

**Free Press National Conference for Media Reform
Report to The Ford Foundation and The Ronald H. Brown Center for Civil
Rights and Economic Development at St. John's University School of Law**

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Thanks to the Ford Foundation and The Ronald H. Brown Center for Civil Rights and Economic Development at St. John's University School of Law, I attended the 2007 Free Press National Conference for Media Reform (NCMR). I was a facilitator at the pre-conference for academics interested in media reform issues and a panelist at the media diversity summit organized by the Ford/St. John's delegates.

The conference was very informative and inspirational and made me think about several media issues in new ways. Below are my observations about the conference:

1. The Academic Pre-Conference

I co-facilitated a panel at the academic pre-conference on Race, Gender, Ethnicity and Language Issues. The more than 20 panel attendees were enthusiastic participants and had a lot of experience with these issues. However, we shared a room with another panel and conducted our session in clusters at opposite ends of the room. This made it difficult to hear each other and seemed odd in a convention center replete with rooms. I would have also liked to learn more about the experience of each of the panel attendees and their interest in these issues.

In terms of academic participation, I think the most important outcome was to establish Philip Napoli as a clearinghouse for volunteers to review the FCC media

ownership studies once they are released. Timely review and critical analysis of those studies will be important. I think we should have spent more time talking about what we know (and don't know about the FCC studies) and identifying other relevant research topics. The paucity of information the FCC released about the studies made this difficult. However, a coalition of researchers filed comments with the FCC in November 2006 about the studies and I think it would have been fruitful to share their concerns with the entire group.

I also think that the Social Sciences Research Council needs to be clearer about the purpose of the academic pre-conference. Is it designed to share research? It would have been useful to hear more in-depth presentations by those who had prepared studies filed with the FCC such as Dr. Carolyn Byerly. They also could issue a call for papers and give people an opportunity to present their work. The structure at the 2007 conference emphasized breadth over academic depth. I recommend more depth in discussing relevant research with some focus on next step research agendas.

2. Conference Panels Discussing Conceptions of the Public Interest

The conference offerings were very broad with two notable exceptions. I felt there should have been more panels on non-English language media and a panel on antitrust law. I attended the panels relevant to Spanish-language media and its service to the Latino and immigrant communities.

Some of the panels on Spanish-language media discussed the role of broadcast owners in commodifying their audience. Commercial programs are designed to construct audiences to attract advertisers who provide the financial lifeblood of most commercial

radio stations. This commercialization of audiences supports the corporate and financial interests of the owners, which in a market-based system, takes precedent over the interests of the communities they serve. The theory of the free market is that the two interests will coincide; businesses which do a good job in serving their customers will thrive. However, this begs the question of who is the customer.

The Department of Justice views advertisers, rather than the audience, as a broadcaster's direct customers. Thus, the DOJ's primary concern in regulating radio mergers is to make sure that the advertisers are not faced with increased prices because of the merger.¹ The DOJ believes that the public benefits indirectly from a competitive media structure that encourages price competition for advertisers, but doesn't make the public good its first priority.

The DOJ's advertiser-focused view of antitrust law treats "advertisers as consumers and the audience as the relevant product."² Under that view, "program content or quality are unimportant in themselves because broadcasters only use them to bring viewers to advertisers."³

Whether advertisers or audiences are given priority is important when their interests conflict. For example, audiences and advertisers may have different incentives regarding media usage and market definition. In its review of the merger of HBC and Univision, the DOJ defined the relevant market as "Spanish-language radio." This market definition was based in large part on interviews with advertisers and market

¹ See for example, Response to Public Comments at 7, *United States v. Univision Commc'ns Inc.*, 2003 WL 23192527 (D.D.C. Dec. 22, 2003) (No. 1:03CV00758), available at <http://www.usdoj.gov/atr/public/comments/201510.htm> (last visited January 10, 2007). In contrast, the Communications Act of 1934 codified that broadcast spectrum should be regulated "in the public interest," conferring on the FCC a broader concern for the effect on the public resulting from media transactions.

² Howard.A. Shelanski, *Antitrust Law as Mass Media Regulation: Can Merger Standards Protect the Public Interest?* 94 CAL. L. REV. 371, 407 (2006).

³ *Id.*

participants such as advertising agencies. An analysis of these statements should take into account the economic interests of those interviewed. Professor Arlene Dávila in her book *Latinos Inc.: The Marketing and Making of a People* points out that some advertising agencies stress the use of the Spanish-language as a distinguishing factor requiring “special” advertising for Hispanics.⁴ This distinctiveness is part of the justification for having advertisers use their services to reach audiences. Professor Dávila commented, “Language means money for Hispanic media and marketing agencies, and this equation is likely to continue to affect the correlation of Latinas with Spanish, impairing attempts to broaden the media’s definition of Latinas.”⁵ Thus, an advertising agency’s statements that they perceive the Spanish and English-language markets as separate also serve their own economic interests.

In addition, Spanish-language stations are generally paid less for their advertising per audience member than are English-language stations.⁶ Since Spanish-language advertising is less expensive than English-language advertising, advertisers may not view English-language programming as a perfect substitute because it costs more per audience member.⁷ Whether or not audiences are using both Spanish and English-language media, advertisers may have a preference for the less costly medium. This highlights the need to

⁴ Arlene Dávila, *Latinos Inc.: The Marketing and Making of a People* at 8, 4, 38, 86 Berkeley: University of California Press (2001).

⁵ Arlene Dávila (2000), *Mapping Latinidad: Language and Culture in the Spanish TV Battlefront*, *Television & New Media*, 1, 75-94.

⁶ See Kofi Asiedu Ofori, Civil Rights Forum on Communications Policy, *When Being No. 1 is Not Enough: The Impact of Advertising Practices on Minority-Owned & Minority-Formatted Broadcast Stations* app. A at iii, 3, 15, 29 (1999), (submitted to Office of Communications Business Opportunities, FCC), *available at* http://www.fcc.gov/Bureaus/Mass_Media/Informal/ad-study; Philip M. Napoli, *Audience Valuation and Minority Media: An Analysis of the Determinants of the Value of Radio Audiences*, 46 *J. BROADCASTING & ELECTRONIC MEDIA* 169, 181 (2002) (finding that stations whose audiences were more than 50% racial or ethnic minorities earned less advertising revenues than those whose audiences were predominantly non-minority).

⁷ See Luis v. Nunez, editor, *Spanish Language Media after the Univision-Hispanic Broadcasting* [sic], Novinka Books, 2006.

illuminate the interests of market participants in media ownership and consolidation and how they diverge from the public interest.

Broadcasters are also instrumental in the creating the perception of their audience. National broadcasters such as Univision have contributed to a pan-Latino or Hispanic identity that attempts to bridge U.S. Latinos communities across divides of national origin, race, region, generation and language.⁸ They have also projected an image of Latinos that serves their own corporate interests.

In Los Angeles, Spanish-language radio Disc Jockeys (DJs) played a key role in attracting more than 500,000 people to a peaceful pro-immigrant march during Spring 2006.⁹ After a summit of rival Spanish-language DJs in the Los Angeles area, the DJs agreed to promote the marches on the air and to urge participants to bring American flags.¹⁰ One panelist at the Media Summit pointed out that the size of the protest marches also called attention to the enormity of the audience for Spanish-language media companies.

Shortly after the Spring 2006 marches, Univision announced that it was putting the company up for sale. The story about its role in the success of the protests demonstrated not only Latino power, but also Univision's corporate power. The audience listened to Univision and rival Spanish-language stations; the corporations had the power

⁸ See, Esteban Del Rio, The Latino/a Problematic, *Communication Yearbook* 30, 387-429, 413 (Spanish-language news creates a Latinidad [conceptualization of Latino/Latino identity] "that, in turn, affirms the vitality and legitimacy of the Latina/o market and television networks such a Univision.")

⁹ Teresa Watanabe and Hector Becerra, How DJ's, Ethnic Media Put 500,000 Marchers in Motion [Los Angeles Times, March 28, 2006, at [pg.]. Also available at: <http://www.media-alliance.org/medianews/archives/001983.php>.

¹⁰ *Id.*

to move people. Furthermore, the audience was composed of neat, orderly, American-flag waiving people, perfect to market as consumers.

Two days after I returned from the conference I taught an Antitrust class. In reading the antitrust material I was struck with the extent to which antitrust had been captured by the idea that price competition was the most important issue to analyze. The ability to maintain price competition had become a proxy for all of the interests antitrust was designed to protect. American antitrust law was enacted to preserve our democracy which the Congress felt was threatened by the power of large corporations that controlled tremendous resources. Antitrust was concerned about preserving structural competition and a role for small business. Over the years however, it has become more concerned with price competition. Concepts of public welfare are couched largely in terms of price and output.

I raised this issue with the class and asked about the unabashed commodification of the public interest the antitrust cases represented. The students gave me a look that said, "That wasn't in the reading." Yet, it was the unquestioned assumption behind the cases.

The Media Reform Conference also made me think about the success of the Reagan-appointed Federal Communications Commission led by Mark Fowler in equating the public interest with consumerism. Subsequent Commissioners including Chairman Powell constantly extolled the virtues of the market and its ability to serve the public interest if only the government would "get out of the way." Yet, this belies a lack of recognition of the difference between corporate interests and the public interest.

Helen Thomas echoed this point in one of the plenary sessions when she talked about the media's reporting of the Iraq War. Both Ms. Thomas and a military service member on the panel questioned the ability of reporters to be objective when they embedded with the troops. They saw what the U.S. military wanted them to see and didn't the converse. It took years for the hard questions to be raised and even now many news organizations are timid in their approach to war coverage. Ms. Thomas stated that many correspondents fear getting cut off from sources or being ostracized by Washington D.C. social circles if they are too critical. The media companies for which they work have overlapping corporate interests which temper their desire to air critical programming. I've never heard a story about General Electric's dual corporate interests in selling war machinery and reporting on the war on NBC. It reminded me of Reed Hundt's observation that no television station carried a story criticizing the distribution of free channels to existing broadcasters for the transition to high definition television. Yet, they showed up for the FCC meeting announcing the HD transition.

The conference was effective in highlighting these clashes of corporate and public interest. Exploration of the role of antitrust law and media mergers in this process would have been helpful, particularly in light of the consolidation in the newspaper industry that parallels consolidation in radio and television.

3. Minority Media Summit

The Minority Media Summit facilitated by the Ford Foundation fellows was a good exploration of many issues facing communities of color with regard to media access. However, like many panels at the conference, it left me wanting more time to

explore the issues in depth. I was also struck by the experience and commitment of the audience members. It would have been useful to develop strategic goals and an action plan as part of that discussion.

4. Summary

The Conference and the opportunity to meet with the Ford Foundation fellows was very helpful in my writing, teaching and organizational efforts. I am grateful for the opportunity to have Ford's and St. John's sponsorship and look forward to sharing work I have produced as a result.