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Exhibits 1 - 18

BEFORE THE
UNITED STATES
FEDERAL COMMUNICATIONS COMMISSION

In re Complaint of)
)
Central Intelligence Agency,)
Complainant,)
)
vs.) FCC Docket No. _____)
)
American Broadcasting Company,)
Respondent.)
_____)

AMENDED COMPLAINT AND PETITION FOR RECONSIDERATION
BY THE CENTRAL INTELLIGENCE AGENCY

The United States Central Intelligence Agency hereby respectfully presents its Amended Complaint and Petition for Reconsideration of the staff ruling adopted and released on 10 January 1985 with respect to our Complaint of 21 November 1984 against the American Broadcasting Company.

It is our considered judgment that the instant filing is necessary to meet the concerns of the staff, to further elaborate on the relevant evidence and legal theories, and to present additional evidence not previously available.

Accordingly herein, we (1) present an Amended Complaint in full procedural and substantive accord with Commission rules and precedent, (2) address the specific issues raised by the staff in its decision, and (3) explain in detail the legal and policy reasons supporting our belief that this is a case which fully justifies the modest relief requested.

We would additionally note that this enlarged record should meet the concerns expressed by the staff in its ruling of 10 January and will provide a more complete record in the event the matter is reviewed by the full Commission.

I. Preliminary Statement

On 21 November 1984, the Central Intelligence Agency ("CIA") filed with the Federal Communications Commission ("FCC" or "Commission") a complaint charging that the American Broadcasting Company ("ABC"), during its presentation of an "investigative report" on 19, 20 and 26 September 1984, engaged in deliberate news distortion and violated the Fairness Doctrine and the corollary Personal Attack Rules which require, respectively, that a licensee (a) ensure that its news broadcasts are neither distorted nor slanted, (b) air contrasting views, and (c) give the right of rebuttal. 1/

To date, despite Commission preference that complaints be first addressed by licensees, ABC has failed to respond to our oral communications and our letters of complaint, as well as our formal Complaint to the Commission. 2/

1/ See EXHIBIT 1: Transcripts of relevant portions of "ABC Nightly News" of 19, 20 and 26 September 1984, as well as the partial disclaimer broadcast on 21 November 1984. A copy of each of these transcripts, as well as all other relevant documentation, has been provided herewith.

2/ On 26 September and 3 October, letters of complaint were sent to ABC News which specifically identified the programming in issue, fully delineated the objections of the CIA to that programming, and specified the remedial steps we believed to be appropriate. In particular, CIA emphasized the falsified and distorted nature of the broadcasts, the personal attack upon the CIA, and the lack of fairness and balance of ABC's programming. Copies of these letters are provided herewith as EXHIBIT 2.

While neither the viewing public nor this Commission has had the benefit of any explanation or the results of any investigation by ABC, 3/ it thus appears fully relevant to note that it is generally conceded among the media and the viewing public that ABC management "may well have exercised faulty editorial judgment in this case, and may indeed be guilty of irresponsible journalism ..." 4/ and that the ABC programming which is the subject of our complaint was misleading to the viewing public. 5/ Indeed, perhaps the best independent analysis to date of ABC's programming and management deficiencies has been detailed by Accuracy In Media:

What the CIA complaint ... demonstrates [is] that these large news organizations are capable of incredible, irresponsible and sloppy journalism, and willing to go with discredited sources.

3/ The letter of CIA to ABC of 26 September, included in EXHIBIT 2, relates the expectation of CIA that ABC would undertake "a complete and thorough investigation of the accuracy of the series and the circumstances surrounding its production."


It is difficult for the CIA to reconcile what should be the natural interest of the Commission in the details and findings of this fully expected but perhaps now abandoned internal investigation, and the refusal of the Commission to substantively concern itself with our Complaint, when the licensee itself has lead the CIA to believe that the matter would be investigated.

4/ Statement Of Media Access Project In Opposition To The CIA Complaint Against ABC, filed 11 December 1984; see also "Government Coercion," Editor & Publisher, 1 December 1984, at 8 (ABC faulted for not doing required checking before the original broadcast.)

5/ The First Amendment Cases [Editorial], The Washington Post, 24 December 1984, at A14. ("Some assertions stand up to challenge. Others collapse, like ABC's murder story, with damage to the reputations of the people who broadcast it.")

It demonstrates that there is something very wrong with the management of ABC for failing to insist on a genuine investigation and a prompt disclosure of the findings as soon as the CIA challenged its report. 6/

However, as more fully presented herein, we respectfully submit that the evidence in this case and the argument set forth herein do not merely demonstrate irresponsible journalism but constitute a prima facie showing of a violation of (a) the fairness doctrine, (b) the personal attack rule, and (c) the rule against deliberate news distortion. It is for these reasons that we 7/ ask the Commission to direct ABC to respond substantively to our complaint and grant such further relief as it may deem appropriate.

Indeed, we believe that the relief we seek is fully consistent with the recent commentary by Peter Jennings of ABC News concerning the story by Time Magazine which gave rise to  law suit by Ariel Sharon:

Time [Magazine] really ought to rethink its victory. When we are wrong, we should say we are wrong and apologize. Freedom of the press implies a responsibility at least to do that much. 8/

Mr. Jennings anchored the objectionable story about the CIA and should be called upon to do himself what he would have others do.

6/ See EXHIBIT 3: AIM Report, December-B, 1984, at p. 4.

7/ We concur in the staff's findings that the CIA is a proper complainant in a matter such as this before the Commission. Accordingly, we do not present further argument in this regard.

8/ Commentary by Peter Jennings, ABC News Information Network, WMAL Radio, 25 January 1985.

II. Commission Action Is Mandated
In Light Of The
Particular Factual Aspects Of This Case

A. Introduction

As we have noted, the filing of a Complaint by the CIA was not lightly considered and was undertaken only because the programming presented to the American public constituted a quintessential example of what the viewing public at large might well term "artificial news" -- a story created out of thin air, a work of fiction, presented to the viewing public in the guise of an investigative news documentary. Indeed, the ABC programming can best be understood in the context of an analogy to the events involving the withdrawal of the Pulitzer Prize awarded for a newspaper series on "Jimmy's World" which was based on a similarly falsified and artificial story -- that of a purported but non-existent 8-year-old heroin addict. 9/

9/ This series was finally determined to be a fabrication in its entirety, created solely from the reporter's imagination and composites of information about heroin addiction in Washington. Following the return of the prize, Benjamin C. Bradlee, Executive Editor of The Washington Post, stated:

The credibility of a newspaper is its most precious asset, and it depends almost entirely on the integrity of its reporters. When that integrity is questioned and found wanting, the wounds are grievous, and there is nothing to do but come clean with our readers, apologize to the Advisory Board of the Pulitzer Prizes, and begin immediately on the uphill task of regaining our credibility.

"Post Reporter's Pulitzer Prize Is Withdrawn," The Washington Post, 16 April 1981, at A1, A25.

This is not a case, such as In re Network Coverage of the Democratic National Convention, 16 FCC 2d 650 (1969) where segments of a responsible programming effort were challenged. In this case, ABC pictorially and verbally presented ostensibly factual statements which were fabricated and about which the viewing public could not even surmise a supporting predicate. Indeed, the programming even went so far as to portray deceptively the President of the United States as engaged in duplicitous dealings with the highest officials of the People's Republic of China without any basis in fact for such portrayal.

Despite the fact that our concerns were relayed to ABC management, ABC has demonstrated no corresponding concern toward its responsibility of honoring its public trust. 10/

10/ We refer specifically to the fact that in our contacts with ABC, we had every reason to believe that ABC would conduct a full and impartial internal investigation. To date, we have received only silence.

It should be noted that these contacts were extensive. Specifically, letters of complaint were sent to ABC which clearly identified the programming in issue, fully delineated the objections of the CIA to that programming, and specified the remedial steps we believed to be appropriate. In particular, CIA emphasized our belief that the programming complained of constituted deliberate news distortion and a personal attack upon the CIA, and demonstrated a lack of fairness and balance. Moreover, these communications were augmented by personal meetings between senior CIA and ABC officials on 24 September, 20 October and 30 October 1984, where the complaints of and specific requests by CIA were fully explored, including the request and belief by CIA that a full internal network investigation would be conducted by ABC.

In sum, these communications fully comported with Commission preference that a viewer first present his prima facie complaint to the licensee.

We are unaware of the extent, if any, to which ABC has conducted an internal investigation, and, in any event, ABC certainly has not shared any findings with the Commission or the viewing public. 11/

11/ In this connection, we are especially concerned with the staff holding that it was "not clear whether the required information was ever provided the network" and that "the Commission will not burden the broadcaster with inquiry until the complainant has satisfied its procedural burden."

We respectfully submit that the notification process outlined in note 10, supra, which included two written and three oral communications, fully comported with the requirements of the Procedure Manual, 39 Fed. Reg. 32288, and that we first presented a prima facie case to the network. We reiterate that ABC has not provided even a pro forma response to our complaint. In the absence of any record evidence to the contrary, our complaint must prevail on this issue of compliance with the notification procedures.

Notwithstanding, we would request that the staff take note that, with respect to complaints generally, the Procedure Manual first observes that it is "preferable," not mandatory, for complaints to be submitted first to the broadcaster and indeed provides examples of why a complainant might file first with the Commission. Id. at 32289, ¶5(2). Second, it suggests that a complaint include only certain basic information such as a statement of the basis of the complaint, the relief sought, and copies of prior correspondence with the licensee. Id. at 32289, ¶5(4). And, third, the Manual recommends that a complainant be as "brief as possible, ... avoid argument, ... [and] avoid repetition or exaggeration." Id. at 32289, ¶5(5).

Of course, there are additional requirements with respect to four types of complaint, of which only two are relevant herein -- Fairness Doctrine and Personal Attack Rules. Id. at 32289, ¶7. But here also, the Commission has consistently recognized that there is no absolute requirement that a complaint go first to a broadcaster and that in "unusual circumstances" or "[w]here time is an important factor, a complainant may find it advisable to complain simultaneously to the station and the Commission." Id. at 32289, ¶7, ¶13.

While we need not reiterate the specifics of the rules set out in ¶¶ 14 and 18 of the Procedure Manual, it is facially clear that, in submitting our written letters of complaint and oral complaints to ABC, our initial formal Complaint and the instant Amended Complaint and Petition for Reconsideration both to this Commission and ABC, we have clearly conformed with all procedural requirements.

If ABC has not yet found its programming was flawed, then the most serious questions are raised as to the extent of similar portrayals in ABC's other "news" programming. If, however, ABC has conducted an investigation and is now aware that its broadcast cannot be substantiated but nevertheless continues to stand by its story, then the matter should be of the gravest concern to the Commission because there can be no clearer extrinsic evidence of deliberate news distortion. Only with Commission inquiry will the public know the extent of ABC misconduct.

We submit, and document herein, that ABC's violation of its public trust makes it incumbent upon the Commission, at a minimum and irrespective of which authority it should choose to exercise, to require ABC to respond to the CIA's complaint and thus explain to the public the basis for its fully standing by its story on 26 September and continuing to the present to support the entirety of its programming but for the Scott Barnes murder charge.

We reiterate that this is not a frivolous allegation for it involves a major member of the broadcast media in a serious violation of the public trust and the rules of this Commission. In doing so, we seek only the vindication of the public's unquestioned right to be fairly informed on a controversial issue of public importance.

B. Action Is Appropriate Under
the Commission's General Oversight Authority

The Commission must recognize that the gravity of the charges at issue here makes this case a compelling one for the exercise of its general oversight authority -- even though, as we fully demonstrate below, the ABC programming is actionable under the Fairness Doctrine, the Personal Attack Rules, and the rule prohibiting deliberate news distortion. Here, ABC knowingly broadcast nationwide an allegation that an agency of the United States Government was conspiring to murder an American citizen among other alleged illegal activities. These totally falsified allegations subsumed the entirety of ABC's two-night broadcast. The evidence discussed here clearly demonstrates that ABC: (a) relied on certain sources (Barnes and Rewald) it knew were unreliable, (b) presented these sources to the public with no warning that their testimony was subject to doubt, (c) constructed its broadcast in such a manner to suggest that these sources were reliable and that their tales had been corroborated, (d) ignored all credible evidence which put to rest the fanciful stories told to ABC, and (e) acted with a reckless disregard by not verifying in advance the serious charges contained in its broadcasts. By so doing -- by presenting nothing less than artificial news in the guise of responsible news programming -- these flagrantly irresponsible news practices clearly demand Commission inquiry.

We submit that such inquiry was clearly contemplated by Congress as an essential element of the FCC's general administrative authority, 12/ which derives from the Commission's broad mandate to regulate the use of the airwaves in the public interest. 13/ It is important to remember that the Fairness Doctrine and the rule against deliberate news distortion do not define or limit the Commission's authority in this regard, but are merely particular applications of the Commission's power.

The power to regulate broadcasting in the public interest gives the FCC "not only a flexible mandate under which the Commission operates, but one under which it is provided considerable judicial deference and room to experiment." 14/ As the Supreme Court has held in the seminal case of Red Lion, "[t]his mandate to the FCC to assure that broadcasters operate in the public interest is a broad one, a power 'not niggardly but expansive.'" 15/

12/ 47 U.S.C. §403 provides that "[t]he Commission shall have full authority ... to institute an inquiry, on its own motion ... concerning any question which may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter."

13/ The Supreme Court has declared that the public interest standard serves as "the touchstone for the exercise of the Commission's authority." FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940).

14/ In Re Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees, 87 FCC 2d 716 at ¶32 (1981).

15/ Red Lion Broadcasting Company v. FCC, 395 U.S. 367, 380 (1969).

Thus, the Commission is fully warranted in considering ABC's conduct from a general public interest standpoint.

Indeed, as the courts have consistently held:

[T]he Communications Act ... [has given] full authority and power ... to the Commission with or without complaint to institute an inquiry concerning questions arising under the provisions of the Act or relating to its enforcement. This ... includes authority to obtain the information necessary to discharge its proper functions, which would embrace an investigation aimed at the prevention or disclosure of practices contrary to public interest. 16/

Here, Commission scrutiny will clearly find that ABC acted with reckless disregard for the truth in producing these broadcasts. As the Commission wrote in Application of Action Radio, Inc., where false temperature reports were at issue:

This activity, albeit on a lower plane, falls on the periphery of the type of 'non fact' reporting we referred to as 'staged', or 'pseudo-event' in Democratic National Convention Television Coverage, 16 FCC 2d 650, 656-657 (1969). In that case we said that '. . . we do not sit to review the broadcaster's news judgment, [or] the quality of his news' On the other hand we are concerned with a willful distortion of news. Id. at 654. All that takes this licensee's conduct from the core of the 'willful distortion' to which we were above referring is that there is no evidence that the licensee knew the actual temperatures and, for motive, warped that information, and

16/ Stahlman v. FCC, 126 F.2d 124, 127 (D.C. Cir. 1942). See also 47 U.S.C. 403; FCC v. Pottsville Broadcasting Co., supra, at 142-3 ("Administrative agencies have power themselves to initiate inquiry ... in ascertaining what is to satisfy the requirements of the public interest ...").

although we have said that '[we] do not sit as a review body of the 'truth' concerning news events" (Id. at 655), where, as here, there is the clearest evidence of reckless disregard for truth in a licensee's own news practices and the broadcast in no way smacks of a 'commentary' type of presentation, public interest questions are raised. Since in this case, there is extrinsic corroboration of such reckless disregard of easily ascertainable facts and materials, the licensee's conduct warrants censure. 17/

If the public interest is adversely impacted when temperatures are broadcast with reckless disregard for the truth, then the public interest certainly must come into play in this far more serious case. Fairness and deliberate news distortion aside, it clearly cannot be in the public interest for any licensee to air charges of heinous criminal misconduct against any individual or group with reckless disregard for the truth or accuracy of those charges, and, indeed, with actual information that the charges are untrue. The public interest is even more damaged where, as here, the licensee is a major news network with access to millions of homes, and the reports are constructed so as to give the aura of reliability to the outrageous allegations.

Indeed, as the United States Congress has noted in no uncertain terms, the public greatly relies

on television news for obtaining information upon which to base its decisions. The effect of unreliable data, unless its unreliability is known, is especially pernicious because it frustrates the ascertainment of truth.

^{17/} Application of Action Radio, Inc., 51 FCC 2d 803 at ¶13 (1975) (emphasis added).

[In short,] the public is lulled into a false sense of reliability where reliability does not exist. 18/

By broadcasting erroneous and unreliable information, ABC has misled the public with a false sense of reliability. Such action is truly inimical to the public interest. Surely ABC's conduct in this matter reflects, at a minimum, a cavalier and irresponsible attitude toward the network's duties as a public trustee. 19/

18/ Subpoenaed Material Re Certain TV News Documentary Programs, Hearings Before the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce, 92d Cong. 1st Sess. 323 (1971) (quoting committee staff legal memorandum).

19/ See Report of the Commission in the Matter of Editorialization by Broadcast Licensees, 13 FCC 1246, 1254-55 (1949) (hereinafter "1949 Report").

III. The ABC Programming At Issue

A. The Initial Allegations By ABC

ABC opened its broadcast on 19 September 1984 by reporting the allegations of Ronald Rewald, presently under a 100-count indictment for fraud, perjury and tax evasion. In essence, ABC claimed that Rewald's activities were conducted in furtherance of the CIA's mission.

B. ABC Misuses Statements By Witnesses,
Fails To Air Contrasting Views,
And Suppresses Contrary Evidence

Immediately after reporting Rewald's claims, ABC News stated that the bankruptcy trustee for Rewald's firm, Bishop, Baldwin, Rewald, Dillingham and Wong ("Bishop-Baldwin"), "confirms the CIA connection," and showed the trustee Thomas Hayes saying:

Clearly it was a commercial cover operation for the Central Intelligence Agency. One or more agents used it for that purpose. But that doesn't justify stealing \$22 million of someone's money.

We note that this contextually confused statement was aired without the benefit of the question which solicited it. As it stands, it implies that the CIA used and operated the firm of Bishop-Baldwin as a commercial cover operation. Moreover, it conveys implicitly the notion that the trustee found that the CIA was directly involved in the theft of the money.

ABC immediately followed this edited and deceptive statement with Rewald's absolute refutation:

But Rewald denies the money is missing at all. He says it's in several different banks under other names.

Notably, in its programming, ABC broadcast no information either in its possession or available from public sources which would have informed the viewing public that Rewald's misuse of the money has been essentially established. In addition, the bankruptcy trustee found:

[T]here is (in the trustee's opinion) no credible evidence of any substantial financial transactions between the CIA, or any other intelligence agency of the United States Government, and BBRDW, Mr. Rewald, or any affiliated entity. According to the analysis which the trustee has made, of the \$20,418,500 which was received by the corporation, only approximately \$3,000 was paid by or on behalf of the CIA to reimburse the company for miscellaneous expenses Of the approximately \$20,157,400 disbursed by the corporation, there is no credible evidence, in the trustee's view, based on his review of the corporate records and the sealed documents, that any expenditures were made directly in connection with 'CIA projects' (overt or covert) except for those relatively minor expenditures incurred in connection with provided 'commercial cover' and for which reimbursement was received. 20/

The United States District Judge involved in the matter arrived at substantially similar conclusions, finding only "slight involvement" by the CIA with Rewald, and "nothing, absolutely nothing, in any of the documents [provided by the CIA] which

20/ See EXHIBIT 4: Trustee's Preliminary Report on Review of Sealed Documents at p. 3.

might indicate or possibly lead to the location of any possible hard assets of the debtor." 21/

Similarly, ABC never informed the viewing public that the Department of Justice and other government entities familiar with Rewald believed that he was solely responsible for the loss of the investment funds. In this regard, we note that underlying his federal indictment were extensive investigations by the Federal Bureau of Investigation ("FBI"), the United States Attorney, the Internal Revenue Service ("IRS"), the grand jury and the Securities Exchange Commission ("SEC"). 22/

All of these credible sources reached essentially the same conclusion 23/ -- one that was not even alluded to by ABC. 24/

21/ See EXHIBIT 5: Order re Sealed Documents, dated 1 September 1984.

22/ In particular, the SEC initiated a civil action against Rewald for fraud and has barred him from the investment business and revoked his registration as an investment adviser. See EXHIBIT 6: Complaint and Consent Order, SEC v. Rewald, No. 83-0812; "SEC Bars Hawaii Broker Who Claimed CIA Ties," The Washington Post, 14 December 1984 at D9; "SEC Prohibits Rewald From Work As Adviser In Investment Industry," The Wall Street Journal, 14 December 1984, at 17.

23/ As considered previously, the other side of this controversial issue, which was set forth in official public records and elsewhere and utterly ignored by ABC, was promptly picked up by the media. See EXHIBIT 7: "No Major Rewald - CIA Link Found," Honolulu Advertiser, 22 May 1984; "Rewald files Show No Major Link With CIA, Trustee Says," Honolulu Star Bulletin, 21 May 1984, at A-8; "Rewald Finances Detailed In Report," Honolulu Advertiser, February 1984.

24/ See EXHIBIT 8: Indictment of Rewald, U.S. District Court for the District of Hawaii.

C. ABC Alleges CIA Was Violating
United States Law And International Treaties

ABC's programming in this matter continued in the next news segment where ABC stated:

ABC News has learned the agency was heavily entrenched in Bishop-Baldwin, running a number of foreign and domestic intelligence operations, one of which violated an international agreement, others in direct violation of U.S. law.

By prefacing its charge of illegal activity with the lead-in "ABC News has learned," ABC induced the viewing public to believe that ABC had some basis for its assertion. Indeed, the public was led to believe that the formidable name and reputation of ABC News supported these claims. In none of its programming did ABC inform the viewing public that statements from Rewald and certain of his associates were clearly biased. We submit that it is incumbent upon ABC to make public the basis, if any, for these charges.

D. ABC Proffers "Support"
For Its Allegations Against CIA


ABC next elaborated on and attempted to support its charges that the CIA was violating international agreements and U.S. law and, on 20 September 1984, reiterated such accusations:

ABC news has learned that Rewald's company provided the cover for some of the CIA's most sensitive and potentially embarrassing operations. Not only was Bishop-Baldwin involved in selling arms to Taiwan, India and Syria and promoting financial panic in Hong Kong, it was also fueling capital flight from two allies, Greece and the Philippines

* * *

And, according to Ron Rewald, the Agency was conducting illegal domestic operations

In an effort to solicit corroboration for its unproven claims of illegal activities, ABC relied on two self-styled



Rewald and were personally familiar with these activities. On the air, one of these individuals claimed to have personally seen documentation on these activities, and then ABC reported that such person stated under oath that he went with Rewald to Hong Kong on a

clandestine mission ... to spread scare stories about the financial impact of China taking over [Hong Kong].

ABC continued by stating to viewers, in a voice-over, that the firm released a lengthy report which encouraged investors to move their money elsewhere, while showing the cover of a report

titled "Capital Flight from Hong Kong and How Hawaii Can Benefit." ABC followed with the Rewald summation:

Certainly we were doing our part just like everyone else was to keep that money flowing towards the United States as opposed to Europe or some other country.

Nowhere, in the broadcast of the allegation by this self-styled agent, or elsewhere in ABC programming, was any corroboration given. In the eyes of the viewing public, the CIA stood accused by ABC of directing a clandestine mission to spread financial scare stories in Hong Kong. Immediately following this allegation, ABC factually posited the existence of a report prepared by Bishop-Baldwin which was described by ABC as encouraging the flight of capital from Hong Kong. This factual statement by ABC was purportedly buttressed by the projection of the cover of the report on the screen. The juxtaposition of this picture with the allegations and the statement by Rewald could lead the viewing public to only one conclusion -- that the CIA was involved in the clandestine effort to undermine the economy of Hong Kong. Similar effect must be attributed to Rewald's statement that "we were doing our part ... to keep the money flowing towards the United States."

This broadcast segment concluded with further, yet similar, claims by another individual, identified by himself and ABC as a "CIA agent," who ABC quoted as saying that

the Taiwan deal involved such items as laser sighting devices for M-16 rifles, armored personnel carriers and M-60 tanks. (emphasis added).

ABC then stated as a matter of absolute truth that this

multi-million dollar back door deal enabled the CIA on behalf of the U.S. government to circumvent its agreement with mainland China not to supply certain offensive weapons to Taiwan.

In airing this accusation, ABC neither presented nor suggested that it had any corroboration or verification. Moreover, the specificity, in conjunction with ABC's endorsement, clearly misled and misinformed the viewing public.

As more fully detailed in Jane's Armour And Artillery, the recognized world authority on munitions, no M-60 battle tanks are now or ever have been in the possession of or in service with the Government of the Republic of China (Taiwan). 25/ This information was certainly known or should have been known to ABC. In any event, ABC decided not to present these facts, or any facts which contradicted its programming, to the viewing public.

However, the most pernicious aspect of the ABC programming in general and this broadcast segment in particular was the use of film footage from file, and wholly unrelated to the broadcast, which showed the President of the United States greeting an official of the People's Republic of China while the voice-over described the "back door deal" -- obviously implying to the viewing public that the President was engaged

25/ See EXHIBIT 9: Extract from Jane's Armour And Artillery - 1983-84, at 117.

in duplicitous, deceitful conduct while appearing to negotiate and exchange views with the Chinese official in a true atmosphere of goodwill.

We submit that the presentation of this accusation and personal attack against the CIA and the President of the United States, which under even the most basic standards of fairness would require corroboration or the presentation of opposing viewpoints, well demonstrates the violation of Commission rules by ABC.

E. ABC Leads With The Murder Conspiracy Charge

ABC's honor of its public trust reached its nadir on the broadcast of 20 September 1984. The report of that evening focused on the assertion by Scott Barnes that the CIA had hired him to murder Ronald Rewald. As we will demonstrate, ABC knew that Barnes' testimony was wholly unreliable and, rather than make serious efforts to investigate Barnes' charges, ABC resorted to innuendo, suggestion, and other questionable "sources" to create what appeared to be substantiation for Barnes' sensational story. ABC first introduced the Barnes segment with a classic accusatory question:

Did the Central Intelligence Agency try to have Ronald Rewald killed to keep him from talking?

The camera then focused on Ronald Rewald, who said:

At first I didn't believe it. I thought it was total nonsense, and it took a lot of convincing and a lot of evidence and a lot of facts to be checked out before I recognized that it was, in fact, what was going on.

Despite Rewald's statement that it allegedly took "a lot of evidence and a lot of facts" before he "believed" the accusation, ABC News presented the murder conspiracy charge based only on the disjointed assertions of four individuals -- Ron Rewald, Scott Barnes, Brent Carruth, and Ted Frigard.

In developing this charge, ABC first presented the remarks of Scott Barnes whom it introduced as a man "who sources say has extensive intelligence background." Clearly implying that Barnes may be connected with the CIA, ABC then went on to announce that Barnes "says he was sent in by the CIA." The juxtaposition of these two claims strongly suggests to the viewer, based not only on Barnes' sole assertion but also on additional information allegedly possessed by ABC, that Barnes worked for the CIA. Indeed, during the broadcast on 26 September 1984, ABC explicitly stated that Barnes was "working for the Agency."

Of course, whether or not Barnes had an "extensive intelligence background," a fact which ABC claims to have corroborated, does not translate to the erroneous implication that Barnes had ever worked for, or had any official contact with, the CIA. Nor does it confirm the charge that the Agency sent Barnes to kill Rewald. In any event, there can be no

defense for ABC's final statement which, without qualification, stated that Barnes worked for the CIA.

In fact, evidence of which ABC knew or should have known shows that ABC was aware of Barnes and knew his statements were false but, nevertheless, broadcast them. In short, there was an abundance of publicly available information which would have raised serious questions on this issue.

Most certainly known to ABC was the fact that, on 18 February 1982, ABC news reporter Ted Koppel directed to the CIA an inquiry on Scott Barnes' relationship with the intelligence community. Prompting this inquiry were false allegations by Barnes that the CIA had sent him to Laos to kill American POWs remaining there. On the same day the inquiry was made, the CIA informed ABC News that the CIA never had any relationship of any kind with Barnes. 26/ As a result, it has been reported in the media that a planned ABC "Nightline" broadcast focusing on Barnes' allegation was cancelled when Koppel concluded that Barnes could not be believed. 27/

In addition, much of the mass media had publicized their concern about stories from Scott Barnes. For example, the 23 September 1983 issue of Defense and Foreign Affairs Daily had this to say about Barnes:

26/ See EXHIBIT 10: Query Sheet (Inquiry by Ted Koppel), CIA Office of Public Affairs, dated 18 February 1982.

27/ See EXHIBIT 11: "ABC Retraction of CIA Murder Plot Detailed," Los Angeles Times, 13 December 1984, at 1, pt. 6.

In the summer of 1982, Moscow's Radio Peace and Progress made much of allegations by an American citizen, Scott Barnes, who falsely claimed he had been asked by U.S. Special Forces in March 1982 to assist in the use of chemical and biological weapons against the El Salvador rebels. Barnes ... also incorrectly asserted that he was a former Green Beret, FBI agent, and CIA officer.
28/

In the spring of 1983, Barnes was also exposed in Soldier of Fortune magazine for his stories relating to his participation in an alleged POW rescue mission and subsequent effort to kill remaining POW's. As Allen Dawson, former UPI bureau chief in Saigon, observed, Barnes should be remembered as "[t]he man who swam a river that wasn't there on a trip he never took for a government that never knew." 29/

Other major members of the media, also concerned with questions about Barnes' credibility, refused to report his claim that he was asked to kill Rewald. On 21 September 1984, the day after the ABC broadcast at issue, the Honolulu Advertiser reported that it had been aware of Barnes' claim for several months, but had not reported it due to lack of substantiation. 30/

28/ See EXHIBIT 12: Extract from Defense and Foreign Affairs Daily, 23 September 1983.

29/ See EXHIBIT 13: "Scott Barnes: My Favorite Flake," Soldier of Fortune, Spring 1983, at 32, 35; "Reed Irvine" [columnist], The Washington Times, 13 December 1984, at 3D.

30/ See EXHIBIT 14: "Rewald Wasn't A CIA Agent, Congressional Aide Says," Honolulu Advertiser, 21 September 1984, at A-6.

Similarly, in June 1984, the producer for the CBS News "60 Minutes" program dropped Barnes' story when he found "a number of continuing inconsistencies in what he (Barnes) was saying." 31/

In sum, as we have demonstrated, Barnes is well-known to many journalists as a peddler of false tales about "illegal" government plots. In light of such facts, ABC's reliance on Barnes and their presentation of his story to the viewing public without attempting any responsible verification -- even though ABC had particular reason to be aware of Barnes' questionable credibility -- is inexplicable and unacceptable. Thus, regardless of the motivation, it is unassailable that, through the creative positioning of phrases, the linkage of Barnes' false claim of CIA affiliation with ABC's alleged supporting source information, ABC gave credence to the unsubstantiated allegations of a murder plot voiced by Barnes.

Yet further extrinsic evidence is relevant to our inquiry. On 10 October 1984 ABC News received a telegram, purportedly from "Scott Barnes," refuting the ABC programming concerning the CIA killing against Ronald Rewald and irrevocably denying that he had "any involvement at any time with the CIA." 32/ More recently, on 9 January 1985, the CIA also received a

31/ See EXHIBIT 11, supra.

32/ See EXHIBIT 15: Western Union Mailgram, from Scott Barnes to President of ABC News, copy to Director of Central Intelligence, dated 8 October 1984.

carbon copy of a letter, also purportedly from Scott Barnes, which had been addressed to the Chairman of the Commission, Mr. Mark Fowler. While the CIA makes no representation as to the authenticity of the mailgram or the letter, or the accuracy of their contents, we should note that the letter states:

... ABC lied in its broadcast, mislead myself and the public. ABC had denied myself, CIA and the public at large of the truth and have withheld factual information. ABC has deceived and falsely stated untruths and attempted to cover-up and with hold facts, in short ABC lied knowingly, and misinformed [the] press of its lies. [sic] 33/

We would note for the Commission that ABC has broadcast neither refutation, ostensibly from its prime source, but rather has indicated to the viewing public only that there were credibility problems with Barnes based on a refusal to take a polygraph.

F. ABC Engages In Deceptive Editing

Beyond the actions considered herein, extrinsic evidence also arises from ABC's method of editing to present the next portion of its programming. The narrative informed viewers that Barnes went to a Hawaii hotel to meet with his "CIA contact." The televised picture showed Barnes clearly sitting in a room with a window behind him and stating that his "CIA

33/ See EXHIBIT 16: Letter from Scott Barnes to Federal Communications Commission, Attn: Mark Fowler, copy to Central Intelligence Agency, dated 10 December 1984.

contact" told him, "'we've got to take him out.' You know, kill him." After that remark, the oral portion of the broadcast continued with the ABC correspondent asking Barnes "Why?" The televised picture with this question showed Barnes and the correspondent then sitting outside on the grass with a chain link fence behind them. Immediately after the correspondent asked the question, and before Barnes responded, the scene changed and reverted back to the original setting with Barnes sitting in the room with the window behind him. Barnes then stated that the reason given to him for why Rewald must be killed was that

[Rewald] was a company problem and he obviously knew things in regards to national security and, [that he] was no longer an asset, [but] now a liability.

The viewing public would perceive this statement -- incorrectly -- as the response to the question asked immediately before. Thus, the viewer develops the impression that the original statement, the follow-up question, and the supposed answer to that question were made at one time and in sequence -- a deception which is revealed by the tape of the actual broadcast.

In this context, we would note certain relevant portions of the "ABC News Policy Guidelines For Non-Fiction Programming, Radio And Television":

In editing interviews, questions and answers may be presented in a sequence which differs from the sequence in which such questions and answers were recorded provided that in so doing the spirit of the interview is unchanged.

In editing interviews, however, answers must follow the questions to which they are actually responses. It is never acceptable to let the answer to a later question appear as though it was the answer to a prior question

Finally, all programming must conform to the FCC's 'Fairness Doctrine' which is designed to ensure that all programming which deals with controversial issues must give expression to representative, contrasting viewpoints. 34/

We submit that ABC's programming at issue conflicts substantially with its own internal requirements as well as the requirements of this Commission.

G. ABC's Support For Barnes

In order to garner some apparent support for the allegations by Barnes, ABC turned first to Brent Carruth, an attorney, and second to Ted Frigard, an investor in Rewald's firm.

ABC introduced Carruth and presented his statement:

ABC: Barnes says he quit the assignment and left Hawaii. Brent Carruth, a defense attorney in another CIA case, says that story doesn't surprise him at all. He recalls a threatening conversation he had with one of the government lawyers who are prosecuting Rewald.

34/ See EXHIBIT 17: Letter from ABC News to the Chief Counsel, dated 30 July 1971, reprinted in Inquiry Into Alleged Rigging of Television News Programs: Hearings Before the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce, 92nd Cong. 2nd Sess. at 177 (1972).

We are unaware of any more recent ABC guidelines which have been made public.

Brent Carruth (Attorney): I was told that, in no uncertain terms, that they would take, they would take any steps that were necessary to protect a particular agent and that they were going to cover people. And once that was done, then they were going to go after Ron Rewald, not before.

As we have seen, the statement by Carruth immediately followed the statements aired by ABC in which Barnes asserted that he was hired by the CIA to kill Rewald. Thus, ABC induced the viewing public to believe that Carruth was also asserting that, in his dealings with government attorneys, similar threats of death had been made to him. This is deceptive as we do not believe that Carruth intended to make any such allegation.

H. ABC Concludes With Ted Frigard

As the final element in its "corroboration" of Barnes, ABC broadcast a palpably unbelievable allegation by Ted Frigard, a disgruntled investor in the Rewald enterprise who has alleged that he lost substantial sums of money:

Their [CIA] offer was that they would pay me \$350,000 in triple A, unregistered, municipal bonds. And then as we got up to leave, the man said, 'You know, if you become too big of a pain in the arse,' he said, 'they will shoot you through the heart. They will report it as a heart attack. Your body will be cremated by mistake and all that will be left will be the coroner's report that you had a heart attack.'

Again, we are presented with "news" which relates to only one side of this controversial issue of public

importance and which is unsupported by any corroborating evidence. Although this statement was patently unbelievable, ABC neither undertook any objective scrutiny nor performed any subsequent investigation to learn the source or truth of the statement. We submit that there is no source and that ABC was well aware of these facts.

I. ABC "Clarifies" Its Broadcasts

On 21 November 1984, after several meetings with CIA officials and its receipt of two written complaints by CIA, ABC broadcast "an update and a clarification" of its reports of 19, 20 and 26 September 1984. ABC announced that efforts taken subsequent to the original broadcasts to verify Scott Barnes' claim that he was hired to kill Rewald had proven fruitless. Consequently, ABC admitted that "Barnes' charges [could not] be substantiated," and that there was "no reason to doubt the CIA's denial" of any relationship with Barnes. In its "clarification," however, ABC did not retreat from any elements of its story other than the testimony of Scott Barnes and, to this date, has continued to stand by all other parts of its broadcast.

IV. ABC's Violation Of The Fairness Doctrine

A. Controversial Issue Of Public Importance

A traditional touchstone necessary to invoke the Commission's jurisdiction under the Fairness Doctrine is that the matter complained of must involve a "controversial issue of public importance." The issue relevant to our complaint is both clear and narrow:

Does the Central Intelligence Agency adhere to the mandate of American law generally and, more particularly, does CIA participate in or condone murder as a practice?

In determining whether an issue is controversial in order to trigger the application of the Fairness Doctrine, the Commission has declared that:

... it is highly relevant to measure the degree of attention paid to an issue by government officials, community leaders, and the media. The licensee should be able to tell, with a reasonable degree of objectivity, whether an issue is the subject of vigorous debate with substantial elements of the community in opposition to one another. 35/

We note that this issue has been a matter of public interest and controversy since 1974 when the President of the United States convened a special commission and since 1975 and 1976 when the United States Senate and House, respectively,

35/ Fairness Doctrine and Public Interest Standards
(hereinafter "Fairness Report"), 39 Fed. Reg. 26372, at 26376 (1974).

instituted select committees to investigate CIA activities including, more particularly, reputed CIA killings or attempts.

In fact, explicitly detailed as part of the mandate of the Senate Select Committee on Intelligence Activities inquiry with respect to the CIA was the question of "whether intelligence activities have functioned in accordance with the Constitution and the laws of the United States." 36/ During this time and thereafter, the question of whether the CIA violates or has violated domestic law has received widespread attention from government officials, 37/ as well as other representatives of

36/ Final Report of the Senate Select Committee on Intelligence Activities, 94th Cong. 2nd Sess. 3 (1976) (hereinafter "Church Committee Report").

37/ Id.; see also Report on the Select Committee on Assassinations, U.S. House of Representatives, 96th Cong. 1st Sess. (1979).

The following mass media articles are also instructive. For example, Richard Pyle of the Associated Press on 22 February 1977 observed that the Committee members anticipated close questioning of the DCI on issues that they kept the CIA and other intelligence agencies in trouble in recent years, such as illegal domestic spying, covert activities abroad and payoffs to foreign leaders. Pyle further noted that these "issues were also expected to be raised by other witnesses"

The Washington Post also consistently detailed such matters. In an article entitled "Post Attitude Held 'Very Responsible' In White House Dealings on CIA Story", appearing at A3 on 1 March 1977, President Carter's Press Secretary "reasserted the President's contention that the CIA is not engaged in 'illegal or improper' activities" In another article entitled "Probe Clears CIA of Contact with two Aiding Qaddafi", appearing at A4 on 3 February 1982, the chairman of the House Intelligence Committee was quoted as saying that "investigations had turned up no evidence of [unlawful action by CIA in connection with] two former agents who went to work for Libya's Col. Muammar Qaddafi."

the community, 38/ and the media. 39/

38/ See Report To The President By The Commission On CIA Activities Within The United States (hereinafter "Rockefeller Commission Report") (1975).

The following mass media articles are also instructive: "[Rev. Jesse] Jackson Asks Revival of King Death Probe," Baltimore Sun, 22 November 1975; "Conspiracy Killed King, Widow Says," Washington Post, 28 November 1975; "Documents Indicated CIA Spied on King, Wanted to Discredit Him as Black Leader," Los Angeles Times, 20 February 1980; "Public Understanding of CIA Called Crucial," The Observer Reporter (Washington, Pa.), 11 October 1976 (Deputy Director Knoche asserts that CIA not involved in assassination of President Kennedy or Reverend King); "Mystery Still Lingers on Marilyn Monroe," Chicago Tribune, 6 August 1982 (Kennedy loyalists in the CIA killed Marilyn Monroe); "Personalities," Washington Post, 3 August 1982 (CIA flatly denies story on alleged plot to murder Monroe).

39/ The following mass media articles are instructive on this aspect also. "CIA Elaborately Tracked Columnist," Washington Post, A1, 4 May 1977 (suit by columnist Jack Anderson, claiming CIA committed various illegal acts and violated his constitutional rights to free speech and privacy); "Ex-Spy Story," Washington Post, A-22, 19 November 1982 (questions whether Ed Wilson, after his retirement, was still working for the CIA and "peddling the paraphernalia of terror to one of the world's premier terrorists." Further observes that "nothing indicated that the CIA had done anything but the proper thing in washing its hands of Mr. Wilson and some of his erstwhile associates"); "Is there a CIA Link with Kaddafi?," Newsweek, p. 28, 15 February 1982; "Police Chief Was Gun-runner's Official Link," The New Statesman, 15 February 1982 (asserts that Edwin Wilson clearly enjoyed official connivance from the CIA in his terrorist training programs in Libya); "Dirty Tricks, Dirty Hands?," New York Times, E2, 10 January 1982; "Big Changes Ahead for CIA After A Damaging Review, U.S. News and World Report, p.17, 23 June 1975; "CBS Reports Alleged CIA Coverup in Wilson-Terpil Case," Associated Press, 9 November 1981 (reports allegations by CBS that CIA allegedly covered up the involvement of some of its top officials in an operation to supply military equipment to Libya).

However, this concern does not merely represent a discord of the past, it also constitutes a current issue of intense controversy and public importance. Indeed, the debate continues to this day with "substantial elements of the community in opposition to one another." 40/

This continued vitality of the issue is evidenced by the current oversight of the CIA by both the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, 41/ the requisite reporting by the CIA to the President's Intelligence Oversight Board, 42/ as well as the ever present commentary by

40/ Fairness Report, at 26376.

41/ "The Permanent Select Committee on Intelligence has a special obligation to the House of Representatives and to the American people to ensure that the agencies of the intelligence community continue to respect the Constitution and the legal restraints under which they must operate. Such rigorous Congressional oversight is essential to avoid any possibility of recurrence of improprieties and illegalities which once occurred in the conduct of U.S. intelligence activities." Report on the Activities of the Permanent Select Committee on Intelligence of the House of Representatives, 98th Cong. 2d Sess. 16, 2 January 1985. (Emphasis added.)

42/ "On October 18, the President ordered his Intelligence Oversight Board to investigate the production and distribution of the manual [The manual] raises the question of whether the Boland Amendment was violated ... [and] whether Executive Order 12333, which prohibits assassinations, was violated." Report on the Activities of the Permanent Select Committee on Intelligence of the House of Representatives, 98th Cong. 2d Sess. 16, 2 January 1985.

the news media and representative community leaders questioning and appraising the legality of CIA action. 43/

43/ See notes 37, 38, and 39, supra.

See also, Debate between Mr. Ray Cline, Senior Associate, Georgetown Center For Strategic and International Studies, and Representative James Shannon on The MacNeil/Lehrer News Hour, broadcast by the Public Broadcasting Service, WETA-TV, 18 October 1984.

Several mass media publications are also relevant. "Charges of CIA Foreign Meddling are Soviet Disinformation", Terrorism Report, by John Wolf, New York Tribune, 11 July 1984 ("Media distribution of stories alluding to the involvement of the CIA in dastardly deeds and the tendency of people, particularly consumers of television, to believe the fairy tales, have smeared the reputation of the intelligence agency. Its efforts to perform in accordance with established procedures and within congressional bounds overnight goes unnoted."); see also, Alpern, David M.; Horrock, Nichols M.; Lindsay, John T.; DeFrank, Thomas M.; "A CIA Bombshell," Newsweek p.30, 29 October 1984. ("It was a handbook for guerrilla warfare -- courtesy of the CIA. And on several crucial points, it seemed a clear violation of presidential orders and federal law against U.S.-sponsored terrorism.")

The Congress has also been deeply involved. See, e.g., "Alleged Author of CIA Manual Said To Be Ex-GI," Washington Post, A12, 20 October 1984 ("Reps. George Miller and Thomas J. Downey called on the Attorney General to appoint an independent counsel, or special prosecutor, to probe whether the CIA violated criminal laws ..."); see also, Vol. 42, Congressional Quarterly, 3074, December 1984 (Report on the finding of the House Permanent Select Committee on Intelligence that the CIA "unintentionally violated a 1983 law that barred U.S. efforts to overthrow the Nicaraguan Government," but that the CIA "did not violate an executive order prohibiting CIA involvement in assassinations.").

The debate has extended even to the recent Presidential race. See Transcript of Debate between President Ronald Reagan and Democratic Party Candidate Walter F. Mondale on 21 October 1984. (Mr. Mondale: "At this moment we are confronted with the extraordinary story of the CIA guerrilla manual for the anti-Sandinista contras, whom we are backing, which advocates not only assassinations ... but the hiring of criminals to assassinate Is this not in effect our own state-supported terrorism?" Mr. Reagan: "I'm glad you asked that question because I know it's on many people's minds.")

Moreover, each Administration since that of President Ford has seen fit to state publicly that assassination is contrary to public policy and a direct prohibition against such acts has been contained in the various Executive Orders (currently Executive Order 12333) governing the conduct of United States intelligence activities. 44/

Indeed, the commentary has run the gamut from views in favor to those highly critical of the CIA. 45/ Even citizen groups have felt the need to voice their concern over the issue. 46/

44/ Section 2.8 provides that "[n]othing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States."

Moreover, Section 2.11 further provides that "[n]o person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination."

45/ See Debate between Mr. Ray Cline and Representative James Shannon presented by the MacNeil/Lehrer News Hour, WETA-TV, 18 October 1984 (Rep. Shannon: "I think that there are real questions as to whether or not the executive order ... have [sic] been violated by this document." Mr. Cline: "I feel that the White House is establishing the guidelines and the operational instructions for the CIA, and that the CIA is following them very carefully.")

46/ "Hill Urged To Probe Reports Of Illegal CIA Activity In U.S.," Washington Post, A2, 16 November 1984 ("An arm of the American Civil Liberties Union called yesterday for Congress to probe charges that the Central Intelligence Agency conducted illegal operations inside the United States in an effort to influence U.S. policy in Central America."); see also, "Discipline Panel Finds Students Guilty In CIA Recruitment Fray," Washington Post, A3, 9 December 1984 (student protest at Brown University said to raise questions about CIA's alleged involvement in illegal activities); see also, United Press International, 30 November 1984 ("some 70 protesters ... [at Rhode Island school] claim the CIA has committed illegal acts including murder and government overthrow").

The evidence makes clear that the question of whether the CIA adheres to the mandate of U.S. law, and, in particular, whether the CIA engages in or condones the murder of American citizens, is currently the subject of intensely differing opinion as well as vigorous debate. On one side, many feel strongly that the CIA does not violate U.S. law and would never disobey a Presidential order. 47/ On the other side, many believe that the CIA constitutes, as a former U.S. Senator once alleged, a "rogue elephant" operating outside the laws of the United States. 48/

Thus, significant attention has been and continues to be paid to this issue by government officials, community leaders, and the media, alike. This evidence substantiates the fact that the "issue is the subject of vigorous debate with substantial elements of the community in opposition to one another."

47/ "CIA said to check reports on U.S.-Nicaraguan clashes," Associated Press, 2 December 1984 (In reply to press inquiry as to whether reported CIA action would be illegal, White House spokesman Larry Speakes responded that CIA activities "would work satisfactorily under the law").

48/ See remarks by Representative James Shannon made on the MacNeil/Lehrer News Hour, WETA-TV, 18 October 1984 ("... if the CIA is once again a rogue elephant running off doing things without permission").

Moreover, it cannot be disputed that the question of whether the CIA acts in contravention of U.S. law presents a controversial issue of public importance. Though the Commission has determined

... that an issue is not necessarily a matter of significant 'public importance' merely because it has received broadcast or newspaper coverage,

it has acknowledged that the degree of media coverage remains one factor "which clearly should be taken into account in determining an issue's importance." 49/

In addition, the Commission has directed that it "is also appropriate to consider the degree of attention the issue has received from government officials and other community leaders." 50/

Finally, the Commission has stressed that the principal test of public importance is "a subjective evaluation of the impact that the issue is likely to have on the community at large." 51/

49/ Fairness Report at 26376.

50/ Id.

51/ Id.

As detailed herein, the issue addressed by ABC's programming has received an exceptional and unusual degree of media coverage. 52/ Articles and reports by the news media, too numerous to document entirely, have speculated on the continuing question of whether the CIA engages in illicit actions, including attempts and conspiracies to murder American citizens.

In addition, as cited above, both government officials as well as community leaders have repeatedly directed a great deal of attention to this controversial issue. 53/

In conclusion, the CIA submits that ABC's broadcast has generated a substantial concern among the American public as to the propriety and legitimacy of CIA actions. Where the past has often shown itself as a reflection of the future, these one-sided allegations by ABC that the CIA does not abide by U.S. law may well lead to an intense public outcry questioning the efficacy of the CIA. 54/

52/ See notes 37, 38 and 39, supra.

53/ See Church Committee Report; Rockefeller Commission Report; see also E.O. 12333, E.O. 12036, E.O. 11905 and the charters of the Senate and House Intelligence Committees; see also notes 37, 38, 41 and 42 supra.

54/ In the past such public concern prompted the establishment of the special congressional investigatory and oversight committees, as well as Executive Order 12333.

B. The ABC Programming Clearly Concerned A
Controversial Issue Of Public Importance
And Violated The Fairness Doctrine

As is evident from our analysis, the CIA has clearly set forth a prima facie showing that ABC's programming concerned a controversial issue of public importance and was violative of the Commission's fairness guidelines. In sum, the programming portrayed the CIA as the talisman of evil, ruthless, and responsible to no individual and with no legal constraints when its interests are threatened. Neither in this investigative report nor elsewhere in its programming has ABC even attempted to make a balanced presentation; rather, ABC decided to create artificial news and, in so doing, implicated and accused the CIA of numerous illegalities. Despite the written and verbal complaints from the CIA, ABC has remained intransigent and has refused to fairly present an opposing view which was available from ABC's own files and from numerous external sources. 55/ This refusal to present any opposing point of view on such a controversial issue, as well as ABC's subsequent intransigence to rectify the broadcasts despite the CIA's protests,

55/ When pressed by CIA with its complaints of distortion and violations of the fairness doctrine, ABC's statement on 21 November 1984 did little to remedy the critical fairness issue. ABC "clarified" only that portion of the story dealing with the alleged murder conspiracy and did so only by stating that there were questions with respect to Barnes' reliability. Notably, ABC refused to address the other aspects of the story which were similarly distorted and, more significantly, continued to refuse to inform the viewing public of the wealth of contrary information -- including the basis for ABC's change of heart after first "standing by" its entire story.

exemplifies a wholly unacceptable approach by ABC to fulfill its obligation of providing the opportunity for the presentation of contrasting views, positions and information.

ABC's programming began, ended, and consisted solely of sensational but otherwise unqualified statements of fact that the CIA was engaged in a number of activities violating international agreement and U.S. law. ABC detailed some of these violations of law through its own narrative statements of fact and the unverified statements of two self-identified "CIA agents." In developing its murder conspiracy charge, ABC presented no evidence and offered no direct corroboration for Barnes' statements. ABC neither questioned the truth of Barnes' statements nor asked who the "he" or "they" are that supposedly ordered the killing of Rewald. Not once did ABC reveal that a senior ABC broadcaster had previously refused to utilize Barnes because he believed him to be an unreliable source of information. Not once did ABC suggest that any other information existed except for the scurrilous picture presented by Rewald and Barnes.

In sum, except for nine words -- "The CIA denies it ever tried to kill Rewald" -- ABC did not once present anything other than the Rewald version of the story -- a story which excuses Rewald from the acts for which he stands indicted and, instead, implicates and indeed accuses the CIA of the theft of

over \$20 million and attempted murder, as well as other nefarious acts. These deliberate actions by ABC clearly establish that the network and its licensees failed to make any reasonable and good faith effort to meet their public obligations. 56/

C. Viewing Habits

In its 10 February 1985 ruling, the Commission staff noted that the CIA failed to "describe its viewing habits sufficiently to support its conclusion that ABC did not present contrasting viewpoints in its overall programming." 57/ We recognize that this is an element of a Fairness Doctrine complaint and herein present what we believe to be a most complete exposition of our viewing of the overall ABC programming.

56/ A licensee in applying the Fairness Doctrine is called upon to make a reasonable judgment in good faith and on the facts of each situation as to whether a controversial issue of public importance is involved and as to what viewpoints have been or should be presented. Brandywine-Mainline Radio, Inc. v. FCC, 473 F.2d 16, 44 (D.C.Cir. 1972). From the facts of the instant situation, ABC has either abdicated or deliberately ignored its obligations in this area.

57/ FCC Staff Ruling, 10 January 1985, at 6.

The CIA views the daily news programming of the networks, which includes "ABC Morning News," "Good Morning America," "ABC World News Tonight," and "Nightline," as well as special reports, documentaries, and non-entertainment shows 58/ for information which would be of interest to the conduct of its intelligence function as authorized by law. 59/ The CIA has viewed all news programming for a number of years and this viewing totals, with respect to ABC alone, in excess of 20 hours per week.

On 19, 20 and 26 September and 21 November 1984, this Agency viewed ABC's broadcast of its World News Tonight program. 60/ It is our considered judgment, based upon these observations, that these broadcasts concerned a controversial issue of public importance, namely, whether the Central Intelligence Agency adheres to the mandate of United States law, and more particularly, whether the Agency participates in or condones the murder of American citizens, or other criminal acts. It is similarly our considered judgment that these broadcasts also constituted a personal attack on the honesty, character, and integrity of the Central Intelligence Agency and its employees.

58/ As broadcast by ABC through its affiliate WJLA-TV in Washington, D.C.

59/ See, National Security Act of 1947 and CIA Act of 1947, as codified at 50 U.S.C. §402 - 403n.

60/ See EXHIBIT 1, supra.

Based on our observation of ABC news programming, ABC, through its affiliate WJLA-TV, has not broadcast, in its overall programming, any opposing views to the thesis developed in its programming of 19, 20 and 26 September -- that the Central Intelligence Agency does not abide by United States law as well as conspires in or condones the murder of American citizens. Specifically, we have not observed, nor are we aware of, any programming broadcast by ABC which has presented the contrary view that the Central Intelligence Agency adheres to and conducts its intelligence activities in conformance with the mandate of United States law.

Based on the foregoing, we submit that ABC has failed to afford the opportunity for the presentation of a contrasting point of view on a controversial issue of public importance and has thus not satisfied its obligation under the fairness doctrine.

V. ABC Programming Constituted
A Clear-Violation Of The Personal Attack Rules

A. Introduction

In its initial ruling, the staff rejected our claim under the Personal Attack Rules holding that the ABC programming at issue 61/ gained an exempt status under the Rules solely because of its inclusion in a so-called "bona fide" newscast. In so holding, the staff failed to reach our corollary claim that a personal attack occurring even in a §315(a) exempt broadcast is nevertheless actionable under the general remedial provisions of the Fairness Doctrine. For the reasons set forth herein, we reiterate that this documentary is not exempt from the Personal Attack Rules. Moreover, inasmuch as the broadcast unquestionably concerned a controversial issue of public importance, it is further and separately actionable under the Fairness Doctrine without regard to its exempt or non-exempt status.

B. The ABC Programming Is Actionable
Under The Personal Attack Rules

As we have observed, the Fairness Doctrine requires a licensee which presents one side of a controversial issue of public importance to afford reasonable opportunity for the

61/ More specifically, because of the characteristics of the programming at issue, it is more properly denominated as an investigatory news documentary or, simply, a news documentary.

presentation of contrasting views in its programming. 62/
 Thus, in order to effectuate the important aspects of this doctrine, the Commission has long adhered to the personal attack principle because "elementary considerations of fairness ... dictate that time be allocated to a person or group which has been specifically attacked." 63/

Beginning in 1967, this principle was codified in order "to clarify and make precise the obligation of broadcast licensees" and so the Commission would be empowered to act "in the event of violations." 64/ This was done in substantial part because the Commission noted that, despite the long existence of this principle, abuse was extensive. 65/ As we shall demonstrate, this clear realization by the Commission seems inexplicably at odds with the holding of the staff in the instant complaint that, absent a demonstration of bad faith, the Commission will not inquire into the decision of a licensee to include non-exempt programming in a news broadcast and thus avoid the mandate of the Rule.

62/ Fairness Report, 26372.

63/ 1949 Report, at 1252.

64/ In the Matter of Amendment of Part 73 of the Rules to Provide Procedures in the Event of a Personal Attack or Where a Station Editorializes as to Political Candidates, 8 FCC 2d 721, ¶3 (1967) (hereinafter "1967 Amendment of Rules in re Personal Attack").

65/ Id., at ¶7.

The rationale for this rule-making has been specifically and cogently stated by the Commission:

The development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues is the keystone of the fairness doctrine. It is this right of the public to be informed, rather than the right on the part of ... any broadcast licensee ... to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting. 66/

Thus, if a licensee 67/ opts to broadcast a personal attack on the "honesty, character, integrity or like personal qualities" of an identified person or group, that licensee must (a) provide timely notice of the attack, 68/ (b) forward a tape, transcript or accurate summary of the attack, and (c) extend a reasonable opportunity to respond. 69/

66/ 1949 Report, supra, 13 FCC at 1249. This reading of the Fairness Doctrine -- and its standard of public interest -- was congressionally ratified in the 1959 amendment of §315(a) of The Communications Act of 1934, 73 Stat. 557, 47 U.S.C. §315(a). Moreover, the Fairness Doctrine and the Personal Attack Rules have repeatedly passed constitutional muster. 1949 Report, supra, 13 FCC at 1246-1270; Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

67/ "The obligation for compliance with these rules is on each individual licensee Where a personal attack ... is carried by the licensee, the licensee may not avoid compliance with the rules merely because the attack occurred on a network program." 1967 Amendment of Rules in re Personal Attack, supra, 8 FCC 2d at ¶8.

68/ This notice must be given "in no event later than one week after the attack." 1967 Amendment of Rules in re Personal Attack, supra, 8 FCC 2d at ¶12.

69/ 47 C.F.R. §73.1920; 1967 Amendment of Rules in re Personal Attack, supra, 8 FCC 2d at ¶7.

When ABC recklessly decided to charge the CIA and unnamed officers and employees with conspiracy to commit murder and other illegalities, and subsequently stood by that story when presented with the most specific denials, there can be no question that there has been a personal attack upon the character and integrity of the CIA and its employees, that ABC has failed to discharge its responsibilities under the Fairness Doctrine and the Personal Attack Rules, and that the complainant is entitled to relief. 70/

C. This Documentary Was Not Exempt
From The Personal Attack Rules

Moreover, we submit that the exempting provisions of the rules are clearly unavailable to ABC. When the Personal Attack Rules were amended in 1968, the Commission broadened the exemptions to include "the bona fide news interview and news commentary or analysis in a bona fide newscast." 71/ This was so because of the necessity to protect the reporting of events,

70/ Upon accusation of criminal conduct, there is "no reasonable doubt ... that a personal attack has taken place." 1967 Amendment of Rules in re Personal Attack, supra, 8 FCC 2d at ¶9.

71/ In The Matter of Amendment of Part 73 of the Rules Relating to Procedures in the Event of a Personal Attack, 12 FCC 2d 250 ¶4 (1968) (hereinafter "1968 Amendment of Rules in re Personal Attack").

the spontaneous and immediate nature of which effectively precluded research, verification, and the considered exercise of judgment. 72/

Notably, however, the Commission explicitly excluded the news documentary from the exemptive provisions:

In the case where the licensee presents a documentary which makes the honesty, integrity or character of a person an issue in its discussion of some controversial issue, the response of the person attacked is clearly germane and important to informing the public fully. There is no factor of even possible inhibition in the case of a documentary, which is assembled over a period of time. (Emphasis added.) 73/

Here, we know that as early as 9 July 1984 the documentary at issue was in production. This is so because on that date the ABC correspondent telephoned the Office of Public Affairs of CIA 74/ and stated that he was working on the Rewald case. The correspondent asked only whether the CIA had made any recent statement concerning the matter. His question was answered in the negative and he was referred to the appropriate court documents.

It is for these reasons -- the actual character of the report as an investigatory report or documentary, the lack of spontaneity, the absence of time deadlines, the opportunity to

72/ Id. at ¶4.

73/ Id.

74/ See EXHIBIT 18; Query Sheet (Inquiry by Gary Sheppard), CIA Office of Public Affairs, dated 9 July 1984.

fully investigate and evaluate the serious charges it was prepared to make against the CIA, the opportunity for unlimited corroboration, and the possession of conflicting information -- that we submit that the programming is not exempt from the requirements of the Personal Attack Rules.

While the staff correctly noted that the Commission has held that the inclusion of such material within a newscast, which if broadcast outside the newscast would not be exempt, will gain exempt status for such material, 75/ the ruling has been strictly qualified by the United States Court of Appeals. The exempt status will be recognized only so long as that judgment is reasonable and made in good faith. 76/ Thus, this rule recognizes only that the Commission, when reviewing a broadcaster's judgment, will uphold that decision where it is reasonable and made in good faith; it presupposes a review by the Commission and sets the standard for the review of a broadcaster's action; it does not purport to authorize the staff or the Commission to ignore valid claims and to decline any review effort or investigatory action unless and until a complainant submits evidence that the broadcaster's decision was "clearly unreasonable or in bad faith." 77/

75/ See, e.g., Citizens for Reagan, 58 FCC 2d 925 (1976); CBS, Inc., 58 FCC 2d 601 (1976); Socialist Worker's 1968 Campaign Committee, 14 FCC 2d 858 (1968); Lar Daly, 40 FCC 314 (1960);

76/ Straus Communications, Inc. v. FCC, 530 F.2d 1001 (D.C. Cir. 1976).

77/ See Staff Ruling of 10 January 1985 at n.10.

Moreover, the authority which the staff relies on in n.10 and similar authority have all involved the inclusion of an interview within a newscast -- hardly the type of programming which could stand alone. We submit that the staff ruling should not have extended the holding concerning interviews to a news documentary -- a case which we believe is of first impression.

In any event, however, we have here presented evidence which satisfies even the staff's stringent holding. Having produced a "documentary" 78/ which would clearly implicate protections under the Personal Attack Rules if broadcast as a regular documentary -- which it should have been considering the sensational nature of the charges -- ABC reordered their programming, broke the documentary into segments and embedded each segment in their evening news program so as to immunize themselves from the Commission remedy most directly available.

78/ We submit that the programming in issue -- a self-contained documentary, independent of the news and consisting of some four announced segments -- is the type contemplated by the Commission in Letter to Honorable Clark W. Thompson, 40 FCC 378 (1962), wherein it was held that the broadcast of a "self-contained program" would not be exempt merely because the licensee placed it within a newscast.

As such, under the mandate of the Straus doctrine, Commission action is warranted. 79/

79/ As the Commission has recognized, "It is difficult to define with precision what is a newscast, news interview, news documentary, or on-the-spot coverage of news events That is why the committee in adopting the language of the proposed legislation carefully gave the Federal Communications Commission full flexibility and complete discretion to examine the facts in each complaint which may be filed with the Commission" In the Matter of Petitions of the Aspen Institute and CBS, Inc., 55 FCC 2d 697 at ¶4 (1975).

It is this authority which compels the Commission to act in the instant matter. As the decision contemplated, the Commission "will be able to determine on the facts submitted in each case whether the [programming] is bona fide" Id.

D. In Any Event, The ABC Programming Is Actionable Under The General Rules Of The Fairness Doctrine

Even assuming that the broadcasts in question qualify as newscasts exempt from the Personal Attack Rules, a point we most certainly do not concede, they are nonetheless actionable under the general principles of the Fairness Doctrine which, as we have shown, imposes upon licensees an affirmative duty generally to encourage and implement the broadcasting of contrasting viewpoints. 80/ It is with respect to this duty that the Commission has consistently recognized that the Fairness Doctrine is applicable to the exempt categories of the Personal Attack Rules. 81/

Thus, under the 1968 revision of the rules, the Commission noted that a licensee's discretion in discharging its affirmative duty with respect to fairness questions is severely circumscribed where a personal attack during a presentation of a controversial issue of public importance is at issue. 82/ In such circumstances, the Commission has consistently held that, with respect to the exempt categories, a licensee must act reasonably and fairly and "present the viewpoint of the person or group attacked on the attack facet of the issue."

80/ 1949 Report, supra, 13 FCC at 1251.

81/ 1968 Amendment of Rules in re Personal Attack, supra, 12 FCC 2d at ¶5.

82/ Id.

Failing such affirmative action by the licensee, the person attacked must be given an opportunity to respond.

[I]t obviously is not appropriate for the licensee to make general offers of time for contrasting viewpoints, either over the air or in other ways in his community. There is a clear and appropriate spokesman to present the other side of the attack issue -- the person or group attacked. Thus, our revision affords the licensee considerable leeway in these newstype programs but it still requires that fairness be met, either by the licensee's action of fairly presenting the contrasting viewpoint on the attack issue or by notifying and allowing the person or group attacked a reasonable opportunity to respond. 83/

In subsequently decided cases under this doctrine, the Commission has routinely applied this rule and held that, although the Personal Attack Rules were inapplicable to newscasts, the Fairness Doctrine nevertheless applied and that under established policy, as set forth in 12 FCC 2d 250, 252, ¶5 (1968), a licensee was required to present the opposing viewpoint on the attack issue. 84/ Indeed, with respect to the appropriate remedy, the Commission has noted:

We wish to make clear that we do not believe that fairness can be achieved by relying upon the person making the criticism or attack to present the other side. 85/

83/ Id.

84/ See, e.g., In re Healy v. KTTV-TV, 24 FCC 2d 487 (1970), aff'd 460 F.2d 917 (D.C.Cir. 1972),

85/ Id. at 489.

To ensure that the staff appreciates the clear availability of a cause of action in the context of a personal attack during a newscast, we highlight the dissent by Commissioners Cox and Johnson in the Healy case:

[w]hen we added the exemptions, we made it clear that the basic Fairness Doctrine applies to personal attacks in newscasts and other exempt programs. 86/

In light of this clearly recognized policy, the public interest must be vindicated by such relief as delineated herein and as the Commission believes appropriate.

86/ Id. at 490.

VI. ABC's Deliberate Distortion Of The News

Deliberate distortion of the news by a broadcast licensee is "a most heinous act against the public interest" 87/ and it is well-settled that the Commission will investigate and take action against licensees charged with deliberate distortion when presented with either extrinsic evidence of such distortion or documents that on their face reflect a deliberate effort to slant the news. 88/ Both of these evidentiary standards are met here.

We recognize that the Commission is loathe to interfere with the editorial discretion of broadcast journalists, and, to that end, eschews attempts to use the news distortion doctrine solely to challenge the truth of a news broadcast or the good faith judgment of editors and reporters in deciding how to cover or report an event. The CIA's complaint, however, does not seek to set the Commission up in the role of editor or censor. Thus, while ABC has already admitted that one of the several serious charges levied against the CIA was baseless, 89/ this case involves much more than the mere falsity of ABC's charges.

87/ Complaints Concerning CBS Program "Hunger in America," 20 FCC 2d 143, 151 (1969).

88/ Staff Ruling at 4; Fairness Report, 39 Fed. Reg. 26372, 26380 (1974).

89/ See ABC "clarification" of 21 November 1984.

What is involved in this matter, and what the CIA's complaint and the evidence outlined here demonstrate, is a deliberate effort by ABC to create an artificial "news" story where none existed, and to present to the American public a distorted and falsified view of the CIA and its activities. ABC accomplished these ends by broadcasting immensely serious charges against the CIA from certain sources which it knew to be unreliable, by making no serious attempt to verify facially absurd claims made, and by deceptively constructing its broadcasts to create the appearance of corroboration. 90/ ABC's conduct, in short, took it "beyond the 'core area' of licensee discretion" 91/

A. Extrinsic Evidence Of Deliberate Distortion

To support a claim of news distortion, the Commission looks, in part, to extrinsic evidence which demonstrates that the reported facts were intentionally falsified or presented inaccurately. The CIA understands that, as clearly pointed out in the

90/ ABC cannot claim that whatever misconduct is found here is attributable to the individuals who put together the broadcasts at issue, and not to management. Senior production officials authorized and passed on the broadcasts. Moreover, ABC's report on 26 September 1984 that it "stands by its story," along with its later clarification of only a small portion of that story, clearly indicates the intention of the network in this case to ratify and adopt as its own the actions of its employees. See EXHIBIT 1, supra.

91/ Application of WMJX, 85 FCC 2d 251 at ¶26 (1981).

Staff Ruling, intent is at the core of the extrinsic evidence requirement; the evidence external to the program must demonstrate not just that the licensee was in error, but that it intentionally sought to distort the news.

Even under this evidentiary standard, Commission action is warranted in this matter. Here, ABC broadcast the charges of Ronald Rewald, Scott Barnes, and Ted Frigard without seriously attempting to verify those charges, and while having substantial reason to believe that the allegations were false. It is this element of knowingly broadcasting a highly suspect and uncorroborated report accusing an agency of the United States Government of the most serious crimes that separates this case from the ordinary case of honest journalistic error, and renders ABC's conduct worthy of inquiry.

Evidence that a licensee broadcast a report with knowledge of its falsity clearly establishes intent to deceive the public for purposes of the rule against news distortion. 92/ Even when the report is essentially harmless or in fun, the most severe sanctions may be appropriate. 93/ The same rule certainly applies when a licensee, with no reasonable attempt at verification and no cautionary statement to the public, broadcasts a "news" report which it knows is probably false, and which has the potential to shatter public confidence in a legitimate organ of government.

92/ Staff Ruling at 4; Application of WMJX, 85 FCC 2d at 251, ¶26 (1981).

93/ Application of WMJX, supra.
59

There can be no serious question that ABC entertained grave doubts regarding the reliability of its sources for the reports at issue here. To begin with, ABC of course knew that Ronald Rewald had been indicted on charges of mail fraud, securities fraud, tax evasion, and perjury. 94/

ABC also must have learned from its interview with the bankruptcy trustee that the trustee contradicted Rewald's claims that he was working for the CIA when he committed his crimes. Not only did ABC fail to report to the public any of this critical information, which raised doubts about Rewald's entire story; it went to the opposite extreme and deceptively used excerpts from its interview with the trustee in a manner which made it look as though the trustee positively supported Rewald's claims.

As with Ronald Rewald, ABC was fully on notice of the falsity of Ted Frigard's claim that a government agent had threatened his life. Frigard's statement that an agent had threatened to "shoot [him] through the heart" and "report it as a heart attack" is

94/ On 20 September 1984, ABC reported, "Rewald has been indicted on 100 counts of fraud, perjury and tax evasion in connection with the bankruptcy of his Honolulu investment company." See EXHIBIT 1, supra.

such a sensational charge that any journalist acting in good faith would immediately question the charge and seek corroboration. No such corroboration was sought in this case.

ABC's collaboration with Scott Barnes also is understandable only as a deliberate effort to distort news. As already discussed in detail, other journalists have easily seen through Barnes' false tales about alleged CIA plots. As detailed in EXHIBIT 12, supra, ABC itself rejected earlier claims by Barnes that the CIA was planning the murder of United States citizens. Nevertheless, on this occasion, ABC broadcast Barnes' story without so much as a one-sentence warning to the public that there might be reason to doubt his word.

ABC's lack of good faith is further exemplified by its wholesale failure to make the most elementary effort to substantiate the very serious charges of certain of its sources. ABC impliedly conceded in its "clarification" broadcast of 21 November 1984 that it failed to verify Scott Barnes' story in advance of airing his claims on 20 September 1984. Indeed, ABC never attempted to find and interview Barnes' alleged CIA contacts. Similarly, ABC accepted Ted Frigard's sensational allegations on their face, and never sought to identify or to contact the federal agent who purportedly threatened Frigard's life. ABC's reliance solely on other Rewald associates for corroboration of Rewald's story of heavy and illegal CIA involvement with Bishop-Baldwin can only be considered to be part of its

attempt to lull its listeners into believing there was some support for these baseless allegations. 95/

ABC's actions in this matter stand in stark contrast to the conduct of the licensee in Complaint of New York City Transit Authority, 96/ a case where the complainant also raised the issue of the reliability of the licensee's sources. In determining that the complainant's news distortion claim did not warrant further action, the Broadcast Bureau, in that case, heavily emphasized the fact that the licensee took all reasonable steps in advance of the broadcast at issue to verify and authenticate the events portrayed by its sources.

In summary, then, significant evidence outside of the content of the programs themselves indicates that ABC broadcast the sensational charges of Ronald Rewald, Ted Frigard and Scott Barnes while having substantial reason to believe that such charges were false, and without seriously attempting to verify the charges. From this extrinsic evidence, without more, the

95/ ABC's failure to press its "sources" for confirming information clearly indicates that ABC knew that the stories it was hearing were false. As Judge Sofaer recently wrote in denying Time magazine's motion for summary judgment against the libel action by former Israeli Defense Minister Ariel Sharon, "A jury could find that [Time reporter David] Halevy chose not to ask source C the ultimate question because he knew or suspected that source C's answer would undermine his hypothesis" "Halevy's actions," the judge continued, "could be read to convey his 'subjective awareness of probable falsity.'" Sharon v. Time, Inc., No. 83 Civ. 4660, slip op. at 74-75 (S.D.N.Y. November 16, 1984).

96/ 45 FCC 2d 844 (1974).

Commission clearly has the basis to require ABC to respond to our complaint and to conduct an appropriate inquiry.

B. Documents Which Reflect Deliberate Distortion

As noted above, the Commission will investigate and take appropriate action regarding complaints of news distortion if it is presented with either extrinsic evidence or "documents that on their face reflect deliberate distortion." The Commission has further defined the documentary alternative to extrinsic evidence only by example:

[W]e can conceive of situations where the documentary evidence of deliberate distortion would be sufficiently strong to require an inquiry -- e.g., where a 'yes' answer to one question [in an interview] was used to replace a 'no' answer to an entirely different question 97/

Put another way, the Commission has recognized that the construction and editing of a news broadcast can be so outrageously deceptive on its face as to warrant -- even without evidence outside of the program -- inquiry on whether the licensee deliberately set out to distort the news. Thus, the "documentary evidence" standard allows the Commission to consider the words

97/ Complaint Concerning CBS Program "The Selling of the Pentagon," 30 FCC 2d 150, 153 (1970); accord, Application of WMJX, supra, 85 FCC 2d at n.75 (1981).

and images of a news broadcast itself in determining the sufficiency of a complaint for news distortion.

The ABC broadcasts at issue here certainly constitute documentary evidence which, on its face, reflects deliberate news distortion. The ABC reports were so deceptively constructed that there is no reasonable conclusion but that ABC cleverly and purposefully assembled its material so as to justify its predetermined position that the CIA was engaging in criminal activities.

Moreover, the Commission has never suggested that action on a news distortion complaint must be based exclusively on extrinsic evidence. To the contrary, it has been determined that, as long as the complaint adduces some clear extrinsic evidence of deliberate distortion, it is also appropriate to examine program content, and to draw therefrom logical conclusions regarding the licensee's intentions. 98/ Thus, whether conceived of as documents which on their face reflect deliberate distortion, or as supplements to the extrinsic evidence discussed above, the ABC broadcasts themselves -- their content and structure -- are legitimate sources for the Commission to consider in determining whether to take action on the CIA's complaint. We would urge that the staff, in its reconsideration, take this evidence into account in passing on our complaint.

98/ See Application of Chronicle Broadcasting Co., 40 FCC 2d 775 at 743 (1973).

The complete litany of ABC's distortions is described above. What bears emphasis here is the way that ABC began with a few wholly uncorroborated claims, and, through clever editing and the deliberate use of text and images, constructed what ABC termed an "investigation" of purported CIA crimes.

As the primary source for many of the charges that ABC levied, it had only Ronald Rewald. ABC thus set about creating corroboration for Rewald's claim that his illegal acts were committed at the behest of the CIA. As noted above, ABC first exploited ambiguities in its interview with the bankruptcy trustee in order to make it appear as though the trustee confirmed Rewald's story, when, in fact, exactly the opposite was true. 99/ ABC similarly buttressed Rewald's false allegation by

99/ ABC thus made the trustee appear to reply "yes" to the question, "Do you support Ronald Rewald?" when, in truth, his reply was a resounding "No!" This, of course, is precisely the kind of deceptive editing which the Commission believes creates a document that, on its face, reflects deliberate distortion. Complaint Concerning CBS Program "The Selling of the Pentagon," supra, at 153.

prefacing its charge of illegal CIA operations with the deceptive imprimatur, "ABC News has learned" 100/

100/ In an open letter to Time Magazine, editor and publisher Steven Brill recognized that deceptive use of a phrase like "ABC News has learned ..." is a dangerous abuse of journalistic discretion. Brill wrote:

For it seems from the testimony of your own people that Time made up its story--that's right, simply made it up -- when it reported in a February 1983 cover article that 'Time has learned' that a secret appendix to a report by an Israeli governmental commission investigating the Phalangist massacre of Palestinian refugees in Lebanon concluded that then-Israeli defense minister Ariel Sharon had visited the Phalangist leaders and 'discussed ... the need' for them to take revenge for the assassination of Phalangist leader Bashir Gemayel.

Noting that the Time reporter had, in fact, only inferred the presence of the information in the appendix, Brill continued: Whenever I read something like 'Time has learned,' is that what I'm now supposed to think is behind it -- the reporter's inference and analysis? Why not say "Time reporter David Halevy speculates that Appendix B says ..."? Why have you been in court defending this journalism? Why has it taken you so long to think about setting a case based on this journalism? This is why this case isn't anything like the libel suit by General William Westmoreland against CBS being tried in the same courthouse. That case involves debates over editing decisions and editorial fairness -- debates that under the First Amendment a jury should never be called on to resolve. Your case involves a fabrication, pure and simple. You said, 'Time has learned,' when Time was only guessing.

"Say It Ain't So, Henry," The American Lawyer, January/February 1985, at 8, 10. Brill concluded by calling on Time to "strike a blow for free press by admitting your mistake and acting to clean up what caused it." Id. at 13.

ABC thus made it appear as though it had received reliable information from sources other than Ronald Rewald and those allied with Rewald who were interviewed or cited on the air. 101/

ABC's most extreme efforts at constructing corroboration are found in its report that the CIA hired Scott Barnes to murder Ronald Rewald. ABC knew that Barnes' testimony alone was completely unreliable. However, rather than make any serious attempt to investigate Barnes' charges (by, for example, seeking to interview Barnes' alleged CIA contacts), ABC resorted to innuendo, suggestion, and unsubstantiated sources to create what appeared to be corroboration for Barnes' sensational story.

ABC first introduced the Barnes segment with the question, "Did the Central Intelligence Agency try to have Ronald Rewald killed to keep him from talking?" The camera then focused on Rewald, who said:

At first I didn't believe it. I thought it was total nonsense, and it took a lot of convincing and a lot of evidence and a lot of facts to be checked out before I recognized that it was, in fact, what was going on.

101/ ABC, of course, never revealed any other sources for the charges it broadcast. Significantly, on 21 September 1984, The Honolulu Advertiser wrote:

The ABC report last night followed a first installment in which the network said -- again without revealing any substantiation -- that Bishop-Baldwin sold arms to Taiwan for the CIA in violation of U.S. treaties with communist China. The Advertiser has reviewed telexes, purporting to discuss such a deal, but has found no evidence of it except that generated by Rewald or his associates at his direction. (emphasis added)

See EXHIBIT 14, supra.

The impression was thus created that there was indeed "a lot of evidence and a lot of facts" supporting the claim that the CIA conspired to murder Rewald. The viewers could also reasonably assume that ABC had checked out all the "evidence" and "facts" before deciding to air such a serious charge. Rather than presenting any solid evidence to its viewers, however, ABC employed artifice and deception in order to make Barnes' charge appear to be believable.

First, by introducing Scott Barnes as a man "who sources say has extensive intelligence background," ABC implied that Barnes was connected with the CIA (even though in 1982 the CIA explicitly told ABC that it had never had any contact with Barnes) 102/ or, at least, that he was a knowledgeable individual regarding CIA matters. With one small phrase, ABC thus concealed Barnes' reputation as one completely lacking in credibility.

ABC then presented the statements of Brent Carruth and Ted Frigard (both discussed at length above) in what appeared to viewers to be reliable confirmation of Barnes' claim. Of course, on its face, the alleged remark of a government attorney to Carruth that the government would "go after" Rewald in no way supports Barnes' charge of a CIA murder plot. As with the interview with the bankruptcy trustee, ABC here was able to exploit ambiguities in Carruth's statement to "generate" corroboration

102/ As noted, supra, during the broadcast of 26 September 1984, ABC erroneously identified Barnes as "working for the Agency."

for the story it wished to present. Similarly, unable to find legitimate verification for the Barnes story, ABC offered its viewers the unsubstantiated and facially absurd claim of Frigard.

It is beyond belief that a major news network, acting in good faith, could construct an investigative report like the one at issue here. ABC focused on a sensational tale of a CIA murder plot, told by a man whose lack of credibility was well documented and to whom ABC had previously refused air time because of significant questions about his reliability. ABC then attempted to substantiate this story with the unsupported statements of two others (Rewald and Frigard) and with completely irrelevant hearsay remarks allegedly made by one of the government attorneys involved in the prosecution of Rewald. At the same time, ABC did not take the simplest and most obvious steps toward genuine substantiation, such as seeking to identify and interview Barnes' supposed CIA contacts, the government attorney who spoke to Carruth, or the federal agent who allegedly threatened Frigard's life. Thus, a virtual facade of corroboration was constructed. Similarly, in the other parts of ABC's report, deceptive editing (i.e., misuse of the interview with the trustee) and clever text (i.e., employing the phrase "ABC News has learned") created the appearance of substantiation for Rewald's claims. We respectfully submit that, on the record of the distortions apparent in the ABC broadcast, and the extrinsic evidence of deliberate distortion discussed above, the Commission is warranted in proceeding with an inquiry on whether ABC deliberately slanted, rigged, and distorted its programming.

C. Addressing The Concerns Of The Staff

In rejecting our argument that ABC deliberately distorted the news in its broadcasts of 19, 20 and 26 September 1984, we respectfully submit that the staff erred in three key respects. First and most importantly, the staff found that the CIA had presented "no extrinsic evidence demonstrating that ABC knowingly distorted news programming" 103/ As is amply demonstrated above, however, evidence external to the programs at issue clearly demonstrates that, in this case, ABC "knew elements of [its] news story were false or distorted, but, nevertheless, proceeded to air such programming." 104/

The staff's finding that deliberate distortion is not demonstrated merely by the fact that "various public records might contradict aspects of ABC's news coverage" misses the key point. This is not a simple case where there are two legitimate sides to a story and only one was reported by the licensee. In failing to report the trustee's findings, ABC ignored the only clearly reputable source of information to which it turned for its story, and relied instead on a source which it knew was, at best, highly questionable. Moreover, the public record did not merely contradict "aspects" of ABC's coverage, but shattered the

103/ Staff Ruling at 4 (emphasis in original).

104/ Id.

very foundation for the report. The fact that reliable public information in ABC's possession contradicted Rewald's claim is therefore significant not for its own sake, but for what it reveals; i.e., that ABC broadcast Rewald's charges knowing that they were groundless.

The staff also failed to even consider the significant documentary evidence of deliberate distortion present in this matter. Although the staff correctly noted the long-settled rule that inquiry is warranted when there is either extrinsic evidence or "documents that on their face reflect deliberate distortion," the opinion rested exclusively on the extrinsic evidence presented, and failed to examine the deceptive nature of the broadcasts themselves in determining whether to initiate an inquiry concerning ABC's deliberate news distortion. 105/

Finally, in its original consideration of our news distortion claim, the staff apparently focused on the probative value of individual facts, and did not consider the totality of the evidence. 106/ As the Commission has long recognized, however, "[i]solating and evaluating each of the items ... obscures and distorts the overall picture [An] examiner [should]

105/ Staff Ruling at 4 (emphasis in original).

106/ The staff found that certain facts presented by the CIA did not "in and of themselves demonstrate the requisite intent by ABC to deceive its audience." Staff Ruling at 4 (emphasis added).

consider altogether the collective effect of all the information presented. 107/ An examination of the "overall picture" in this case leads inescapably to the conclusion that ABC first decided exactly what it wanted to report, and then purposefully constructed a broadcast to fit its predetermined ideas.

107/ Application of Miami Broadcasting Corp., 19 FCC 2d 651 at ¶2 (1969); Application of Chronicle Broadcasting Corp., 40 FCC 2d 755 at ¶56 (1973).

VII. Conclusion

As this Amended Complaint and Petition For Reconsideration amply demonstrates, ABC created and broadcast into millions of homes a sensational report on alleged CIA crimes that had absolutely no basis in fact. The analogy between this case and the case where a Pulitzer Prize was withdrawn from a Washington Post reporter who had fabricated a story about a young heroin addict is direct and compelling. ABC did not falsify merely a small or tangential aspect of an otherwise legitimate report. Rather, the "facts" which formed the very basis of ABC's three-part report were created out of thin air. ABC, in short, presented to the viewing public a work of fiction -- what we have termed artificial news -- in the guise of an investigative report.

The question now is how the FCC will deal with such "artificially" created news. We would hope that, as the agency charged with regulation of the airwaves in the public interest, the Commission would want to seize the opportunity presented by this case to renew and restate in the strongest possible terms its historic aversion to distorted and deceptive news practices by licensees. It is difficult to conceive of a more blatant case of "artificial" news reporting than that presented here. We thus respectfully request that the Commission, as part of its inquiry into the issues raised by the CIA's complaint and

this supplement, at a minimum, to require ABC to respond to the CIA's complaint, to conduct an appropriate investigation, and to grant such further relief as it may deem appropriate.

For the foregoing reasons, the complainant Central Intelligence Agency requests that the Commission take all appropriate action necessitated by the facts presented here.

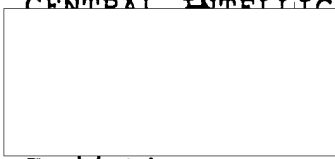
Respectfully submitted,

UNITED STATES

CENTRAL INTELLIGENCE AGENCY

STAT

By:


Executive Secretary
Central Intelligence Agency

Dated: 8 February 1985