it, and they're putting pressures on their government. They don't even have to know how to read, because all they have to do is listen to radio and they have them, and they have a village radio in all these little backward places. So, one of the things that we have done is to make a gift to Indian farmers of transistor radios so they can learn better farming methods without having to learn to read. Now, this is what's happening in the world, but people find it very hard to make the readjustments. The same thing happened with the industrial revolution in England and people got restless and it is always easier to have a double theory that somebody is responsible.

Mau: Now, Mrs. Olmsted, upon your return from Russia, and I'm quoting now, in your own publication, Four Lights, you are quoted as saying 'It is challenging to visit a society which is set out to do what is good for the people regardless of cost and without competition, advertising, unemployment, waste or political rivalry.'

Mrs. Olmsted: Well, that is true.

Mau: Did you say that?

Mrs. Olmsted: Probably, because that is, I mean, I don't have the quotation from you but I would say it.

Mau: It is right there, Mrs. Olmsted.

Mrs. Olmsted: Well, that's what I said. I would say that because as a social worker, I struggled for years. I was a hospital social worker for one thing. I was a family-planning worker, and I was working for the Main Line Federation of Churches and we would struggle and struggle and struggle to get some little improvement here, to get some little improvement there, then to get it through, and my first reaction when I went to Russia was 'Isn't it wonderful if you can work these people to the idea that this is the better way to run a hospital, this is the better way to take care of the children, which they do very well over there, wouldn't it be wonderful to be able to go and show and lay your facts and figures before somebody and then the improvements would come about?'

Mau: Mrs. Olmsted on the basis of this statement, have you lost faith in the private enterprise and the free enterprise system?

Mrs. Olmsted: No, indeed, I haven't, and I wouldn't be anything but an American.

187. Before going further, an observation must be made. Whenever Mau had a pacifist on his show he had several stock questions. One was whether the individual would stand for the National Anthem and another was whether he would salute the flag. And there were some others of similar tone. Now this may or may not have been nonsense in a program of this type but the constitutional question is whether a Hearing Examiner has any right to investigate such delicate refinements of taste. To put it bluntly, the Commission has made it plain that it will not substitute its judgment for that of a licensee or, it must be presumed, for that of the person speaking on the air.

188. In substance, Mrs. Olmsted, who it must be said was a lady of the utmost refinement and intelligence, did not feel she had had her full day in court so to speak. Mau thought he had treated her with gentility. The question would be fascinating to students of manners but it is a difficult one for an administrative tribunal. So far as the transcript of the broadcast shows, Mrs. Olmsted gave a very adequate and plausible account of WIL and Jane Addams. Furthermore, she handled herself and Mau's questions adroitly. No further finding can be made concerning the interview.

189. A similar story is told in the interview between Mau and Professor Davidon of Haverford College. Davidon had gone on a pilgrimage to South Vietnam as one member of a group sponsored by the Committee for Non-Violent Action. He was invited by Mau as a "person in the news" and appeared on May 2, 1966. This program was one which lasted for 45 minutes and was rebroadcast on FM in the evening. Mau was questioned: (Tr. 3214)

Q You testified in response to a question that Mr. Schattenfield asked you that you "roughed him up". Do you recall that?

A I do.

Q How did you rough him up?

A After he said that he wouldn't stand in a public place if the Star Spangled Banner was being played or the American flag didn't mean anything to him and that it was all right to burn draft cards, then I roughed him up by asking him -- well, I recall one question -- once again I don't recall the sequence -- that if he didn't like this country why he didn't take a boat and get back to Russia.

190. It is impossible to paraphrase what happened on the program so a substantial portion of it must be set forth: (Int. Ex. 71)

DD: Well, I was born in Florida, my mother was born in Stillwater, Minnesota, my father was born in Kiev, in Ukraina.

MAU: That's part of Russia?

DD: Part of the Soviet Union, Yes.

MAU: Part of the Soviet Union. Now, Doctor, let me quote first, or no, we'll go to some other questions here first. First of all, people want to know how you got to go to Vietnam?

DD: Well, the Committee for Non-Violent Action is a group which for close to a decade now, has been opposed to military policies of all governments. They sent a ship into the Pacific to protest nuclear weapons testing by the United States, the Committee for Non-Violent Action sent a ship into Leningrad to protest the nuclear weapons testing of the Soviet Union, they sponsored a walk from San Francisco through Moscow calling upon the peoples of all the countries through which they went not to support the military policies of their government, they carried this message not only to the United States and Great Britain and West Germany, but also through East Germany, Poland and the Soviet Union. They got unfortunately, I think, similar kinds of answers in most of these places. The people of each country said they didn't support the military policies, except as they felt it was necessary because of the defensive purposes. . . .

* * * * *

MAU: Doctor, Stephen Decatur, do you remember him back in the Revolutionary War? A Naval war hero. I quote him "My country in her intercourse with other nations, may she be always right, but right or wrong, my country."

DD: Do you know the rest of the famous statement? He went on to say that "when wrong to give her the courage to correct her mistakes, and when right to support her." I think I agree with the sentiments expressed in this statement. I think, however, that what distinguishes the United States and societies which are in varying measures around the world, free from those societies around the world which are not free is the fact that when one shows one's devotion to one's country not by blind subservience to its leaders, but by trying to develop an awareness of the opportunities for critically examining the issues of the day and the willingness on the part of individuals to speak out. I was very pleased when walking into this restaurant today to see the sign on the doorway which was, I don't know who wrote it, I think it did say at the bottom of the sign, but I didn't jot that down, "Dare to be a Patrick Henry, dare to stand alone, dare to have a purpose, dare to have it now." I think the idea that you strengthen this country by trying to force a false image of a consensus, I think, weakens the country in fact. . . .

Davidon then said he had a statement from Catholic priests in Vietnam who were opposed to the war:

MAU: Doctor, may I see the cover on that paper -- where does this come from?

DD: This was reprinted in two different places.

MAU: Well, who printed that?

DD: It -- the Commonweal, which is a Catholic Layman's magazine was one of the places in which this appeared. I believe it appeared in early March though -- I don't recall the exact date --

MAU: Where?

DD: The Commonweal? It was printed in the United States. The other place where it was printed was in a magazine called Viet Report of February 1966. To my knowledge, these are the only two places that have printed the statement. However, the statement is certainly available for printing by whoever wants to.

MAU: Well, I'm sure no American newspaper would print that, but isn't this some more Communist propaganda?

DD: Oh, come on!

MAU: Now, Doctor the Communists are so clever, but let's go on with -- we've only got 45 minutes.

191. On December 21, 1965, Mrs. Shirley Porter, a resident of Media, was Mau's guest on Delaware County Today. (Tr. 5932) She had been present at the Borough Council meeting when the matter of Livezey and FOS was brought up and had joined those who complained although she had not come to the meeting for this purpose. She testified as to having heard Livezey "give lengthy orations against various groups of people, Catholics, Jews, Negroes; I heard Mr. Livezey be insulting to people that called in to express opposite views; I heard him hang up on people; I heard him call people very derogatory names right over the air; I heard him many times on the program. I felt that I, as any normal person, could protest." (Tr. 5942-43)

192. It was this that induced Mau to invite Mrs. Porter to appear on Delaware County Today and she accepted. The purpose, as Mrs. Porter understood it, was to discuss Livezey but Mau later in the program asked a number of questions about civil rights, focusing his remarks on Negroes. His concluding question was as follows: (WXUR Ex. 39)

". . . But today, Mrs. Porter, let me ask you this. You're a comparatively -- I hope you are because I'm a lot older than you -- a young woman, a young lady, if you please. Would you marry a white man if you were single?"

193. Mrs. Porter declared that if she had known Mau was going into civil rights topics she would have declined to appear. She also stated flatly that she did not have a reasonable opportunity to discuss the Livezey program. (Tr. 5958) On the other hand the transcript cannot be said to show that Mrs. Porter was cut short in her remarks and, aside from some questions from Mau of questionable taste, she was not treated rudely.

194. As has been mentioned, Mau interviewed a group who called themselves "Peace Walkers" and Mau was openly and admittedly antagonistic to them. "I took the American side," he declared, and they took the un-American side." (Tr. 3386) Later he said: "I feel I am a moderator, but I become a commentator when somebody brings un-American philosophy up." (Tr. 3412) He disparaged the Peace Walkers as being dirty, unkempt and having long hair. By his own admission he "roughed them up". (Tr. 3413) This was a phrase Mau often used to describe his style. A kindred phrase was that he "threw curves" at the guest. It must be stated, though, that these phrases were simply Mau's quaint way of expressing how he took an adverse position and, in this connection, he repeatedly said that he tried to take the opposite view from that of his guest, veering from conservative to liberal as the situation required. It is clear from his own testimony, however, that he was more acid in his manner when interviewing persons whose views were repugnant to him and this specifically related to all shades of pacifism.

195. It would be unjust to Carl Mau to leave unnoticed certain aspects of his program and his demeanor on the witness stand. It must be assumed that this was typical of his style in the studio and a reading of transcripts in the record would confirm this. Mau was anything but subtle. Where McIntire or Cotten wielded rapiers, Mau was still swinging a stone-age ax. Furthermore, he was unreservedly candid about his antipathy to persons whom he considered as un-American. Actually his style indicates, if anything, a lack of imagination and graciousness. There is testimony in the record indicating that some individuals were afraid to appear as Mau's guest because they expected to be "roughed up" but this, of course, was a voluntary decision which each invitee was entitled to make. Mrs. Williams, for example, testified that she would not appear with Mau because it would have been impossible to explain the views of Media Fellowship House on such a program. That, of course, was her citizen's right.

196. The record is replete with evidence as to invitations which Mau extended. His invitation to a representative of B'nai B'rith was refused. He received a well-known local civil rights leader, Stanley Branch, and he entertained a Quaker gentleman who spoke about the voyage of the Phoenix, a vessel which transported medical supplies to North Vietnam. This was Mr. Lawrence Scott and Mau bestowed his customary characterization by saying he was un-American. Mau also received Dr. Felder Rouse, a Chester Negro physician whom the record shows to have been a highly respected civil rights worker.

197. Once Mau had as guest a homosexual although Mau was not aware of the man's identity until a few minutes before air time. During a spirited election for county judge, Mau had Miss Wanda Chocallo on his show. Miss Chocallo was running for office and the local bar association had issued a pronouncement that she was unqualified. In a gesture of chivalry, Mau invited the lady on his program a few days before election and she was given a chance to defend herself, an incident which she later confirmed from the witness stand. He received members of the John Birch Society and here was an instance where Mau claimed he took the liberal viewpoint in opposition to his conservative guests.

198. In the religious field he has had guests representing Roman Catholics, Episcopalians, Mormons, Quakers and others. On St. Patrick's Day, he had a local judge of Irish extraction who stunned the audience by attempting to prove that the worthy saint was actually a Greek. On Columbus Day, Mau entertained an Italian and he has had a Pole appear for Pulaski Day. Educational leaders from various local institutions of learning have been invited and have appeared. A miscellany of guests included Reverend Lilley (who appeared in a lay rather than a clerical capacity), Marvin Burak, Tom Livezey and a Mr. Ben Levine whom the record leaves a rather obscure figure.

199. When a guest was likely to be a controversial figure, Mau notified the station secretary, Mrs. Powell, and asked that a tape be made. Or sometimes a guest requested to buy a tape of his program. When the guest uttered remarks critical of another person, Mau affirmed that he immediately notified the latter individual and invited him on the program as soon as possible. As he never tired of pointing out, there is a need for about 260 guests a year and Mau is receptive to anyone who wants to talk. Sometimes the invitees responded and sometimes they did not.

200. Mau asserted that he often warned his guests that it could be a rough program but this treatment seems to have been reserved pretty much for pacifists and anti-Vietnam War protagonists. The following summarizes his attitude: (Tr. 3413)

Q Don't you think that a person who believes that we should withdraw from the war in Vietnam is disloyal?

A It is their general attitude. I mean, if they go out and cause actions to demoralize our troops, I think they are disloyal. When you sit there in front of a microphone, as I did with these peace walkers, and the odor and the long hair and the way they were dressed, and even suggesting to them if they don't like this country take a boat and skip, and they say, "Well, there is no other place to go," you wonder about these people.

Radio Free Philadelphia - Marvin Burak

201. Mr. Marvin Burak is a self-styled socialist and agnostic -- an extreme left-winger. He came to the attention of Mau through an article about him in one of the local journals and this led to an appearance on the Mau show. He was also a frequent caller on FOS prior to his joining WXUR with his own program. In May, 1966 Burak had a conference with Norris which resulted in the production of Radio Free Philadelphia (RFP) starting May 29, 1966.

202. Burak believed he had something to contribute in that he represented a viewpoint opposite to that generally associated with the station and he was convinced that he was black-listed by other area stations. Having recently won a lawsuit against a former employer, he was able to pay for his time but Norris allowed him to solicit contributions from listeners. A member of the FTS Board expressed disapproval of Norris for permitting such a leftist as Burak to have air time but he came nonetheless. Burak described his show this way: (Tr. 5985)

"A free swinging, uninhibited program whose two main guidelines would be honesty and integrity. I made it clear to Mr. Norris that I would not be bound by any particular type format. It would not be a case where we would have a guest every week or not have a guest; we would sometimes have guests, sometimes we wouldn't have them. Whatever happened to come up, whatever happened to be the topic in my opinion, that is what we would discuss. Most of the time we take phone calls on my program, sometimes we don't."

203. It is no overstatement to say that Burak was a controversial figure since he gloried in controversy and made no apology for his outspoken statements. As a self-professed "genius" Burak advanced his opinions on the air with blunt assertiveness but he welcomed the response of those who disagreed and promised Norris he would give equal time to anyone whom he criticized or whose opinions differed from his own. The "guideposts for the program," he testified, "would be integrity, honesty, and responsibility." He also claimed that the problems he had in being black-listed "were simply because I told the truth; that radio stations around the country and particularly in the Philadelphia area, and television stations, were scared to death of a man who when he knew a certain politician was doing something wrong, he was going to tell the people about it. And I explained to Mr. Norris that I needed to be on a station that would not for its own benefit suppress me." (Tr. 6928)

204. Radio Free Philadelphia (RFP) begins with the announcer's introduction of Burak as "Radio's Boy Wonder Fool," an apparent pun. Guests seldom appear on the show but Burak begins by reading a bit of news or making comments about some timely event and then inviting his listeners to call in and comment. Although he confessed that he had few callers, he has resorted to the practice of calling those who opposed him -- for example, Father Hines -- and inviting a discussion. (Tr. 6982-83)

205. When Burak has considered a caller offensive, he has not hesitated to cut off the call. He said this does not happen often, "not as often as I should but I do cut them off." (Tr. 6956) Sometime around October 2, 1967, a Mrs. Casper, who was identified in the record merely as a woman who claimed to have suffered a concussion during a Women's Strike for Peace demonstration in Washington, called the program. About a week before, she had called Burak at his home and, according to him, had spoken vile names. When she telephoned the program, Burak told her he would not allow her to call any more and "as a result of that I gave her name and telephone number out over the air and said that if she is going to be a liar she is not going to be an anonymous liar." (Tr. 6204)

Q [Mr. Cottone] Did you call her a liar on the air?

A [Mr. Burak] Oh, yes.

206. Barry received a complaint about the incident and sent a tape of the broadcast to Mrs. Casper. (WXUR Ex. 114) He also sent a telegram offering free time for reply but Mrs. Casper's attorney declined.

207. On his program, Burak extends an invitation to any person or organization whom he has criticized and he also declared he had sent tapes, form letters and sometimes telegrams. He had an understanding with Norris that he needed to be on a station which would not suppress him. (Tr. 6928-29)

"So while WXUR through my program was letting the people know that they were being cheated by AAMCO, the other stations in the Philadelphia area were taking AAMCO's money in order to encourage people to go down and be cheated by AAMCO.

"And this was what I told Mr. Norris before we started. I told him this is the way I work, that I wasn't interested in protecting anyone, including the station, and that if I said things which would lose the station support from people in the conservative element, if they were unhappy about the fact that I was on the station and they were going to stop supporting the station, that was just too bad, that my program was going to be done with truth. And happily, Mr. Norris agreed to these stipulations."

208. One of Burak's favorite enterprises is to expose persons or companies he believes are operating unfairly or illicitly. He freely gives time to causes which he considers worthy, such as persons whom he thinks have been badly used by finance companies or used-car dealers.

12/ Burak made the tapes at his own expense. (Tr. 7004)

Just as Dr. McIntire placed all his ideas in the frame of reference of the Bible, Burak related everything to his faith in the superiority of socialism over capitalism. It was a format which truly generated disputation, sometimes in a very heated manner, but Burak rejoiced at having his opposition come back at him.

209. Burak's wife assists him in preparations for the show by making telephone calls and screening those which come into his home. His small son also assists by making the station breaks. As was just mentioned, Burak had appeared on the Mau show during the winter prior to the commencement of his own show. As a witness he was asked whether Mau had inquired whether he was a communist. Burak replied: "He's stupid enough to do that, yes." He quickly added, however, that he liked Mr. Mau and did not mean to disparage him. Although Burak calls himself a left-wing extremist he firmly denied being a communist and, in fact, spoke of communism in the most deprecatory terms.

210. Burak insisted that prior to broadcast time, he calls persons whom he intends to mention and that he issues a standing invitation to anyone who feels he has been attacked to come on the program. Take the episode of Mr. A. J. App, whom Burak called a Nazi. When asked if he sent a tape to Mr. App, Burak said: "I saw Mr. App personally, so it wasn't necessary to send him a tape. I talked to Mr. App personally, and begged him, I mean literally begged him to appear on my program with me. And he refused." (Tr. 6999)

Local Needs, Tastes and Interests

211. It can be said in a nutshell that there was no concentrated effort to survey the community as to its needs, tastes and interests in the manner that is customarily presented by applicants in these proceedings. By this it is meant that Mr. Norris did not -- nor did anyone under his direction -- go through the Media community and inquire systematically about the kind of programming which local folk thought they needed or wanted. But surveys can become a matter of ritual and the absence of a questionnaire or spot check is not necessarily indicative of indifference to what the community needs in the way of programming. Originally it was the intention of Norris to let FOS fulfill this role. Throughout his testimony it is evident that he had naive faith that the public, through its telephone calls, would somehow give guidance to the station as well as express divergent opinions on all manner of subjects. Attentiveness to local needs was, however, not wholly neglected. First, there must be a word as to what this means in the normal terms of Commission proceedings.

212. A local "need" has generally been supposed to represent something of specific value to the community such as a new hospital, a new school or an improved transit system. Tastes are a different matter and relate to the specific desires of individuals or groups for a kind of program, whether it be news, music or sports. Interests are something which do not differ materially from tastes. Customarily there is testimony as to a community's

interests in sports, country and western music, market reports, religion or a host of other subjects. In the case of FTS -- or rather Mr. Norris -- there was an a priori decision that the area needed more religious programming and by this was meant conservative, fundamentalist religion. This conclusion seemed to be validated by two things; one, a survey of religious broadcasts as shown in the renewal application forms filed by area stations with the FCC and two, the blackout of Dr. McIntire when WVCH shut its doors to him in 1964. Looking at the matter from the point of view of a fundamentalist, this was by no means unreasonable. It is not unheard of for stations to devote large amounts of time to revivalist types of programming or to the kind of "gospel hymns" which appeal to certain segments of the community. But apart from this, the leaders in the present ownership believed that there was a desire for the peculiar (in no invidious sense) type of programming offered by Dr. McIntire and the other commentators. It is not an unfair deduction from such record evidence as the multitude of calls received on FOS that appreciable segments of the Media community did feel a need for the WXUR programming.

213. Let us return to the more conventional concept of needs. Under the prior ownership, Mrs. Marion Pedlow had been engaged by the station to act as a consultant on local needs and had conducted her program each day with a rather free hand in attempting to meet them. This is what is sometimes known in the trade as a "back fence" chatter type of show. The moderator (if that is the right term) interviews a guest about what is happening on some community project which might be anything from the United Fund Drive to an exhibition of paintings. Mrs. Pedlow is an employee of WXUR who runs her program almost independently, choosing her guests at will and running whatever commercial announcements or non-commercial spots may come along. The pattern is by no means unusual in American broadcasting. Mrs. Pedlow is an inhabitant of the Media area but she has made trips abroad and when this has occurred she has made tapes of what she considered interesting for her audience. The tapes were sent back to WXUR and were carried. There is no point in reciting the wide variety of subjects which were dealt with but suffice it to say that they covered everything which an average American radio station would regard as pertaining to local needs, tastes and interests. While she was not specifically re-employed as a consultant by FTS, Mrs. Pedlow was retained on the staff and her duties do not seem to have differed very much from what she had been doing before. In a word, she was the station's contact with the little world of Media and the record indicates that she performed this function admirably.

214. In addition to Mrs. Pedlow, there was a program called "Information Central" whereon bulletins of local events were broadcast. These were the typical public service announcements carried by myriad stations throughout the country. In addition, there were promotions of charitable causes publicized on Mau's Delaware County Today and on the Polish and Ukrainian programs.

Political Tone of WXUR

215. In the early stages of the hearing there was testimony from Mr. Jerome Bakst, a political analyst employed by the Anti-Defamation League (ADL), who attempted to establish certain norms for evaluating the political coloring of broadcasts. Mr. Bakst was subjected to considerable cross-examination which, in retrospect, did little more than uncover what we all know -- that political philosophy is not an exact science and that no opinion can be analyzed by precise criteria. As the hearing progressed, however, it became apparent that everyone involved seemed to know in a general way what was meant by such terms as "liberal" and "conservative" and, in fact, the witnesses for WXUR were even more glib than Mr. Bakst in applying these epithets. To go a step further, however, and identify someone, such as Dr. McIntire, as "extreme right-wing" is a more dubious process. In point of fact, these extreme refinements of definition are not merely irrelevant, they are dangerous because once we start evaluating the nuances of thought which a speaker expounds we are getting close to the forbidden area of censorship. On the other hand there have to be some reasonably understood categories if the evidence is to make sense. Now it seems that those persons most intimately connected with WXUR and its story have had an understanding that their viewpoint -- leaving aside Mr. Burak -- was conservative and they made no secret of the fact. The callers on FOS and similar programs also seemed to share this understanding. The word "conservative" generally implied an attachment to the constitution and traditional social or political values. Above all it implied an intense dislike of Communism and Socialism. In the eyes of these conservatives, the liberals or left-wing were in opposition on these points. To the liberals, however, it appeared that constant preoccupation with Communism betokened extreme right-wingism and these same liberals were normally associated with causes such as peace, withdrawal from Vietnam, civil rights and the like. It must be stressed and never forgotten that the Examiner's opinion as to the merits of these positions is entirely irrelevant. It is only because we must have a vocabulary for the purposes of discussion that these terms are mentioned at all. Bearing this firmly in mind, we can turn to the political tone of WXUR.

216. There is no doubt that Dr. McIntire considers himself a conservative and is so regarded by his followers. At the other end of the spectrum sits Marvin Burak who was about as outspoken a liberal or left-winger as one could imagine. In fact, he vaunted his extreme leftist views. Again, returning to the right we find Mr. Livezey whose distaste for left-wingers was transparent. Throughout the record, such commentators or speakers as Mr. Hargis, Dean Manion and Richard Cotten were eloquently self-styled conservatives. It makes little difference whether they were "extreme" or otherwise. They formed a legion which, depending on one's taste, could be called conservative or right-wing. Reverend Lilley (Ton O Anthropon) seems to have stood somewhere in the middle and it is noteworthy that he refused to classify himself.

217. It would be a staggering task to classify the views of those earnest souls who called in to express themselves on FOS but it is sufficient to say that they came from both camps and their utterances were couched in language ranging from temperance to vitriol. Aside from the pre-emptory tactics of Livezey, who from time to time would shut off a caller with whom he disagreed, there seems to have been no policy or practice of silencing any of these vocal indulgences.

Balancing of Political Viewpoints

218. Much of what has been said relates to this important aspect of the Fairness Doctrine but one program is worthy of mention, notwithstanding its brief tenure on WXUR. Known as Left, Right and Center, it was conceived by Burak or, at least, was claimed by him as its parent. Actually it commenced after the start of the hearing, that is, on October 29, 1967. It was produced by WXUR and, as a reward for his production of the show, Burak received monetary credit toward his Radio Free Philadelphia on AM. Left, Right and Center began on FM only and, in Burak's opinion, this was a failure but Norris later agreed to put it on AM. In conception, it was designed to give a wide range of opinions through the ministrations of spokesmen for three shades of political viewpoint, those of the Right, the Center and the Left. Needless to say, Burak was the representative of the Left. Mr. Jay Parker was spokesman for the Right and Mr. Jim Tayaun for the Center. Each was allotted an hour in sequence but the program was subsequently reduced to 45 minutes. Sometimes one of the speakers had a guest who was occasionally invited to remain for interrogation by one of the others. The record is not as lucid on this program as one might wish but there was the hint that it was an amiable "bull session" in which all strata of opinion had a chance to be heard.

219. In connection with Issues 4, 6 and 7 which are generally concerned with whether WXUR has been used as an instrument for the propagation of the sectarian and political views of FTS or whether it has provided an opportunity for the expression of conflicting viewpoints, it is obvious by now that the station has done both. Many of the foregoing findings reveal the summary fact that conservative fundamentalist speakers have abounded on the station and, incidentally, have used it for the solicitation of funds. But they also reveal that other viewpoints have been solicited and in specific instances have been voiced.

220. One matter raised by the Broadcast Bureau must be mentioned at this point. The Bureau has professed to find that Dr. McIntire was favored with a cheaper rate than other broadcasters and the same is possibly true of other "conservative" programs. Testimony about the rate cards which have been in use at WXUR was extremely disjointed and it is difficult to make any definitive findings about rates. It does appear, however, that McIntire believed he was paying the base rate which, of course, is the lowest because of frequency and Fulton's testimony seemed to verify this. At all events, there is insufficient evidence to find that either Dr. McIntire or men of like faith were shown partiality in the rates they paid.

221. In brief, WXUR has by no means been dedicated solely to the tenets of FTS, McIntire or any other person or organization. Views ranging from fundamentalist theology to agnosticism and from militant conservatism to militant socialism have been articulated. To describe this in detail would be repetitious and one needs merely to recite the parade of names and programs which have already been delineated: Freedom of Speech, Burak, Delaware County Today, Dr. Felder Rouse, Stanley Branch, Mrs. Olmsted, Mrs. Porter, Professor Davidson, Inter-faith Dialogue and countless others.

The Nine "Hate Clubs" of the Air

222. In addition to the 20th Century Reformation Hour, Norris imported from WGCB a set of programs which he characterized as "the nine hate clubs" of the air. This title originated in an article which appeared in "The Nation" in May, 1964, written by a man named Fred J. Cooke.¹³ That article is not in evidence but testimony indicated it was sharply hostile to a group of conservative broadcasters whose programs collectively were identified as "hate clubs". McIntire's 20th Century Reformation Hour led the list and was the first one on WXUR under the new management. Mention has already been made of some of these programs but it will be helpful to have the relevant facts.

223. On Monday, May 3, 1965, Norris put on "Life Line," a daily commentary by Melvin Munn, sponsored by H. L. Hunt.¹⁴ "Life Line" is still carried by WXUR. On the same day Norris introduced the "Manion Forum" (daily, 15 minutes) and this was carried continuously until about ten months before the hearing commenced.

224. "Behind the Headlines," a commentary program by R. K. Scott, was added on May 4 and carried again on FM in the evening. Howard Kershner's Commentary was started the next day.

225. On May 6, a weekly show produced by Kent and Phoebe Courtney and titled "Independent American" was begun. It was also repeated in the evening on FM. Another in the series was "The Dan Smoot Report," a talk program which left the station prior to this hearing. On May 8, Major Edgar Bundy's "Church League of America" was added to the schedule.

226. On June 14, 1965, Billy James Hargis' 15-minute daily Christian Crusade, the ninth "hate club," was commenced. Norris testified that he was grooming Richard Cotten's "Conservative Viewpoint" at WGCB to be the tenth hate club. The program did later appear on WXUR and has been carried five or six days a week ever since. The only significance of most of these programs is that they were admittedly of a conservative nature.

¹³ See letter to WGCB, October 6, 1965, 1 FCC 2d 934, and letter to WGCB, dated December 9, 1965, 1 FCC 2d 1587; WGCB's appeal from this last letter is pending decision in the Supreme Court, Red Lion Broadcasting Co., Inc., et al., v. F.C.C., cert. granted 389 U. S. 968.

¹⁴ All of these programs were simulcast on FM and most of them were repeated over that medium in the evening.

Alleged Misrepresentations in Transfer Application

227. The Broadcast Bureau has furnished a table purporting to show the programs promised by FTS and those actually placed on the air. To this, the station replied with a similar table purporting to show a virtual identity of programs produced as against those promised. It would consume an inordinate amount of space to repeat these and would serve no useful purpose. The ultimate facts are as follows. WXUR did propose a number of programs which it never put on under those names and it did produce a number of programs which were not specifically listed in its transfer application. These included the so-called hate clubs. In the instance of FOS, there had been a promise to carry contrasting viewpoints and that is what this program was designed to do although it was not specifically mentioned in the application. The Inter-faith Dialogue was promised but was somewhat delayed in its appearance since it did not go on the air until November, 1965. If measured in time segments, the type of programs produced were roughly the equivalent of those promised. Thus it cannot be held that there was any misrepresentation about what or how much would be placed on the schedule. In one most important respect this was true. FTS never made any secret about its intention to "propagate the gospel" in its own idiom and to afford Reverend McIntire a broadcast pulpit. That this purpose was well known is clearly shown by the various complaints which were filed against the proposed transfer of control.

American Patriotic News

228. In its proposed findings, the Broadcast Bureau has laid considerable stress on the sponsorship of certain programs over WXUR by a non-profit corporation called American Patriotic News (A. P. News). The Examiner does not share the Bureau's concern with this matter but, for the sake of completeness, the essential facts will be stated.

229. Among the purposes in the charter of incorporation of A. P. News was this: (BB Ex. 89)

"To act as a fund raising agency for any and all individuals, groups, associations and organizations dedicated to: . . .
(c) Combating, refuting, and opposing foreign ideologies inimical to traditional American religious, social, economical, and political systems."

Among the officers and directors are Norris, Robert Manuel¹⁵ and Victor E. Parker, a consultant for WXUR. A. P. News raises funds from contributions and a principal benefactor was the father of John Norris. It was apparently founded as a means of sponsoring programs prepared by non-profit organizations which either could not or would not purchase time on radio stations. In keeping with this purpose, A. P. News became obligated to pay for certain programs at Station WGCB and later at WXUR. Kershner's Commentaries, Church League of America and Behind the Headlines were so sponsored on WXUR. Through March 27, 1967, the Inter-faith Dialogue was announced as sponsored by A. P. News but the treasurer of that organization testified that Dialogue was not, in fact, sponsored and no bill was ever submitted by the station.

¹⁵ Identified in this record as personal attorney for Dr. McIntire.

230. In 1967, payments for the Kershner and Church League programs were in arrears because, according to Morris, his father had not come through with donations. As shown by canceled checks introduced in evidence by the Bureau, A. P. News owed WXUR more than \$3,200 in October, 1966 but no further payments were made until February, 1968. This occurred after Mr. Parker had been directed by the Examiner to comply with a subpoena for the production of the canceled checks in question.

231. From these facts, the Bureau deduces that A. P. News was a "creature created by the principals involved in the operation of these stations by Faith Seminary to carry programs which they desired to be aired and to reflect, contrary to the fact, that these programs were commercially sponsored and paid for." The Bureau also correctly notes that during the license period now being reviewed, programs announced as sponsored by A. P. News were not, in fact, paid for.

Alleged Personal Attacks

232. The Intervenors have filed reply findings of fact which are simply a repetition of certain exhibits which were characterized as points of reliance. Without intending any reflection upon counsel, these have been of very little assistance for several reasons. In the first place, they are too fragmentary in that they do not show how the alleged attacks were made in the course of a controversial discussion of a matter of public importance. They also appear to assume the attack as being against the honesty, character, integrity or personal qualities of the individual or group attacked. In making findings on this subject, certain prefatory comments are necessary. There are so many instances cited by the Intervenors that a decision dealing with each and every one would arrive at unconscionable proportions but since they tend to fall into certain patterns it will be sufficient to discuss these together with illustrative examples.

233. By a rough count, the Intervenors have cited some 65 instances of alleged personal attacks during the week which they had monitored and reduced to written form. This, of course, would not include other instances which may have appeared during the license period or thereafter. If these instances were to be adjudged individually, it would require an analysis of the whole program to determine whether it was a controversial discussion of a matter of public importance, an evaluation of the particular remarks to determine whether they were, in fact, an attack and a summary as to what the station did, if anything, in response. Each of these steps would, in some measure, require a summary judgment on the particular facts and this would literally run into hundreds of pages of analysis but fortunately the citations of the Intervenors can be conveniently -- and it is hoped fairly -- grouped into certain categories.

234. One easily identifiable group is that which subjects persons in public life to critical remarks. These persons were generally politicians but not in all instances. On June 5, 1966 in the broadcast of Pastor Bob Walter, the Intervenors have cited the following, among others. While advocating regulation of campaign financing, the speaker criticized the Democratic Party for practicing "deceit in its operations". Later on, he

opposed civil disobedience and the attitude of the Federal Civil Rights Commission toward it. In doing so, he said that John Pinkley of the Civil Rights Commission "ought to be removed immediately from his post" for "urging a policy which means absolute lawlessness and anarchy in our nation."

235. On October 9, 1966, the same speaker disapproved of President Johnson and Senator Clark for "their socialistic program" and in connection with peace negotiations in Vietnam he said that President Johnson had "blatantly and traitorously compromised and betrayed our country." This kind of vitriol recurs over and over again, not only with Pastor Bob but with other commentators. The Pastor Bob program, which purported to be a commentary on news and current events, may be briefly characterized as bitterly anti-Communist.

236. Of a very similar nature were the frequent comments on individuals in public life for taking a stand which is sympathetic to the Communist line, which furthers the Communist movement or which is socialistic in nature. In this group, the speaker normally avoided making an outright charge of identification with the Communist Party. In some instances, Pastor Bob and Richard Cotten, to name but two, would use this means of criticism supported by quotations from what purported to be reliable documents. Two examples will help to illustrate what we are considering here. One was an alleged attack on Harold Howe, II, Commissioner of Education, as being in league with "Fabian and Keynesian socialist politicians, almost identical in their ambitions and plans with Communism's conspiracy to overthrow our free nation." This observation came up during a discussion of school integration and the bussing of pupils. A second instance occurred during a dissertation on the Lower Merion School Board regarding its integration suggestions. Pastor Bob struck at the NAACP for its demands that the Lower Merion school system be integrated to a greater extent and in doing so made the statement that "We continue to warn -- civil rights has become extremist integration, black supremacy and Black Power."

237. In one curious instance Pastor Bob voiced his disapproval of rock-and-roll music and such contemporary dances as the Frug and Watusi as part of a Communist conspiracy using music to destroy American youth. It is evident that Pastor Bob was not acquainted with the fact that the masters of the Kremlin have inveighed against this kind of popular music in their most severe manner of castigation by calling it bourgeois.

238. In a number of cases it is seriously to be doubted whether the matter being discussed was of public importance except with reference to certain segments of the population. For example, Pastor Bob criticized the Episcopal House of Bishops for failing to try Bishop Pike on the charge of heresy. He spoke of Pike as "dishonest," "not a Christian by any wild stretch of the imagination," and an "easy prey for any kind of wild belief, heresy or apostasy." Another instance occurred when Catholic traditionalist Father Gomar DePauw was a guest on FOS and criticized Cardinal Sheehan for having abused his authority. In similar vein, while criticizing a possible meeting of world church leaders, including Pope Paul VI, to discuss Vietnam, Pastor Bob described the Roman Catholic Church as "apostate" and proceeded to condemn a "one-world church" pursuant to some language contained in

Revelations 17. On November 20, 1966, Pastor Bob, in a curious mixture of condemnations, criticized the Catholic Church for its attempts to "decree against birth control" and the Johnson Administration for "pressuring the poor to practice birth control."

239. In still other instances, there were remarks by Pastor Bob which, if contained within a truly controversial discussion of matters of public interest, would unquestionably reflect on the character of an individual. For example, there are recurring references to Adam Clayton Powell as "immoral, corrupt and degenerate." On March 19, 1967, he denounced the 4-F classification given to Stokely Carmichael by his draft board together with a description of Carmichael as one of the "enemies and traitors who are destroying our country." While the foregoing are merely selections from a voluminous list offered by the intervenors, they are typical of the different kinds of critical remarks employed by Walter and further examples would not contribute to any better understanding of his broadcast. The question as to whether these were actually personal attacks within the somewhat narrowly defined scope of the Fairness Doctrine will be discussed more fully in the conclusions but it may be noted at this point that mere criticism, however severe, is not necessarily an attack on character. It may also be noted that the record fails to show that in any instance of presumed attacks by Pastor Bob was any individual or group furnished any tape, transcript or summary nor does it show that Pastor Bob specifically invited any of these persons to make a reply over the facilities of WXUR.^{16/} Another observation which must be made is that the truth or falsity of the alleged attacks is not relevant in this context. Outside of the denunciations of well known public officials for alleged Communist leanings -- accusations which were patently absurd to anyone -- it would require lengthy hearings to establish whether they had any foundation in fact.

240. Turning to the instances cited by the Broadcast Bureau, it becomes not only desirable but necessary to practice some condensation in order to keep the Initial Decision within comprehensible limits. Many statements are recorded in the transcripts of broadcasts which, it might be argued, are attacks on persons or groups but the Examiner has decided to discuss only those which have been presented by one or more of the parties as actual attacks. Condensation, however, does have its limits and because of the difficulty in determining whether a particular broadcast contained a personal attack during discussion of a controversial issue of public importance it will often be necessary to give verbatim what was said. Summaries and general characterizations lend themselves to distortion so it becomes of critical importance to know exactly how an alleged attack was phrased and under what circumstances.

241. Certain observations about the methods of various broadcasts and the techniques of monitoring are first in order. Many of the programs -- perhaps most -- were sent to WXUR on tape and were then played over the air. This would include the so-called "hate clubs" or religious and editorial type shows which were sponsored by the broadcaster or by some friendly party.

^{16/} The incident involving IAD is an exception and is discussed in paragraphs 256-259.

Others were done live, sometimes from a script (as in the case of Pastor Bob Walter) or extemporaneously as in the case of Dr. McIntire's programs. On the various "call-in" shows, such as FOS, there was obviously neither tape nor script since the substance of what the caller said was always unpredictable and was sometimes regrettable. With respect to those programs which came to the station already on tape, Norris insisted that he had an understanding with the "sponsor" that the latter had an obligation to notify persons who might be attacked and to offer time for a reply. Very much the same arrangement existed with McIntire and Walter in the sense that neither Norris nor any of his employees at the station made any attempt or had any devices for auditing these programs in advance of air time. The reason given for this was very simple. A station with so small a staff and such limited resources was unable to perform the time-consuming labor of pre-monitoring each show. In some instances, however, tapes were recorded at the transmitter and many of these were later typed in transcript form for introduction into evidence. Norris showed little concern with most of his sponsors, whom he avowedly relied upon to refrain from personal attacks or at least to observe the station's obligations in notifying persons or groups who might have been attacked. In the case of Pastor Bob he did go to the extraordinary trouble of asking Mr. Broadwick to listen for any objectionable material but this could have been done only when Broadwick was on duty at the station as an announcer or engineer. Surprisingly enough, Norris himself rarely listened to the majority of the WXUR programs. Pastor Floyd he had heard only once, the "hate clubs" infrequently and FOS once a week or every other week. Except for an isolated instance when Norris heard objectionable language from Livezey while driving, there is no admission from him of having heard anything on his own station which he regarded as a personal attack.

242. It is impossible, therefore, to find that Norris had established any methods or techniques for making instant detection of possible infractions of the Fairness Doctrine and his own testimony shows that he generally waited for a complaint to be received before doing anything. The following is illustrative: (Tr. 1674)

"Well, we would hear from -- say, IAD, Institute for American Democracy -- possibly the Reverend Hines, Spencer Coxe of the American Civil Liberties Union. If they complained, we usually -- I can't think of once when we didn't offer them an opportunity to reply."

243. As to the call-in type of program, Norris had what can only be described as an obsession against any interference. He made it clear time after time that in his mind any pre-monitoring of a call, let alone shutting off the call, would be censorship. "This is Freedom of Speech" was his proud boast to Livezey when the latter proposed use of a delayed broadcast apparatus. Thus it happened that many of the more caustic and abusive remarks came in from callers who were not always identifiable by the moderator. Let us start, however, with one who was well known as a frequent caller on FOS, the Reverend Floyd.

244. Livezey had not been at the station very long but he either recognized Floyd's voice or Floyd identified himself on this occasion. On July 9, 1965 Floyd telephoned the program that while Senator Clark was running for reelection "his henchmens [sic] offered to put me on the spot and get rid of me" and that "little two legged hounds . . . the fellows around the little politician . . . they offered to, they wanted to put me to sleep and everything." (Int. 66, pages 3-4)

245. This was not reported to Norris immediately although he shortly learned of it from someone at the station. Meantime Mr. Richard Clayton, who on other occasions monitored by tape the programs of WXUR, wrote to Senator Clark and notified him of the slurring remark. Clark asked the FCC to look into the matter so a letter was sent to WXUR asking for comment on the complaint. Norris, who had done nothing until now although he had apparently learned of Floyd's call, wrote the Commission on August 17, 1965: (Int. 66, page 8)

" . . . Nevertheless, had the extemporaneous reference to Senator Clark come to our attention after it had been made on the air, we would have seen to it that Senator Clark was contacted and advised thereof and invited to make, on Station WXUR, any response thereto which he desired to make. . . ."

246. At the same time Norris did write to Senator Clark, offering to air a tape or have Clark telephone the program to express his views. (Int. 66, page 9) In the communication to the Commission, Norris made a statement which is symptomatic of his concept of the station's obligations, a concept curiously marked by narrow legalistic reasoning. He said: (Int. 66, page 8)

"According to the materials which you enclosed . . . [referring to pars. 20-27 of the Fairness Doctrine Primer of July 1, 1964, which the Commission had sent the licensee] the Fairness Doctrine requires the communication of a copy of any station editorials, containing a personal attack, to the person attacked, either prior to or at the time of the broadcast, in order to afford a reasonable opportunity to reply. As previously indicated, the 'personal attack' to which you apparently make reference was neither the subject of an editorial and was not, nor could it be, the subject of a script."

247. Pastor Floyd now passes from the scene but several comments are in point with his exit. He was one of the early additions to the program schedule in 1965 but Norris never discussed the Fairness Doctrine with him. Floyd had been driven to the station by a Mr. Jay Parker because Floyd was both old and partially blind and Jay Parker was shortly to be hired as a station employee. Norris did discuss the Doctrine with Parker, who, incidentally, was later a moderator on FOS, and assumed that Parker would pass on the information to Floyd. But apparently Norris never instructed Parker to advise Floyd of the duties which a sponsor owed to the station. Floyd was at that time a sponsor.

248. Mr. Richard Clayton now reappears as an informant to Spencer Coxe of the Philadelphia chapter of the ACLU regarding some remarks by someone on WXUR which identified the ACLU as a partisan for left-wing organizations. This was on November 24, 1965. Coxe forthwith wrote to the station for a copy of the broadcast but received no response. Two more letters went out from Coxe on the same matter but there was no reply.

249. Late in the following summer Clayton again notified Coxe of an assertion by Pastor Bob that ACLU backed only communist causes. Actually there were three identified broadcasts by Pastor Bob, these being on August 21 and 28 and September 11, 1966. Intervenor's Exhibit 26 contains excerpts from the September 11 broadcast and a couple of paragraphs give the flavor of what was said. Walter was giving a "documented opinion" of the ACLU with the following, among others:

"The American Civil Liberties Union as usual hastened to the defense of those assorted beatniks, radicals and communists who carried on so terribly at the House Committee on Un-American Activities hearings recently. This brings to mind the fact that few Americans know about this ACLU. Here's what others have said about the American Civil Liberties Union. Notice, these are not my words, but the findings of others:

"One. The Colorado Senate Fact-finding Committee on Un-American Activities in 1948 on page 107 quote: 'The American Civil Liberties Union may be definitely classified as a communist front or transmission belt organization. At least ninety per cent of its efforts are on behalf of communists who come into conflict with the law!' End quote.

"Two. The House Committee to Investigate Communist Activities in the U.S., Report 2290, entitled 'Investigation of Communist Propaganda.' Quote: 'It is quite apparent that the main function of the ACLU is to protect the communists in their advocacy of force and violence to overthrow the U.S. Government.' End Quote.

* * * * *

"And finally, Karl Prussion, 26-year member of the Communist Party, part of this, by the way, spent as a counterspy for the FBI, openly declared the ACLU to be the legal front for the party in the U.S. He also charged that the group seeks out opportunities to represent those who would eliminate all references to God from our national life."

250. Coxe had already written WXUR about the earlier broadcast on August 30 but on September 16, registered delivery, he renewed his request for a transcript and an opportunity to reply. On September 28, Norris replied to this, saying he had sent the request to Pastor Bob: (Int. Ex. 38)

"I am sure that since he has previously agreed to honor such requests, that Pastor Bob will not only send you the text of the broadcast in question, but that he will invite you to appear at his expense on his weekly broadcast over this station."

251. Time passed and Coxe had received nothing from WXUR or Pastor Bob until the latter wrote him on February 15, 1967, from which the following is taken: (Int. Ex. 39)

"During the broadcast of the program 'The World, The Bible, and You' over WXUR last year, I released some material dealing with the investigation of your organization. Mr. John Norris, manager of the station, shortly afterward advised me that you were asking for equal time to answer the material I released. In his letter he distinctly specified to you that I was willing to give you that equal time on my program.

"This letter is to verify and confirm Mr. Norris' letter to you. It actually should not be necessary for me to write a follow-up letter since his was so very clear and plain in its offer, but in deference to Mr. Norris and the station I want to set the record straight by extending this definite invitation to you to appear on my program to use 'equal time' for your presentation."

252. Coxe, on February 27, wrote to Norris stating that he had never received a transcript or summary of Pastor Bob's remarks and reminding Norris that it was the duty of the station, not the commentator, to dispatch these after an attack. In the interval between September 28, 1966 and February 27, 1967, the renewal application of WXUR had been designated for hearing. Also it appears that Norris and Coxe had engaged in a telephone conversation regarding the matter of Walter's earlier broadcast. This seems to have been incidental to a conversation about the Red Lion station but Norris recalled "I assured him [Coxe] that he would be offered, not free time, but he would be offered time on a program which was sponsored. I went through that rigmarole, telling him how we couldn't stay alive if we had all of the time free time." (Tr. 1965) With artless simplicity Norris thus disclosed a thought which was never far from his mind. At all events Coxe had been instructed by Pastor Bob to "get in touch" with him and arrange for an appearance on the program. On February 27 Coxe once more wrote Norris asking for a transcript or summary of Walter's remarks on August 21 and 28, 1966. Norris came back on March 6, 1967 with the information that Pastor Bob did not have "an exact transcript of the program in question" but that he could provide the material from which remarks might have been spoken about the ACLU. And also, "Pastor Bob also assured me he will furnish you with paid time at no cost to you or the Union to answer any references he might have made about the Union."

253. The exchange went on with a lengthy epistle from Walter to Coxe dated March 7, 1967 which, unfortunately, must be quoted in part to show the absence of understanding which pervaded the atmosphere of WXUR: (Int. Ex. 43)

"Thirdly, and I believe most important, the reason for the time lapse is simply that I felt it was not at all necessary to contact you first, for two reasons. One, Mr. Norris very plainly, clearly and unequivocally stated that he was sure I would send you the transcript and offer you equal time on my paid commercial program in his letter of September 28, 1966. He did not say I 'might,' but that I would, he was sure. Secondly, you were and still are, the one making the complaint, and therefore you should

have followed up his letter with one directed to me, asking me directly for the material promised you in his letter. Had you done this, as is usual and normal business practice, you would not have had to wait all this time, I can assure you. Your failure to contact me after Mr. Norris directed his clear letter to you is your responsibility, not mine or Mr. Norris'. I waited after receiving a copy of his to you under date of September 28, 1966 (which I still have in my file) to hear from you. No letter was ever received. Perhaps your confusion, evident in your last letter of February 27, 1967 to Mr. Norris, was the reason, then. I do not know. At any rate, since you were the complainant, the burden surely rests on you to make the contact with me, not for me to make it with you, after Mr. Norris' clear letter to you on September 28, 1966.

"However, let me say that if you contact me personally and directly at any date and ask for equal time, I will send you a fair summary of what I stated over the air, and have you as a guest on my paid commercial program to answer the summary, which I will read just before you answer, so that it will regain its effectiveness as a contemporary matter. But this will only be when you write directly to me, and not to Mr. Norris or anyone else, requesting same. This is the only business-like way."

254. Coxe testified that he finally did have four minutes on the FOS program by way of a telephone call and that he appeared on Burak's show twice, July 9, 1966 and January 20, 1967. (See Tr. 1182, 1193-94, 1202-03.)

255. Mr. Charles R. Baker is the Executive Director of the Institute for American Democracy (IAD) and he appeared as a witness at the hearing. On October 12, 1967, he wrote to the FCC about a program aired by WXUR and said in part: (BB Ex. 81)

"We have received the enclosed transcript of a radio program on WXUR in Media, Penn., broadcast on September 24, 1967, between 1:30 and 2:30 p.m. As you will see from the content of this transcript, a personal attack upon the character of the Institute for American Democracy, and its chairman, Dr. Franklin H. Littell, has been made.

"The IAD, of course, is not a 'gestapo-like' Institute, as charged by WXUR's 'Pastor Bob.' It is not a secret police organization, our methods are not underhanded and our tactics are not those of terrorists.

"In view of the continuing attacks on IAD carried on by the Rev. Dr. Carl McIntire, Major Edgar Bundy, and the Rev. Billy James Hargis - all of whom broadcast over WXUR and all of whom have produced publications attacking the character, honesty and integrity of IAD - it is difficult for me to believe that this is just the capricious statement of an obscure Right Winger which slipped by without the station manager's notice. We have, to date, not been notified of this attack."

Attached to the letter was an excerpt from Pastor Bob's broadcast of September 24, 1967 which must be quoted:

"Did you know that at a National Educational Association meeting in Minneapolis recently, Dr. Franklin Littell, the left-wing president of the gestapo-like Institute for American Democracy, that has forced the administration into a position of persecution of stations that carry conservative broadcasts, that he called, notice, for the complete silencing of all the conservative right-wing broadcasts, and called, mind you, for throwing out from the professional organizations, school boards, political parties, churches, and synagogues, any person who dares to speak up against the socialistic establishment of our day.

"He added, Dr. Littell, that the Christian Crusade, and other supporters of right-wing broadcasts, conservative broadcasts, he said must be, quote, muted and rendered ineffective. In other words, suppress them. Do you realize that? This has all happened, by the way, since President Johnson took office, and one of the newspapers, when he did it, said that he would fight these right-wing organizations and would suppress them. Not in words to that effect, perhaps, but that he would deal with them. Well, they're dealing with them. And you're going to see that there's going to be more.

"May I make a prediction, from the word of God? America, if it keeps going like it is into socialism, that God is responsible for this, because He is going to punish America . . ."

256. This was one fragment of a running controversy between IAD and WXUR which involved not only Pastor Bob, but also Richard Cotten and Major Edgar Bundy. For the time being, let us consider only Pastor Bob. Upon receiving the complaint from Baker, the FCC requested the station to comment and Norris thereupon offered to air a five-minute tape of IAD as rebuttal to what Walter had said. Baker accepted and dispatched a tape containing the IAD rebuttal to what Pastor Bob had broadcast on September 24. On November 7, 1967, Barry wrote to Baker, acknowledging receipt of this tape and affirming that it would be aired on Pastor Bob's broadcast Sunday, November 12, 1967. The letter added:

"This, of course, stems from your letter to the FCC dated October 12, 1967. Mr. Norris normally handles matters such as this. However, in his absence but through his request, I have taken care of this matter."

257. WXUR placed in evidence a series of four letters which constitute an exchange of views and arguments between Pastor Bob and Baker during the same period that the foregoing events were taking place. The only apparent relevance of these letters, however, is to show the widely divergent attitudes of Baker and Walter. No direct relation between the letters and any broadcasts has been shown. (WXUR Exs. 31-34)

258. Pastor Bob's controversy with IAD did not stop there, however. On September 12, 1967, Dr. McIntire's broadcast contained critical remarks about the Commission's Fairness Doctrine and shortly afterwards Baker dispatched a letter to all stations carrying the 20th Century Reformation Hour in which was enclosed a script setting forth IAD's defense of the Doctrine. On September 28, McIntire telegraphed Baker, requesting the IAD tape called "contrasting viewpoint" which seems to have carried the same text as the aforementioned script. This was followed by some correspondence between Baker and Dr. McIntire relating to a proposed debate between the two which, it so happened, never came off. The matter is pertinent here only in that during the exchange, Baker alluded to "bicycling" the IAD tape and, as it was explained on the record, this is a term in the industry meaning that a tape will be sent from one station to another by the fastest possible means. While McIntire did play the tape on one of his programs, the word "bicycle" aroused the ire of Pastor Bob who made reference to it on his own program as "plainly and disgustingly sarcastic, rude, discourteous, insolent, arrogant, bigoted and intolerant. Such low expressions are not much above barbarianism. It certainly discredits Mr. Baker and the IAD he represents to any decent American."

259. Neither Baker nor the IAD ever received any notice of this castigation, let alone a tape, and Baker learned of it for the first time when he took the stand in this hearing. The aftermath is that Pastor Bob, upon learning that the reference to "bicycling" tapes was normal broadcast parlance, did make an apology of sorts on his Sunday program. Baker sent a complaint about this to the FCC and eventually sent a rebuttal tape to WXUR.

260. A further altercation between the IAD and WXUR arose out of Richard Cotten's "Conservative Viewpoint" program and, specifically, his broadcasts on January 11 and 12, 1967. This is a particularly important sequence of events since it illustrates a number of aspects of the personal attack portion of the Fairness Doctrine. The broadcasts in question related mostly to Dr. Littell, chairman of IAD, and it is regrettable that the entire transcript cannot be reproduced here but its great length makes that inadvisable. The Examiner will quote selected passages with the intent of capturing the general sense of the Cotten broadcast but avoiding a selection which would do injustice to the positions of either Cotten or Dr. Littell. The document is in evidence as Broadcast Bureau Ex. 72. Consider the following where Cotten is reading from an article which had appeared in the December 30, 1966 issue

of a periodical called "The Herald of Freedom" and is from time to time interjecting his own comments: (BB Ex. 72, pages 3-4)

"Dr. Littell originally came from Syracuse, N.Y. where he was born in 1917. He has had a long career as an educator, working with young people. He wrote for the publication, 'Social Questions,' of the Methodist Federation for Social Action, a cited communist front. His writings were so radical that they received attention from the House Committee on Un-American Activities in their investigation of Communist Activities in the New York City Area (July 7, 1953). In these hearings three articles by Franklin H. Littell, shown as the director of the Student Religious Association, Line Hall, University of Michigan, were analyzed. The analysis reads as follows:

"MR. COTTEN: Now, folks, before I continue here, this is not Frank Capell's opinion, this is not Richard Cotten's opinion, this is from the House Committee on Un-American Activities describing the writings of Dr. Littell who is the organizer or the chairman, if you wish, of the Institute For American Democracy, Inc. You need to know about this fellow.

"(transcribers note - at this point Mr. Cotten continues reading from the same issue of the Herald of Freedom)

"Mr. Littell's organizational proposals on the infiltration of religion follow closely the cell techniques on infiltration described in the thesis on organization of both the Communist Party and the Communist International....In his second articlehis views put him in favor of planned economy and in the camp of the Communists who like to call themselves liberals....

"MR. COTTEN: Oh, I like this. I like this. Let me go on.

"(transcribers note - Mr. Cotten continues reading from the same issue of the Herald of Freedom)

"To carry out aggressively and boldly a program to win support among church people for a system of planned economy and to build up opposition to the American economic system, Littell strongly advocates the cell concept of organization, developed by the Communists, as the most important element in the formation of the group....The driving force in the Methodist Federation for Social Action is the small cell that knows where it is going, that is disciplined and the driving force in the organization. The record will show that the cell in the federation consistently follows the Communist Party Line....That Mr. Littell knows he is writing about the Communist concept of organization is clear from the following words of his Article, A Cell In Every Church:

* * * * *

"MR. COTTEN: Isn't that priceless folks? Here is this Dr. Littell chairmaning an Institute For American Democracy, Inc., and yet as far back as this report on the House Un-American Activities Committee we know his leanings from his having written about a cell in every church. Let me continue.

"(transcribers note - Mr. Cotten continues reading from the same issue of the Herald of Freedom)

"The cell form of organization, made up of a small disciplined group, bound by a common ideology, meeting in secret behind closed doors, is what Mr. Littell favors and which the leadership of the Methodist Federation for Social Action endorses. What is their purpose? Their purpose is to seize control of the church."

261. In the January 12 portion of the program, Cotten refers to a number of the individuals and organizations who had sponsored IAD. The list is fairly extensive but in each instance he purports to find an association with either communism or some extreme leftist position. His analysis of each follows the same general pattern so the following quotations give a representative picture of the whole: (BB Ex. 72, pages 5-7)

"(transcribers note - Mr. Cotten continues reading from the same issue of the Herald of Freedom)

"Heading the list of committee members described as 'Organizational Leaders,' we find Dore Schary, chairman of the Anti-Defamation League of B'nai B'rith, who has a published record of affiliation with communist-fronts. Another committee member with A.D.L. connections is Samuel Dalsimer, listed as vice chairman of Grey Advertising, Inc., New York. He is a member of the A.D.L. Executive Committee. The A.D.L. has been attacking and undermining conservatives and anti-communists for many years so these two men will undoubtedly be quite an asset to this new organization in its fight against 'extremists of the right.'

* * * * *

"Bishop Grant, president of the Methodist Board of Social Concerns, has been active in the Methodist Federation for Social Action (a cited communist-front) and was reported as signing a protest against the deportation of identified communist, Harry Bridges. Bishop Grant has several other communist-front affiliations according to published reports. Dr. Burt, Episcopal Bishop-elect of Ohio, is reported to have signed a legal brief filed with the U.S. Supreme Court on behalf of Rev. William Howard Melish, an identified communist."

Cotten then goes on to list a number of so-called "left-wing" labor leaders and concludes: "To picture any of these men fighting extremists of the left is really quite amusing."

262. On February 1, 1967, Mr. Baker sent the following memorandum to a list of radio stations which carried "Conservative Viewpoint": (BB Ex. 48)

"It has been called to my attention that on or about January 11th, your station carried a broadcast by Richard Cotten under the name of 'Conservative Viewpoint,' which consisted largely of an attack on this Institute and persons associated with it.

"I also note that you have not yet informed us of this attack as you are required to do by the Federal Communications Commission. Accordingly, would you kindly send us a transcript of this program and an indication of when you can make available to us the time in which to defend ourselves.

"Since a number of so-called 'Radical Right' broadcasters tend to carry the same message, it is entirely possible that others will make similar attacks on IAD or have already done so. Please inform us of any and all such broadcasts."

263. On February 11, 1967 Baker also addressed a memorandum to "Those concerned with Richard Cotten's 'Conservative Viewpoint' program attacking the Institute for American Democracy." In substance this was an attack on the factual foundation of Cotten's broadcast which in this instance was information originally supplied by a man named Frank Capell. Baker contended that Capell was a fraud but the memorandum does not specifically contradict any of the matters which Cotten had broadcast about Dr. Littell.

264. The record contains further correspondence involving Baker, Norris, Cotten and the FCC. There is no point in quoting it since the upshot was a misunderstanding which amounts to a comic anticlimax. On March 29, 1967 Norris wrote Baker that "Mr. Cotten has graciously agreed at his expense to sponsor your requested reply. . . . Your taped broadcast will be aired over Station WGCB Friday, March 31st at 4:14 P.M. and over Station WXUR Friday, April 7th at 4:15 P.M. Mr. Cotten's broadcast time has been preempted by him for this purpose. This arrangement has been made by Mr. Cotten and not the licensees of these respective stations." (BB Ex. 57)

265. In all of this Baker was dealing with Norris -- or with WXUR -- but somehow Cotten became involved as an extraneous party. It appears that Cotten thought IAD would get its reply by paying for it; Norris thought Cotten had offered time paid for by himself and Baker cared not in the least so long as IAD had its innings without cost. The arrangements became hopelessly confused but the denouement was absurd.

266. Station WXUR did, in fact, carry the IAD rebuttal to Cotten but IAD received a bill for \$22.50. This was because (letter of Norris to Baker, April 18, 1967) "our local manager, Mr. Barry, did not follow the instructions of Conservative Viewpoint, but instead followed your instructions, we cannot, therefore, look to Mr. Cotten for payment and we, therefore, await your check in the amount of \$22.50."

267. The rest of the story is not really relevant, except as it reveals a certain intransigence on the part of Norris. IAD apparently never paid the \$22.50, which is as it should be but Norris, over and over again, exemplified an attitude which can only be construed as narrowly commercial. Putting his position in its best light, he was willing for all sides to be represented but he often tried to get remuneration for the station. This, of course, is not what the Fairness Doctrine contemplates but the record does not clarify whether Norris ever truly understood this.

268. The Baker-Cotten sequence is especially significant in the questions it poses regarding personal attacks. Let us assume, which is questionable, that the context was one of public importance. During the course of it, Mr. Cotten made detailed references to the alleged connection of Dr. Littell and others with various organizations which he said were communistic or extreme leftist. At this point, it may be said that there is no more or less reason for accepting the characterization of "extreme leftist" than the similar characterization by IAD of Cotten and others as "extreme rightists" but the matter may be passed. The truly important thing is that controversial discussion normally involves criticism but criticism is not necessarily to be equated with a personal attack as that term is understood within the context of the Fairness Doctrine.

269. Thus the first question is whether there was an attack upon the integrity, honesty or character of Mr. Baker, Dr. Littell or the IAD. The Examiner has found nothing in the above-quoted passages or any others that reflect dishonesty although they do suggest a pinkish hue which a sensitive individual might take to be an attack upon his character. The next question is whether the documentation was correct. To clarify this, let us take an example. If the commentator declares that X is a member of an organization that has been identified with communistic leanings, there is presented a question of fact. To condemn Dr. Littell out of hand for being associated with some group or other would be a heartless and unsubstantiated thing to do but if the administrative process is to be burdened with an examination of all the surrounding circumstances of each "personal attack" it will require far more hearing time than even this prolonged proceeding has consumed.

270. For the sake of common sense, let us assume that the commentator has relied upon some reasonably authoritative source such as a House Committee report. True, this is not an absolute fount of fact but it is one which possesses a *prima facie* claim to unblemished truth. In such a situation, is it a personal attack to quote from such a source? And if a quotation is made, does the speaker have an obligation (or does the station) to send a tape, transcript or summary to the person who is mentioned? These are not easy questions to answer.

271. But let us return to the factual question. If the person accused of having communistic associations -- or any others which may be supposed -- feels offended by the accusation, he should have a chance to set the record straight. The broadcaster may be cognizant of this; yet on the other hand he may not. This points up the difference between arguing the Fairness Doctrine as an abstract proposition and arguing it on the basis of an

evidentiary record. Let us make this plain; the broadcaster is not assumed to be omniscient. He is a human being with all the fallible qualities of humanity. He can honestly make a mistake.

272. There is absolutely no way of determining from this record whether Dr. Littell was an "extreme leftist" or not and, even if he was, there is a lingering doubt as to whether that is a personal attack. Even with this much certainty there remains the unanswered question as to whether accusing a person of being what he is constitutes a personal attack.

273. Suppose, for example, that a commentator stated that Nixon were a Democrat or Humphrey a Republican. Factually neither statement would be true but would it be a personal attack? Under certain circumstances, the answer could be "yes". The important thing is that judgment on such a point would entail an extensive hearing as to the truth of the matter alleged.

274. Considering all these things, the Examiner is forced to conclude that what was said about Dr. Littell and the IAD by Mr. Cotten was not a personal attack.

275. In another episode during the spring of 1967, IAD learned from Station KONI that there had been a possible attack made upon it on Major Bundy's Church League of America show and Norris was forthwith requested to supply a tape. Following a rejection of this on the ground that Baker had not yet paid for his reply to Cotten, Baker renewed his demand. To this Norris wrote a curious response which referred to a pending petition to set aside the designation order in this proceeding.^{17/} It seems to have been his understanding that this circumstance suspended operation of the Fairness Doctrine but he concluded with the usual offer to sell time. So far as the record shows, Baker never received a tape or transcript of the program in question but Bundy, in a letter of May 3, 1967 addressed to Baker, stated that the language used in the broadcast had been derived from an article in a magazine which had been given to Dr. Littell on the night of its publication. There is no way of confirming from the record whether the broadcast was actually based on the article but this, at least, was the extent of notice to the victim of the alleged attack. Aside from the instances heretofore specifically noted, there was no showing that Norris or anyone else on behalf of the station ever sent a tape or other notice that there might have been a personal attack. This, of course, excepts the many instances where Dr. McIntire notified persons of critical remarks and attempted to secure their appearances on his programs. It also excepts the performance of Mr. Burak.

^{17/} The litigation referred to was a petition to set aside the designation order in this proceeding on the grounds, inter alia, that the Fairness Doctrine violates Article I, Section I, and the First, Fifth, Ninth and Tenth Amendments to the Constitution. The case was dismissed per curiam. No. 20,788, C.A.D.C., May 18, 1967, Petition for Reconsideration en banc denied June 19, 1967, cert. denied, 19 L.Ed. 2d 467, December 4, 1967.

Conclusions

1. This is a proceeding on applications for renewal of licenses of Stations WXUR and WXUR-FM, Media, Pennsylvania. At the heart of the proceeding is the question of compliance with the Commission's Fairness Doctrine but there are other issues which to some degree or other are related to this. The hearing was of considerable length and compiled a record of more than 7,800 pages in addition to several hundred exhibits. It is quite possible that in no other instance have the affairs of a broadcast station been subjected to such intensive and searching scrutiny. Obviously the outcome is of considerable importance, not only to the licensee of WXUR, but to the industry in general because it is no exaggeration to say that every broadcast station in the United States in some degree or other is under judgment in this proceeding. This applies to the large licensees, the networks and the small independents of which Brandywine-Main Line Radio, Inc. is one. It must be remembered from the outset that WXUR is a relatively small station by national standards, operating with only 500 watts power, daytime only.^{1/}

2. At the outset it should be confessed that in recounting the facts, many sections of testimony have been either elided or greatly condensed for the simple reason that more complete coverage would have prolonged this opinion to hundreds of pages without gaining in understanding of the essential problems. This was particularly true of the many transcripts of individual broadcasts. As to the majority of these, no findings of fact have been made for the practical reason that such a thing would be impossible. Any attempt in this direction would have merely resulted in an appraisal or critique of what was said, something resembling a literary review rather than an opinion. Wherever possible, therefore, the Examiner has attempted to paraphrase the evidence into an accurate capsule so that its true substance could be grasped.

Issues 1 and 2

3. The subjects encompassed in the issues relate to four evidentiary areas which, though related, are nonetheless distinct. The first of these pertains to local needs.

4. Issues 1 and 2 are addressed to what is usually termed area familiarity and the specific service rendered to area needs and interests. Let it be said at the outset that neither Norris nor anyone else on behalf of WXUR^{2/} conducted a systematic area survey in the customary sense. Two matters, however, must be noted. The Commission has emphasized that a mere ritualistic "survey" is not important.^{3/} This refers to the spot checking

^{1/} WXUR-FM, of course, operates at nighttime but the FM station had no particular significance in this hearing in separation from its AM affiliate.

^{2/} The practice followed in the Findings of referring to the combined AM and FM operation by simply using the call letters "WXUR" will likewise be observed here.

^{3/} Report and Statement of Policy re: Commission En Banc Programming Inquiry, 20 RR 1902 (1960).

of opinions from community leaders and citizens which applicants customarily introduce when area familiarity is in issue. In this case, the application for transfer was primarily motivated by a belief that a need existed for the programs of Dr. McIntire in the Philadelphia area and the Commission was advised of this when it acted upon that application. Subsequent to the transfer, there was a kind of survey made by the station and it was based upon renewal applications of other area stations on file with the Commission.^{4/} As a result of this survey, the management concluded that religion was underserved in the area and this especially referred to conservative fundamentalist religion. There is no reason to doubt the good faith of the applicant in reaching this conclusion nor is there any evidence to support an affirmative finding that it was incorrect.

5. Perhaps the trouble lies in a preconception of what constitutes a local need or a local interest. While it may be conceded that the greater part of America possesses a certain degree of homogeneity in that each of its communities has a sense of pride in its charities, local governments and schools, it is also true that some communities have distinctive needs and interests. Delaware County, for example, is characterized by ethnic variations; a sizeable number of Polish, Irish and Negro inhabitants. It is also fairly clear that the Philadelphia area contains an appreciable number of conservative fundamentalists in the religious sense since the demand for this kind of programming can scarcely be doubted in view of all the evidence. Dr. McIntire could hardly have raised the substantial sums which were collected as a result of his marathons if there were not a considerable body of appreciative listeners.^{5/} In short, the determination as to what is needed or what listeners desire to hear is a matter for the good faith judgment of the broadcaster. The men of Faith Seminary, including both Norris and Dr. McIntire, had firm convictions about the need for the type of programming which is epitomized by 20th Century Reformation Hour and there is no ostensible reason for saying that theirs was a capricious judgment.

6. Obviously, however, the question goes beyond the matter of religious needs. There are a variety of other needs such as those of the multifarious ethnic, political and charitable groups in the Delaware County area which ought to be considered by any broadcaster located in Media, Pennsylvania. In the absence of a typical survey, there can be a recognition by an applicant that such needs exist and this can be demonstrated in ways other than a house-to-house interview method, a questionnaire sent to selected citizens or some other technique for ascertaining popular opinion. In actual practice, Brandywine-Main Line Radio, Inc. relied upon two very useful sources of information regarding the needs of the community. One of the most important was Mrs. Marion Pedlow who had been retained by the previous owners as a consultant on

^{4/} Findings, paragraph 212.

^{5/} Findings, paragraphs 134-135.

the subject and the record shows very clearly that her morning "chit-chat" program was specially tailored to satisfy the needs of Media and its environs. Another source of information was Carl Mau, whose knowledge of Delaware County was outstanding and whose program "Delaware County Today" was addressed to the interests of local residents in an exemplary degree. The record is abundantly clear that these two individuals had many relationships with the community life of Delaware County in its political, social, charitable and other aspects.^{6/}

7. The next question is whether WXUR, under the ownership by FTS, served the needs and interests of the community as they found them. The programs conducted by Mrs. Pedlow and Mr. Mau, by all normal standards, did provide this service. A third community contact was Mr. Burak whose program, in addition to expressing a leftist political viewpoint, was designed to defend consumers against fraudulent practices.^{7/} In terms of what the average American broadcast station does, a fact of which the Examiner must rely upon his own knowledge through years of hearing cases involving this kind of issue, all of these persons gave air time to an exceptionally wide variety of community topics. All this is apart, of course, from questions as to whether WXUR narrowly represented the parochial and political views of its owner but there can be little question from the evidence that it attempted to serve and did, in fact, serve every legitimate need or interest in the community.

Issues 6 and 7

8. In the 1949 Editorializing Report, the broad philosophy of the Fairness Doctrine was set forth and the particular matter involved in Issues 6 and 7 was expressed as follows:

"We fully recognize that freedom of the radio is included among the freedoms protected against governmental abridgement by the First Amendment. . . . But this does not mean that the freedom of the people as a whole to enjoy the maximum possible utilization of this medium of mass communication may be subordinated to the freedom of any single person to exploit the medium for his own private interest."
(Editorializing by Licensees, 1 RR 91:201, 91:210-11 (1949).)

9. At issue here, among other things, is the question as to whether Faith Seminary used its AM and FM stations as a platform for the dissemination of its own private sectarian and political views in

^{6/} Findings, paragraphs 180, 196, 198, 213 and 214.

^{7/} Findings, paragraphs 203 and 208.

detriment to the public's right to hear contrasting views. To be clear about this, let us repeat the language of Issue 6:

"To determine whether during its license period the applicant has utilized its stations to serve the sectarian and political views of its principals and to raise funds for their support rather than to serve the community generally and to serve impartially all the various groups which make up the community."

There are two answers to this; one is very simple and it is affirmative as to the first part of the issue. The station was used by the principals of FTS for its sectarian views and it was also used to raise funds but the trouble begins at the adverb "rather" which introduces a second question. As has been shown already, the station did make a good faith effort to serve the community as well as present its "private sectarian, etc." views and to raise funds.^{8/} So far as the Examiner is aware, there is nothing wrong with raising funds. As a matter of fact, all commercial broadcasting in one way or another is based on raising funds to pay for the program fare but there is no logical reason why a religious group should be interdicted in this respect any more than a manufacturer of pain-relievers. The one is direct; the other indirect. Yet it is implicit that service to the community includes the proposition that other viewpoints be given their innings.

10. There is no doubt that the religious and political philosophy described as conservative fundamentalist has been frequently expounded over WXUR and, broadly speaking, these are philosophies subscribed to by the directors of the Seminary. The statement has been qualified as a broad one since there was testimony to the effect that their views were not monolithic but permitted scope for individual differences. Nevertheless, they can be contrasted fairly with other positions such as those of the National Council of Churches or the Institute for American Democracy. They can also be contrasted with the views of Mr. Marvin Burak, Reverend Lilley and a variety of other gentlemen who had access to the facilities of WXUR. Assessing this in terms of the public's right to hear all views on important issues, one cannot ignore the evidence that other stations in the Philadelphia area -- and there are a great many -- had effectively blocked out this fundamentalist philosophy so that, in an area sense, WXUR provided a balance of programming for the benefit of the public. The question suggested here is one which to date has apparently received consideration only from the law reviews^{9/} and the Examiner has mentioned it merely to show the many facets of judgment which this case affords. The issue can be decided upon the uncontroverted demonstration that diversity of viewpoints was presented over WXUR and that the station was not monopolized by the private sectarian and political beliefs of FTS or, more properly described, the conservative fundamentalist philosophy.

^{8/} Findings, paragraphs 134-135 and 219; but Burak also solicited funds, findings, paragraph 202.

^{9/} See Robinson, the FCC and the First Amendment: Observations on 40 Years of Radio and Television Regulation, 52 Minn. Law Review 67, 142 (1967).

It should be repeated that there is no prohibition on the expression of that philosophy and, indeed, there could not be under the First Amendment because that would necessitate a judgment upon the validity of the views themselves. The issue is answered by stating simply that views ranging from fundamentalism to agnosticism -- and a miscellany of intermediate positions -- were given voice on WXUR and if a question of balance is raised, it must surely apply to every other broadcast station in the Philadelphia area.^{10/}

11. Next, it is to be noted that WXUR, on several occasions, lent its facilities to the promotion of Dr. McIntire's opposition to Resolution 160 and similar positions, but two important considerations must be recognized.^{11/} Even assuming that McIntire was an eminence grise in the whole operation, he was not thereby divested of his rights as a citizen. Secondly, the entire broadcasting format over the license period and since has been one which welcomed all opposing viewpoints, including those of the proponents of Resolution 160. What more could be asked in the name of fairness than this?

12. Furthermore, it is not quite accurate to say, as the Bureau does, that WXUR gave no voice to Catholics, Jews or Episcopalians. Monsignor Adamo, a Catholic, appeared on programs as did Reverend Aulenbach of the Episcopal faith. Jewish rabbis were invited and time was offered to the GPCC and the United Church of Christ. As to other Protestant faiths, there were the programs of Reverend Lilley, Reverend Licorish and others.^{12/} Moreover, there were guests on the Mau show who expounded a considerable number of viewpoints which represented a wide variety of subjects.^{13/}

The History of the Licensee

13. In the findings of fact, events in the history of the ownership of WXUR by FTS have been related with some care because they had an intimate connection with the whole picture. A number of conclusions are compelled by these events. Commencing with the vigorous protests against the transfer of control^{14/} and going through the post-grant complaints up to the Media Borough Council action against the station^{15/} and House Resolution 160,^{16/} there was a consistent pattern of animosity toward FTS and the station. Whether this was justified or not is, of course, not the

^{10/} Findings, paragraphs 162, 165, 174-179, 198, 201.

^{11/} Findings, paragraphs 57, 126, 133-136.

^{12/} Findings, paragraphs 96, 159, 162, 164-166, 196.

^{13/} Findings, paragraph 198.

^{14/} Findings, paragraphs 10 and 47.

^{15/} Findings, paragraphs 48-56.

^{16/} Findings, paragraph 57.

point. Its sole significance is that from the beginning WXUR was marked for trouble and the response of its management was remarkably cooperative with the opposition, considering everything. According to the complainants, this was merely a gesture to strengthen the station's position on renewal but, leaving motives aside, the fact is that many attempts were made to get spokesmen from the complaining groups, sometimes with success. For all that the record shows, both sides may have been sincere in their beliefs but it hardly matters. There is nothing in the Fairness Doctrine which requires purity of motives. Were it otherwise, we should be locked in a hopeless task of making discriminating judgments on the ethics of all individuals concerned and passing upon questions of the utmost refinement.

14. As amended,^{17/} the rules now exempt, among others, "bona fide newscasts, bona fide news interviews, and on-on-the-spot coverage of a bona fide news event (including commentary or analysis contained in the foregoing programs)" but they do not exempt editorials.^{18/} In a footnote in its pleading before the 7th Circuit Court of Appeals, which the Court quoted in its decision, the Commission clarified the requirements as follows:

"Some other matters simply call for a common sense reading of the rule. Thus, if the person attacked has previously been afforded a fair opportunity to address himself to the substance of the particular attack, fairness and compliance with the rule have clearly been achieved. Similarly, as shown by the introductory phrase, 'when, during the presentation of views on a controversial issue of public importance . . .,' the rule is applicable only where a discussion of a controversial issue of public importance contains a personal attack which makes the honesty, integrity, or character of an identified person or group an issue in that discussion." (See Footnote 48, *post.*)

15. It thus appears that the personal attack rules are somewhat circumscribed and that interpretation of the rules must be guided by common sense. In further explanation, the Commission, in adopting modified rules, said this: (12 FCC 2d 253)

"In sum, since our goal is to encourage robust, wide-open debate, we have reexamined the question presented here, and have concluded that the application of the personal attack principle to these news-type programs can be more limited, thus simplifying the licensee's responsibility in fulfilling his journalistic functions without materially interfering with the public-interest objectives of the personal attack principle."

16. Several considerations must now be stated or reiterated since they are of the utmost importance to the decision. This is a proceeding on renewal of license, one in which Brandywine-Main Line Radio, Inc.

^{17/} Personal Attack Rules, 12 FCC 2d 250, March 27, 1968.

^{18/} 12 FCC 2d 254.

could be taken off the air and in that respect it is unlike a proceeding to determine whether a forfeiture should lie. In other words, this is the supreme penalty, one which by custom has been reserved for transgressors whose acts of disobedience or folly have reached major dimensions. Furthermore, in renewal hearings, the licensee is adjudged on an overall evaluation of its performance rather than on isolated instances of error.^{19/}

17. The matter was designated for hearing prior to the codification of the Fairness Doctrine into the rules of the Commission although that event occurred before actual hearings were held in Media. Issue 5, which relates to personal attacks, is broad in scope and does not specify particular instances of violation as would probably be the case in a forfeiture proceeding. The significance of this, as understood by the Examiner, is that if personal attacks, as comprehended within the Doctrine were to be found, they would be considered as part of the entire performance of WXUR and would not necessarily incur the death penalty unless they were frequently repeated and were severe in nature. Applying the rule of common sense which the Commission indicated to the Court of Appeals, the determination of whether a particular broadcast contained a personal attack and whether the party attacked received notice must be made by a strict application of all the principles involved and doubts should be resolved in the licensee's favor.^{20/}

18. There is a manifest relationship between Issues 3 and 7 in that both raise the question of whether WXUR fully informed the Commission about its proposed programming and whether they misled the Commission into granting the transfer application. The Bureau and Intervenor profess to find misrepresentation in several areas. These are compliance with the Fairness Doctrine, which was promised, a failure to use the facilities for the benefit of religious groups other than those connected with FTS and the promise to serve the community generally. In a record possessing the dimensions of this one, there is generally some evidence to support the position of each party and there are certainly areas of fact where it is difficult to assert answers with dogmatic precision, whether one way or the other. Considering the importance of the case, however, the Examiner believes it his duty to reach results in the light of the entire picture rather than to be persuaded by fragmented portions of evidence. Abiding by that approach, it is concluded that the plans of the applicant (FTS) were made known to the Commission without reservations.

^{19/} Report and Statement on Program Policy, *supra*, Footnote 3 of Conclusions. See also *Westinghouse Broadcasting Company*, 22 RR 1023 (1962); *Melody Music, Inc.*, 2 FCC 2d 958 (1966), 6 RR 2d 973; *Banzhaf v. FCC*, USCA for the District of Columbia, decided November 21, 1968.

^{20/} *Radio Broadcasting for the Christian Crusade*, 11 FCC 2d 687 (1968); 12 RR 2d 182.

19. If there is one fact which shines forth with crystal clarity, it is the intention of FTS to provide Dr. Carl McIntire with a radio platform and it was certainly no secret before the transfer or at any other time.^{21/} While the addition of the conservative programs, generally characterized as the hate clubs, was not specifically proposed, the matter must be considered in relation to other facts.^{22/} FTS did, in fact, commit itself to comply with the Fairness Doctrine and this, in part, meant the presentation of balanced programming in such areas as politics and religion. While the hate clubs were brought in early in the operation, there were also repeated efforts to present other viewpoints and to an appreciable extent these were effectuated on such programs as FOS, Delaware County Today and Reverend Lilley.^{23/} Certainly the program of Marvin Burak, a socialist and agnostic, cannot be ignored nor can the oftentimes pathetic Inter-faith Dialogue.^{24/} As the Bureau correctly notes, this program did not appear until the time of the Media Borough Council action but the important fact is that it did appear, even if tardily. Conflicting viewpoints were also expressed in considerable measure on Freedom of Speech where widely contrasting opinions were given over the air by callers to the program. It might also be borne in mind that the production of any program is subject to some vicissitudes over which even the conscientious broadcaster has no control and this certainly seems to have been the case with Dialogue. As has been related elsewhere,^{25/} there were many appearances by clergy of other than fundamentalist churches and there were appearances by exponents of assorted political viewpoints, not in rare or exceptional cases, but in considerable numbers. On the whole, the record does not reflect an intent by FTS to mislead the Commission nor does it show a signal failure to match promise with performance.

20. Obviously WXUR did not render the exact schedule it had proposed, at least not under the same program titles but this was not necessarily a misrepresentation. It appears that FTS laid bare all its material intentions, including the presentation of Dr. McIntire's 20th Century Hour and other fundamentalist programs.^{26/} It promised compliance with the Fairness Doctrine and to this end came up with FOS and later with such shows as Delaware County Today and Left, Right and Center.^{27/} If the titles differed from those in the application, it is a small matter since we are concerned with substance, not form.

^{21/} Findings, paragraphs 12-16.

^{22/} Findings, paragraphs 12-13, 39, 221 and 227.

^{23/} Findings, paragraphs 90-92, 94-97, 174-179, 180-182, 196-198.

^{24/} Findings, paragraphs 148-168.

^{25/} Findings, paragraphs 173-179, 198.

^{26/} Findings, paragraphs 9, 12-14, 16.

^{27/} Findings, paragraphs 91-97, 182, 194, 196-199, 215-218.

21. The Bureau's objections, however, insinuate a more difficult question. There is an implicit suggestion that the introduction of the so-called "hate clubs" was improper because of their conservative character. It is charged that the programming instituted by the new licensee served "as a divisive force in the community in that persons and groups with views differing from those espoused by the applicant were disparaged and vilified. Members of the Negro and Jewish communities were consistently ridiculed and castigated." The Borough Council resolution and the Legislature's House Resolution 160 are then cited as evidence of this.

22. A ready answer to this is that the Borough Council action was later rescinded after Livezey had been removed from FOS and, further, that House Resolution 160 was received in evidence simply to show its existence but not for the truth or falsity of its contents. The facts do show that Livezey "vilified" minority groups and sometimes "castigated" persons who telephoned his program,^{28/} these being the primary causes for his ousting. On the other hand, the record is unambiguous on the point that Dr. McIntire, Mr. Roper, Dr. Cohen and the Seminary itself were strongly opposed to racial bias.^{29/} But the argument of the Bureau raises a serious First Amendment problem which cannot be dismissed by simply concluding that Livezey was a "divisive" force and that Livezey's tenure was terminated.

23. All controversial discussion is likely to be divisive to some extent and the more robust it becomes, the more divisive it will be. There is no reason, however, to suppose that the listening public has feelings so tender that they cannot bear vigorous debate. On the contrary, the Editorializing Report of 1949^{30/} was founded on precisely the opposite conviction as shown in its quotation from the Associated Press case:

"[The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom.^{31/} Freedom to publish means freedom for all and not for some."

^{28/} Findings, paragraphs 65, 72-74, 77-82, 191.

^{29/} Findings, paragraphs 79, 80, 144. See also Anti-Defamation League of B'nai B'rith v. FCC, 14 RR 2d 2051 (September 30, 1968).

^{30/} Editorializing by Broadcast Licensees, 1 RR 91:201.

^{31/} Associated Press v. United States, 326 U.S. 1 at page 20.

24. In a somewhat kindred vein, the Bureau and Intervenors have suggested that a lack of courtesy on the part of a moderator constituted an infraction of the rules. This related not only to Livezey's handling of FOS but also to Carl Mau and his Delaware County Today program where he freely proclaimed that he sometimes "roughed up" his guests and threw curves at them.^{32/} This invites a number of reflections. Such things as a speaker's tone of voice, his choice of language or his fondness for asking certain questions are peculiarly within his own discretion, provided, of course, he avoids obscenity which is proscribed by statute. Leaving the "roughing up" aside, however, it is perfectly apparent that Mau did not confine his repertoire to complacent guests who agreed with him; he actively sought out persons whose views were, to say the least, ungenial with his own or those of Dr. McIntire. On this program as on FOS, there were many speakers who took so-called "liberal" positions on such subjects as civil rights, Bible reading in the schools and the Vietnam War.^{33/} But there was more to it than that. At least in the appearances of Professor Davidson of Haverford College (a pacifist) and the civil rights advocates, Stanley Branch and Dr. Rouse, any fair reading of the transcripts clearly indicates that if anyone was "roughed up" it was Mau himself. Even in the more genteel interviews, Judge Olmsted on Quakerism and reapportionment, Mrs. Olmsted on WIL and pacifism, Reverend Kibby on Unitarian thought and Mrs. Porter on Livezey and civil rights, the transcripts do not manifest rudeness by the moderator. One might criticize his choice of questions but this is certainly beyond the scope of the regulatory process. Let us assume that such guests were roughly handled, the assessment of Mau's civility or lack of it, let alone his choice of questions, is perilously close to an area forbidden under the First Amendment. If Mau were truly such a formidable host, there was no obligation to meet him in his lair at the Towne House. Mrs. Williams, for example, said she did not feel she could appear on the show and present her viewpoint.^{34/} This was unquestionably her personal privilege but it does not follow that an agency of the government is, therefore, empowered to teach better manners to the program moderator.^{35/}

25. What is involved here is an application of the policy and the rules to a specific situation, one which has been tested through a lengthy evidentiary hearing and which possesses those aspects of high drama that distinguish life from the abstractions of theory. In the application of the rules, there is a responsibility to consider the situation of WXUR in the vast panorama of American broadcasting since that is really what we are dealing with.

^{32/} Findings, paragraphs 194, 195, 200.

^{33/} Findings, paragraphs 192, 194, 196.

^{34/} Findings, paragraph 195.

^{35/} Pacifica Foundation, 36 FCC 147 (1964), 1 RR 2d 747.

26. There are open questions to be sure. What is an issue of public importance? What is a personal attack within the framework of discussing such an issue? What limits are to be allowed the broadcaster in making good faith decisions on these questions? As abstract philosophical propositions these are one thing but in the hurly-burly of everyday commercial broadcasting they assume a somewhat different image. For example, is the same test to be applied to a large, well-financed and well-staffed station as to a small independently-operated station? One is obliged to recognize that the small broadcaster is likely to run into problems which for fiscal reasons are well-nigh insoluble as, for example, in monitoring controversial discussions. This is a task which a large operation might handle with skill but a station with a small staff would be defeated by it.

27. One more word must be said about the significance of having an evidentiary record. The questions as to whether a controversial issue of public importance was discussed, whether an attack was truly personal within the terms of the Fairness Doctrine and, most important, whether the licensee used good faith in assessing these matters and giving notification to a possible victim of attack are not always easy to answer. Yet they are reasonable questions and are such as can be answered with the application of prudence and discrimination. Their validity, when related to an evidentiary record, lies in their having factual support for any conclusion which may be reached. In the present case, it must be reemphasized to the point of being tiresome that a knowledge of the facts, as recited in the Findings, is absolutely essential to any comprehension of what is involved here.

28. With so many viewpoints having been expressed over WXUR on so many different issues, it would be futile to attempt any conclusion in terms of equating the time given to each. Fortunately the Fairness Doctrine does not demand this kind of approach. What it does demand is an honest and good faith effort by the licensee to air contrasting, conflicting and varying attitudes towards subjects of important controversy. In the broad perspective of this record, it is almost inconceivable that any station could have broadcast more variegated opinions upon so many issues than WXUR.

29. It was a strange phenomenon how the case emerged as the hearing progressed. In its early stages it seemed that every dereliction imaginable had been committed by the management and employees of WXUR. Yet as the weeks rolled by the picture changed. The multitudinous seas of opinion were navigated in what seemed to be a breath-taking course and this, indeed, was a main cause of the station's difficulties -- not that it was narrowly partisan but that it sought and received too much controversy.^{36/}

^{36/} For example, in the instances of Livezey and Burak.

30. It is all too true that the style of presentation over the air -- sometimes so racy as to make the gorge rise -- was not what men of refined tastes would deem expedient but this is obviously beyond the purview of judicial review. The American scene has always been characterized by rough-and-tumble and fervent rhetoric but of such stuff is free, robust controversy fabricated. We are more than mere academicians -- we are a free people, for better or for worse.

31. There is a strange irony in the fact that WXUR has attempted to do what broadcasters have been exhorted to do and that is to offer vigorous discussion of controversial issues. The station has, in fact, presented such discussion in about the same degree that most stations offer entertainment. But its methods and the personalities employed to accomplish this end have sometimes had woeful consequences. For a stranger attempting to comprehend the scene it would require an Orwellian prescience in reverse. He would have to imagine that radio existed in 1860 and that there was a station whose personnel included such figures as Lowndes, Jeff Davis, Sumner and Thad Stevens. Curiously enough, the men who conducted this experiment in controversial broadcasting were sometimes violently and vituperatively opposed to one another. Both Livezey and Burak had occasion to complain of personal attacks against them and both showed what can only be called condescending disapproval of the more mild mannered Mau. Yet Mau has been accused of "roughing up" his guests.

32. Unquestionably it is in the area of personal attacks that WXUR has been revealed in its worst light. The nature of these attacks will be discussed but enough has come out of the record to conclude that such attacks probably did occur and, what is worse, that management did very little to comply with the mandate of the rules in supplying tapes or summaries. Usually, the individual attacked was obliged to request a tape and, even then, he had difficulty.³⁷ In weighing this factor, however, one must bear in mind that this is a proceeding on the renewal of licenses and in renewal cases the entire performance has to be considered.

33. In renewal proceedings, such as this one, it is customary to examine the entire record of the applicant rather than dwell upon some singular deficiency.³⁸ In other portions of this opinion, it has been pointed out that WXUR has made a creditable record of serving local needs and interests, of balancing its own viewpoint with viewpoints in contrast, in declaring its main purposes to the Commission before the transfer of control and in giving vent to positions sharply opposed to its own. Only in the matter of protecting persons from personal abuse did it show a signal failure. To do justice one must consider other factors.

³⁷ Findings, paragraphs 242, 245, 250-252, 256, 259, 275.

³⁸ See Footnote 19 of Conclusions.

34. Those readers who have had the patience to read all of the quotations from Livezey's program in paragraph 65 of the Findings will possibly have formed the conclusion that this was beyond the Pale and that, in any event, it did little to enlighten the public. The soundness of that judgment, however, is not the point in issue. Whether Livezey was uncouth, whether FOS was the best vehicle for encouraging lively discussion of important issues, whether it enlightened anyone or whether it was just badly managed are speculations outside the limits of this opinion. The more flagrant passages might have been excised if Livezey had possessed a delayed broadcast mechanism (DB device) but he did not and there was no rule requiring it.³⁹ Livezey, himself, thought that a DB apparatus would have been salutary but Norris would not hear of it. Be that as it may, the call-in type of show does lend itself to eccentricities, especially when conducted by a moderator like Tom Livezey. On the other hand, FOS under ideal conditions might have been or might still be a successful medium for airing diversified opinions and the determination to carry it cannot, therefore, be condemned out-of-hand as an instance of bad management. It was one of those decisions which were properly within the discretion of the licensee. Norris came to realize that he had made a mistake in his choice of a moderator -- a conclusion in which Roper certainly joined⁴⁰ -- and the man was removed. From that time on, there seems to have been little trouble with the program and it would be excessive to amerce the licensee for one sorry experience.

35. Unquestionably much of the public resistance was generated by the FOS programs conducted by Tom Livezey and the examples already cited leave no illusion as to why this happened. Within the limits of this proceeding, however, it would have made no difference if, instead of Livezey or FOS, there had been a thunderous hour of rock-and-roll, a lengthy dissertation on witchcraft or an unvarying production of medieval plainsong. We are not concerned with the quality nor with matters of taste.⁴¹ The story, in essence, means simply that Livezey evoked hearty antagonism and that the management of the station eventually responded by removing him from the scene. After that there was far less friction between management and public. There were no further Borough Council resolutions but, on the contrary, there were appearances by advocates of views which Livezey and, possibly, the men of FTS found distasteful.⁴²

³⁹ Findings, paragraphs 91, 101, 243.

⁴⁰ Findings, paragraphs 76-85.

⁴¹ Pacifica Foundation, 36 FCC 147 (1964), 1 RR 2d 747.

⁴² Findings, paragraphs 93-97.

The Fairness Doctrine -- Background

36. The Fairness Doctrine is the product of an evolutionary process whose history has been recounted on several occasions and need not be dwelt upon here.^{43/} Underlying the Doctrine is the purpose which was stated in the Commission's 1949 Report^{44/} and repeated in a Primer issued in 1964 for the use of broadcast licensees:^{45/}

"... It is this right of the public to be informed, rather than any right on the part of the Government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting."

Program Balance

37. The situation is thus one where something more than a literal application of rules to given facts is required. It is not like the case where a licensee allows its directional antenna to fail in adjustment, where mathematical calculations and measurements determine the degree or severity of the infraction. To some extent it is concerned with the character of the licensee or its principals but more fundamentally it is related to some of the most cardinal propositions of Anglo-American jurisprudence. The task, therefore, is to understand the agitated world of WXUR and Delaware County in the philosophical context of freedom of speech as that concept has evolved and has been defined through constitutional processes. To do this one must first clearly comprehend a number of basic propositions.

38. "The fairness doctrine," says the Primer,^{46/} "deals with the broader question of affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance." It goes on to say that the licensee, in applying the Doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation and declares that in passing on any complaint in this area the Commission's role is not to substitute its judgment for that of the licensee for any of the programming decisions. It follows that there "is thus room for considerably more discretion on the part of the licensee under the fairness doctrine than under the 'equal opportunities' requirement,"^{47/} meaning the requirement specified by Section 315 of the Communications Act.^{47/}

^{43/} Red Lion Broadcasting Co., Inc. v. FCC, 381 F.2d 908 (1967), cert. granted 389 U.S. 968 (1967).

^{44/} Editorializing by Broadcast Licensees, 13 FCC 1246; Vol. 1, Part 3, RR 91:201; 25 RR 1901.

^{45/} Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 2 RR 2d 1901; 29 Fed. Reg. 10415.

^{46/} Conclusions, Footnotes 3 and 45.

^{47/} 48 Stat. L. 1088 as amended, 47 U.S.C. §315 (1964).

39. The Examiner is aware of the pendency of two appellate court decisions affecting the Fairness Doctrine. One of these was in the Court of Appeals for the District of Columbia, arising out of WGBC, the Red Lion station's refusal to give reply time. Red Lion Broadcasting Co., Inc. v. FCC, 381 F.2d 908 (1967), cert. granted 389 U.S. 968 (1967), 390 U.S. 916 (1968). Red Lion Broadcasting Co., Inc. has also filed an application to construct a new UHF television station in Red Lion, Pennsylvania. That application was designated for hearing by order released April 30, 1968 (FCC 68-453), but proceedings were suspended pending the final outcome of the Media case. The other appellate case was recently decided by the 7th Circuit in Radio Television News Directors Association, et al. v. United States and FCC, ___ F.2d ___ (September 10, 1968). There is an apparent conflict between the holdings and presumably the conflict will be decided by the Supreme Court but in the meantime the Examiner conceives it to be his bounden duty to follow the Fairness Doctrine and to attempt its application in such a way as to meet any objections. An extremely important distinction, however, must be noted. In neither of the two cases referred to was there an evidentiary hearing as there was here. There is a valid distinction between a broad statement of principle and its specific application to a factual situation. To apply the principle in such a way as to defeat its very purpose would manifestly be an injustice, a fact which has particular importance in this case. To put this very succinctly, if the licenses of WXUR and WXUR-FM were to be denied on the grounds that a number of isolated infractions really did occur, it could very conceivably result in silencing all controversial discussion on American radio and television.^{48/} Or, as an alternative, it could mean that discussion would henceforth be a diluted parlor chat in which such restraint was exercised that the outcome would be insufferably dull and totally unenlightening.

40. At this point it is appropriate to review what exactly we are now being called upon to do. First, the object is to promote robust discussion of controversial issues but only under the safeguards of protecting individuals from character assassination and also to provide a forum for contrasting viewpoints. The free expression of ideas is more than an empty phrase. In the words of one of the greatest exponents of free speech who ever lived, "if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought -- not free thought for those who agree with us but freedom for the thought that we hate." Mr. Justice Holmes, dissenting in United States v. Schwimmer, 279 U.S. 644, 654-55 (1929). Let us refer to the facts of the present case for a moment to understand the purport of this statement.

^{48/} This possibility has been noted in other places. See RTNDA v. United States and FCC, ___ F.2d ___ (September 10, 1968). See also Findings, paragraphs 137, 138.

41. As shown by the facts of record, Dr. McIntire -- or perhaps the ebullient Marvin Burak -- expressed opinions which in some quarters would be considered abhorrent. It scarcely needs to be said that the soundness of those views is entirely irrelevant to this decision but they were uttered over the airways and they were -- we must assume -- neither slanderous nor subversive. In short, there was no conceivable legal reason why they should not have been expressed, notwithstanding the possibility that they were distasteful, incorrect or even absurd. Ever bearing in mind the Fairness Doctrine, it is apparent that the only burden on the licensee at this point was to give opposing views a chance for utterance and to protect persons who might have been attacked with a chance for reply.^{49/} In other words, a proponent of an idea may speak his mind at liberty provided those opposed are given some time for response and those attacked are given the opportunity of defending themselves. If these propositions are granted, then the broadcaster is exonerated, no matter how objectionable the ideas expressed by the speaker nor how calumnious his remarks.

42. In order to comprehend the full impact of this proposition, there must be a brief digression in order to see the case in its entire perspective, forgetting the variegated details which suggest violation on the one hand or conformity with the rules on the other. The philosophy of Norris was one of extreme latitudinarianism, that is, to permit every expression of ideas which the moderators or callers on FOS and other shows might wish to give. The dangers of this are manifest but the concept is not without respectable authority. John Stuart Mill had this to say:

"All silencing of discussion is an assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common."^{50/}

One might almost suppose Mill had been studying the Fairness Doctrine and the controversies broadcast over WXUR when he wrote these observations:

"Strange it is that men should admit the validity of the arguments for free discussion, but object to their being 'pushed to an extreme'; not seeing that unless the reasons are good for an extreme case, they are not good for any case."^{51/}

"Acts injurious to others require a totally different treatment. Encroachment on their rights; infliction on them of any loss or damage not justified by his own rights; falsity or duplicity in dealing with them; unfair or ungenerous use of advantages over them; even selfish abstinence from defending them against injury -- these are fit objects of moral reprobation, and, in grave cases, of moral retribution and punishment."^{52/}

^{49/} Editorializing by Broadcast Licensees (Footnote 44, *supra*).

^{50/} Mill "On Liberty," "The English Philosophers," Modern Library Ed., page 962.

^{51/} Ibid. page 965.

^{52/} Ibid. page 1010.

43. To relate these comments to the case at hand, one must descend from a philosophical Olympus and witness what was going on at Station WXUR in Media, Pennsylvania. There was an attempt, however inept, to allow wide-swinging utterance of all shades of thought. This met the first mandate of the Fairness Doctrine calling for broadcast of divergent viewpoints but it ran head-on into the second commandment of protecting persons and groups against attacks. The reason is not hard to find. Norris was attempting a general program format which even a network might find difficult of accomplishment. As Fulton, the first station manager, testified,^{53/} no station with such limited facilities, in terms of staff, could possibly audition all the tapes which came in for broadcast nor could it adequately monitor everything spoken on its programs. For very practical reasons there had to be some delegation of responsibility to the sponsors and the taking of a calculated risk that commentators, moderators and callers would use some discretion. This practical problem of monitoring was recognized in a slightly different context by a Report of the Interstate and Foreign Commerce Committee of the House of Representatives, House Report No. 281, 88th Congress, 1st Session, May 8, 1963, as follows:

"195. It is apparent from what has been said that the licensee-affiliate has little or no part in the creation, production, selection and continuance of the network programming broadcast through his facilities. It also appears that the licensee has only the most general kind of advance knowledge as to the subject matter and content of such programs prior to broadcast. It was testified that the station does not know the details of the vast majority of network programs until he views them on his monitor. In other words, the station and its audience first see such programs at the same time. This being the case, there obviously, is no opportunity for the licensee to exercise his program responsibility before the fact with regard to the great bulk of network programs.

"196. . . . In sum, by far the greatest part of the programming which reaches the average viewer of television is chosen for and delivered to him by persons other than the station licensee whose legal responsibility requires that he serve the needs and interests of his community."

In this respect, the relation of WXUR to its commentators was practically the same as the relation of an affiliated station to its network.

Balancing of Viewpoints

44. As the Commission has repeatedly said, decisions regarding programming must be made in good faith by the broadcaster himself and unless there has been a transparent abuse of that discretion no penalties

^{53/} Findings, paragraph 40, and also Barry's testimony, paragraph 102.

have followed.^{54/} Obviously this involves a delicate judgment on the question of good faith but the problem is not insuperable. If all the circumstantial evidence indicates that a conscientious effort has been made to present contrasting viewpoints, the matter is ended. This is a matter of the most critical importance because at this juncture we begin to navigate the perilous seas of possible censorship where the Scylla of bias and the Charybdis of human fallibility await the unwary helmsman. In the present case certain facts appear incontrovertible. FTS was a fundamentalist institution with fundamentalist ideals and it was desperately anxious to proclaim them to the listening public.^{55/} It was, however, also an institution devoted to the principles of free speech and those to whom it entrusted the management of WXUR made demonstrable efforts to consummate this purpose. That they sometimes failed is no more than proof that one does not always realize one's ideals, whether it be through ineptitude or through adverse circumstances.

45. While we are at this stage of decision, however, one important fact must be noted. By now it must be apparent that Dr. McIntire has been a figure of more than passing interest in this case and that his significance to the fortunes of WXUR is of exceptional importance. In the conduct of his own programs, Dr. McIntire has been extremely circumspect in complying with the mandates of the rules. When persons or groups have been attacked by him, they have been notified by means of tapes and they have been invited to respond. In saying this, the Examiner does not necessarily imply that there were actual attacks but what is meant is that criticisms which sensitive spirits might have regarded as attacks have been levelled. So far as the record shows, Dr. McIntire has met all the requirements of the Fairness Doctrine. When Dr. McIntire was about to speak caustically of someone, he did the decent thing and advised that person beforehand.^{56/} More than that he sent an invitation to respond. To say that this did not exonerate the licensee is mere quibbling. Dr. McIntire's operations did not materially differ from those of a network and if he accepted his delegated duty to notify persons attacked there is no reasonable basis for finding the individual licensee in default.

46. The same was not true of many of the other commentators such as Richard Cotten, Pastor Bob or Major Bundy. As far as the station itself was concerned, however, the most damaging fact was the neglect of Norris to make any organized effort to assure compliance. Time after time he made it plain that WXUR would sell reply time to anyone who considered himself the victim of abuse but this was not enough. The question is thus placed in the whole perspective of the case. There was a failure to observe the strict requirements of the personal attack rules but there were ameliorating circumstances.

^{54/} Mile High Stations, Inc., 28 FCC 795 (1960), 20 RR 345; Pacifica Foundation, 36 FCC 147 (1964), 1 RR 2d 747.

^{55/} Findings, paragraphs 12, 13, 16.

^{56/} Findings, paragraphs 136, 137, 275.

47. For the moment it may be desirable to assume that there is a general agreement on what is a question of public importance although the record indicates that not all people would find agreement on this point. It is self-evident that robust discussion is nearly always likely to invite sharp exchange, caustic and personal comment and even vituperative remarks. To counteract the dangers resulting from this, the Fairness Doctrine has a second mandate which is to require notification of a personal attack together with the submission of a tape, transcript or summary of what was said and an opportunity to reply. The ideal is thus envisioned: a spirited discussion of an issue in the course of which comments reflecting upon a person's character might be made but, as an antidote, the individual is to receive an accurate communication of what was said and to have a chance to reply. This, in capsule form, is the Fairness Doctrine. Yet fairness, like motherhood, is something of which everybody approves, depending upon the circumstances.

Personal Attacks

48. Those attacks which were alleged by the Intervenorers have been recounted in paragraphs 232 through 239 of the Findings and those alleged by the Bureau in paragraphs 240 et seq. A summary of some of the problems is contained in paragraph 241. There are several ways in which these attacks might be classified but the following is perhaps the simplest. The first evidentiary problem is whether the critical remarks were uttered within the context of a controversial discussion of a matter of public importance and in many instances the evidence is too fragmentary to demonstrate this. Transcripts of a number of portions of broadcasts were introduced and received which showed abrasive remarks about a person or group. The Examiner believes that his rulings on these were correct because there was no reason to doubt the reliability of the evidence but the conclusions to be drawn still remain uncertain in many instances. For example, the "attack" by Pastor Floyd on Senator Clark^{57/} was reflective upon character but there is no way of knowing in what context it was made. In other instances, the controversy being discussed was probably not of general public importance.^{58/} In many instances, the determination as to whether the spoken words constituted an attack would depend upon the truth or falsity of what was said.^{59/}

^{57/} Findings, paragraphs 244-246.

^{58/} Findings, paragraphs 237, 238.

^{59/} Findings, paragraphs 238-254, 255, 260-274. (Bureau citations of personal attacks.)

49. Some attacks, however, seem to be reasonably clear-cut. Among those cited by Intervenor were the defamation of the Democratic Party in connection with campaign financing,⁶⁰ the denunciation of the president for having "betrayed our country,"⁶¹ the innuendoes about Mr. Harold Howe II,⁶² and the castigations of Adam Clayton Powell and Stokely Carmichael.⁶³

50. In the instance of the alleged attack by Major Bundy on IAD, there seems to have been some sort of notification in advance of the program but the record does not permit an affirmative finding one way or the other.⁶⁴ There was, at least, a kind of summary as to what was said.

51. The simplest and most easily discernible attacks were those phrased in insulting terms, terms which unmistakably implied dishonesty or moral turpitude. There were a number of these in the Livezey broadcasts such as the repulsive allusion to the late Dr. Martin Luther King.⁶⁵ Another would be Burak's statement over the air that Mrs. Casper was a liar.⁶⁶ But in the latter instance, there was a tape sent to the victim. In contrast to such defamations, there were remarks of a critical nature which, so far as one can tell from the transcripts, were delivered without rancor and were not reflective upon character.⁶⁷

52. The Intervenor and Bureau have laid great stress on the fact that Norris, the stations' manager, did not set up an efficient system for detecting possible attacks and the instances when he caused tapes or summaries to be sent to individuals were quite rare. As has been pointed out, the main reason for this was the undoubted fact that the station had a limited staff and thorough monitoring of all the taped programs either before or during broadcast would have been physically impossible.⁶⁸ Nonetheless, it was shown in the Findings that Norris exhibited a degree of laxity which reflected against the station's performance and that should in no way be condoned.⁶⁹ He also mistakenly tried to exact payment for replies to possible attacks.⁷⁰ It is not to be supposed that every station

⁶⁰ Findings, paragraph 234.

⁶¹ Findings, paragraph 235.

⁶² Findings, paragraph 236.

⁶³ Findings, paragraph 239.

⁶⁴ Findings, paragraph 275.

⁶⁵ Findings, paragraph 65.

⁶⁶ Findings, paragraphs 205, 206.

⁶⁷ Findings, paragraph 178.

⁶⁸ Findings, paragraphs 40, 98, 102.

⁶⁹ Findings, paragraphs 29-31, 242.

⁷⁰ Findings, paragraphs 152, 252, 253.

manager will personally undertake to monitor all programs and follow up with the sending of tapes. Some delegation is realistically a necessity. Balancing the many facets of this picture, the performance by WKUR was not nearly as reprehensible as might be supposed from reading isolated sections of the Findings.

53. In many of the alleged instances of personal attack, there were ambiguities as to the essential elements, that is whether the issues being discussed were truly of public importance, whether the spoken words were in derogation of honesty, etc., or whether the broadcast was in the excepted category of news-type programs.

54. When all of this is related to what has been said about applying the Fairness Doctrine so as to achieve its basic purpose of promoting free discussion, it becomes apparent that only for the most flagrant violations should WKUR be denied its renewal of license. Striking a balance on the multitude of considerations developed by this record, the entire performance of the station has been much more consonant with the objectives of the Doctrine than hostile or delinquent. It has required many pages to discuss the multifarious facets of the case and any attempt to reiterate them in condensed form would produce a distortion of the evidence. A few, however, might be mentioned as compelling reasons for concluding that the equities lie, in the final analysis, with WKUR. The fundamental purpose of the Seminary in acquiring the station was to serve the needs of a significant segment of the area's population but in doing this, management did not neglect other needs or viewpoints. On the contrary, it performed what would normally be considered a wholesome service in providing an outlet for contrasting viewpoints on a wide variety of subjects. To impose the fell judgment of removing WKUR from the air in the light of these facts could only have the consequence of admonishing broadcasters everywhere that they would act at their peril in allowing robust discussion because penalties would be meted out in rigid compliance with the exactions of the rules. In brief, it is not unreasonable to say -- and it is clearly supported by evidence in this record -- that an adverse decision here would have the effect of discouraging free discussion on the air and would have the practical result of removing certain militant viewpoints from the microphone. That result would be manifestly contrary to all the Fairness Doctrine stands for and it must therefore be rejected. Thus the decision must be shaped by ultimate objectives rather than by isolated instances of error. This will not be an invitation to carelessness or disregard of the ethical principles involved in the personal attack rules since punishment by forfeiture will always await the transgressor but, in the unusual circumstances of this case, Draconian justice is inadvisable.

Therefore, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by any of the parties or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the applications of Brandywine-Main Line Radio, Inc. for renewal of licenses of Stations WXUR and WXUR-FM, Media, Pennsylvania (File Nos. BR-4178 and BRH-1320) ARE GRANTED.



H. Gifford Irion
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Hearing Examiner
Federal Communications Commission