BROADCASTING: MEXICAN-AMERICANS AND THE MEDIA

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MEXICAN-AMERICANS (CHICANOS)

Mexican-Americans are the second largest minority in the United States. Ninety percent of the Mexican-American population lives in the five Southwestern states: Arizona, California, Colorado, New Mexico and Texas. As of the 1960's, Chicanos constituted fifteen percent of the total population of this area.

In the Southwest as a whole, more than a third of all Mexican-American families live at poverty levels on incomes of less than $3,000 per year. A Mexican-American is seven times more likely than an Anglo to live in substandard housing. The chance that his baby will be born dead or will die before his first birthday is about twice as great. The educational level is four years below that of Anglos. The Mexican-American school dropout rate is twice the national average. The unemployment rate is about twice that of Anglos. When employed, the vast majority of Chicanos, almost eighty percent, work at unskilled or low skilled, low paying jobs.[1]

The pattern of Mexican-American poverty is in a way similar to that of all other poverty in the United States, as are many of its causes. Yet there are characteristics of the Mexican-American community in general which make its experience in this country unique. In the Southwest, lack of understanding of barrio problems on the part of the dominant Anglo culture is typical. Nationally, such ignorance is even more pervasive. The media, in its portrayals of Mexican-American stereotypes, has only reinforced this ignorance. Although many minority groups suffer from stereotyped characterization, Mexican-Americans are particularly subject to this abuse.

Chicanos have learned to mistrust federal and state govern-

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1. *See generally* THE MEXICAN-AMERICAN, U.S. Commission on Civil Rights (1968).

ment agencies. As one said during an inquiry into the problem of farm labor:

> "We who have for thirty years seen the Department of Labor stand by, and at times connive, while farm labor unions were destroyed by agribusiness; we who have seen the Immigration and Naturalization Service see-saw with the seasonal tides of wetbacks; we who are now seeing the Department of Housing and Urban Development assist in the demolishment of the urban barrios where ex-farm laborers have sought a final refuge; we who have waited for a Secretary of Education who would bristle with indignation, back it with action, at a system that continues to produce that shameful anachronism—the migrant child; we who have seen the Office of Economic Opportunity retreat with its shield, not on it, after calling the Mexican poor to do battle for maximum feasible participation in their own destinies. . . . We, may I say, are profoundly skeptical."[2]

A significant part of the problem arises from the media's failure to cover the Mexican-American in any depth. Ignoring real problems does not solve them. Meaningful change in the status of the Chicano cannot occur while the media contents itself with caricatures. To suggest by silence that the realities of Mexican-American life and identity do not raise issues worthy of public attention is to ignore the daily injustice received by millions of citizens.

THE RACIAL-STEREOTYPIC COMMERCIAL

Young Chicanos are deeply offended by recurring caricatures of Mexicans as lazy, slovenly morons. They, perhaps more than their parents, give affirmative demonstration of great pride in their Mexican heritage, and want the myths destroyed that help keep them from becoming contributing members of the larger community. As with the black movement for social equality, Mexican-American youths are striving for a sense of identity through ethnic consciousness. The cause of "La Raza" (literally translated as "The Race", or "The People") has become the basis of organized efforts against discrimination in education, in housing, in employment, and in other areas.

In short, Mexican-Americans are demanding their rights. The overwhelming majority want to achieve their objectives through peaceful means. The Anglo community must help rather than retard such activity by deliberate disparagement. For example, commercials using unflattering Mexican stereotypes represent the antithesis of the positive identity toward which the

2. *See* THE MEXICAN-AMERICAN, *id.*

Chicano might peacefully strive. They constitute the dominant culture's denial of the rich heritage of La Raza.

The effect of stereotypic representations of the perceiver is subtle, but significant. Hence, "man on the street" surveys conducted by advertising agencies have been of limited value in gauging their effect, which may be far too subtle for such measurement. As was said in a recent article:

> It is well known that American Culture is saturated with images and charactures of various ethnic groups. These 'pictures in our heads' which Lippmann (1922) called stereotypes have come to be regarded as highly significant factors in intergroup and interpersonal relations.[3]

Expert opinion supports the charge of cause-and-effect relationship between media portrayal of stereotypes and social-economic status and broad social attitudes.

Stereotypes presented by the broadcast industry have contributed substantially to keeping Mexican-Americans socially and economically repressed by encouraging the use of ethnic generalities between human beings. As reported in one study, the person perceived is not viewed in terms of an individual human being, "but as a personification of the symbol we have learned to look down upon. Walter Lippman has called this type of belief a stereotype—by which is meant a fixed impression which conforms very little to the facts it pretends to represent and results from our defining first and observing second."[4]

While stereotypic advertising might be intended strictly to sell a product, the actual effect, being both subtle and persuasive, may reinforce feelings of superiority in one group by jokingly implying racial inferiority in others. The reverse of this is the encouragement of feelings of inferiority in those groups made the butt of such 'humor'. Explaining the phenomenon of the "self-fulfilling prophesy", R.K. Merton commented:

> It serves to call attention to the reciprocal conduct of human beings when in interaction. Too often we think of outgroups as simply possessing certain qualities. . . . The truth of the matter is that these two conditions interact. The way we perceive qualities in others cannot help but have an effect on what qualities others will display. It is not true, of course, that every grim image we have of hated groups results in the development of hateful traits to confirm our worst expectations. Yet there is likely to be some

3. Karlins, Coffman, Walters, *On the Fading of Social Stereotypes: Studies in Three Generations of College Students*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, Vol. 13, #1 (Sept. 1969).

4. Katz and Braly, *Verbal Stereotypes and Racial Prejudice*, READINGS IN SOCIAL PSYCHOLOGY, at 41 (1947).

> kind of unpleasant reflex of our unpleasant opinions. And thus a vicious circle is established that tends, unless specifically halted, to augment social distance and enhance the grounds of prejudice.[5]

The effect of ethnic bias in the broadcast industry must be far greater in those cases where the content of the bombardment is most consistently unbalanced—where there is, as with Chicanos, no counterbalancing image portrayed. The stereotypes survive because ". . . (t)hey are socially supported, continually revived and hammered in, by our media of mass communication."[6] That Chicanos have had virtually no positive access to the media is unquestioned. Now the neglect of Mexican-Americans other than the exploitation of their ethnic heritage for the sale of corn chips and chili is taking its toll.

THE FEDERAL COMMUNICATIONS COMMISSION (F.C.C.)

A. "The Fairness Doctrine".

Throughout the history of the Federal Government's regulation of the air waves, paramount importance has been placed upon public, as opposed to private interests. Limitations in the number of available broadcast frequencies, added to the large role played by the electronic media in our daily lives, place on licensees a great responsibility to their audiences. This view was expressed as early as the 1926 Congressional debates concerned with the passage of the Radio Act of 1927:[7]

> We have reached the definite conclusion that the right of all our people to enjoy this means of communication can be preserved only by repudiation of the idea underlying the 1912 law that anyone who will, may transmit, and by the assertion in its stead of the doctrine that the right of the public to service is superior to the right of any individual to use the ether. This is the first and most fundamental difference between the pending bill and the present law. . . . If enacted into law, the broadcasting privilege will not be the right of selfishness. It will rest upon an assurance of public interest to be served.[8]

Cases following the 1927 Act suggested a doctrine of fairness based on the idea that broadcasting must be public at least to the extent of ". . . something other than private merchandising."[9] At this stage in the development of the public interest

5. Merton, *The Self-Fulfilling Prophesy*, THE ANTIOCH REVIEW, Vol. 8, at 5-17 (1948).
6. *Id.* at 200.
7. 44 Stat. 1162 (1927).
8. 67 Congressional Record 5479 (March 12, 1926).
9. KFKB Broadcasting Assn. v. FRC, 47 F.2d 670 (1931).

concept, the idea of fairness was basically negative in nature; there was no affirmative obligation to do anything. There were "shall nots", (such as Thou Shall Not Use The Public Air Waves Strictly For Private Gain), but no "shalls".

These early principles were later affirmed by the F.C.C. operating pursuant to the Communications Act of 1934.[10] The leading case in this regard is *Mayflower Broadcasting Corp.*[11] There the Commission stated that

> Under the American system of broadcasting it is clear that responsibility for the conduct of a broadcast station must rest initially with the broadcaster. It is equally clear that with the limitations in frequencies inherent in the nature of radio, the public interest can never be served by a dedication of any broadcast facility to the support of his own partisan ends. Radio can serve as an instrument of democracy only when devoted to the communication of information and the exchange of ideas fairly and objectively presented.[12]

Subsequent to *Mayflower*, the F.C.C. began speaking in terms of an affirmative duty on the part of a licensee to broadcast contrasting viewpoints on public issues. In *Johnston Broadcasting Co.*,[13] for example, the Commission, in considering two mutually exclusive applications for a frequency in Birmingham, Alabama, based its decision on the program proposals of one applicant, rather than on the qualifications per se of either of the parties to operate a radio station. The F.C.C. reasoned as follows:

> Although the Johnston Broadcasting Company has a policy of permitting the presentation of conflicting views on controversial matters, there is nothing in this record to indicate that an affirmative effort will be made to encourage broadcasts of forums or discussion groups dealing with controversial issues. . . . On the other hand, Thomas N. Beach's station . . . has a policy which provides not only for equal opportunities to be heard for both sides on controversial issues but also for positive action on the part of the station in planning public forums and round-table discussions to deal with those questions.[14]

The basis of the Commission's Fairness Doctrine is found in its Report on Editorializing by Broadcast Licensees, issued in 1949.[15] There, the F.C.C. ". . . recognized that there can be no one all-embracing formula which licensees can hope to

10. 48 Stat. 1081; *as amended*, 47 U.S.C. Sections 301-97 (1964); *see* 6 F.C.C. Ann. Rep. 55 (1940).
11. 8 F.C.C. 333 (1941).
12. *Id.* at 399-340.
13. 12 F.C.C. 517 (1947).
14. *Id.* at 524.
15. *Reprinted* at 25 P&F Radio Reg. 1901.

apply to insure the fair and balanced presentation of all public issues".[16]

As a result of the F.C.C.'s consideration of the *Lar Daly* case,[17] arising out of news broadcasts by Chicago television stations covering political events, Congress amended Section 315 of the Communications Act to its present form.[18] This 1959 amendment provides that broadcasters in their coverage of the news are not relieved of the ". . . obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of importance."[19] The Supreme Court in *Red Lion Broadcasting Co. v. F.C.C.*[20] followed the F.C.C.'s interpretation of this statute:

> This language makes it very plain that Congress, in 1959, announced that the phrase "public interest", which had been in the Act since 1927, imposed a duty on the broadcasters to discuss both sides of controversial public issues. In other words, the amendment vindicated the F.C.C.'s general view that the fairness doctrine inhered in the public interest.[21]

The F.C.C., as a result of *Red Lion*, clearly is authorized by Congress to *compel* broadcasters to use their facilities to show all sides of controversial issues:

> Thirty years of consistent administrative construction left undisturbed by Congress until 1959, when that construction was expressly accepted, reinforce the natural conclusion that the public interest language of the Act authorized the Commission to require licensees to use their stations for discussion of public issues, and that the F.C.C. is free to implement this requirement by reasonable rules and regulations which fall short of abridgements of the freedom of speech and press, and of the censorship proscribed by 326 of the Act. (footnote omitted).[22]

It is obvious that the power is there. The problem is implementation.

The personal attack aspect of the Fairness Doctrine became crystalized in a series of proceedings before the Commission in 1962.[23] The Commission in 1963 issued a Public Notice[24] af-

16. *Id.* at 1907.
17. 18 P&F Radio Reg. 238, *affd.* 18 P&F Radio Reg. 701 (1959).
18. 47 USCA Section 315(a) (1959).
19. *Id.*
20. 89 S. Ct. 1794 (1969).
21. *Id.* at 1801.
22. *Id.* at 1802.
23. *See* Times-Mirror Broadcasting Co., 24 P&F Radio Reg. 404 (1962); Billings Broadcasting Co., 23 P&F Radio Reg. 951 (1962); Clayton W. Mapoles, 23 P&F Radio Reg. 586 (1962).
24. 25 P&F Radio Reg. 1899 (1963).

firming its adherence to the view expressed in the 1949 Report ". . . that the licensee had an affirmative obligation to afford reasonable opportunity for the presentation of contrasting viewpoints on any controversial issue which he chooses to cover",[25] and enumerated three factual situations where the Fairness Doctrine has been applied. Regarding personal attacks it was said,

> When a controversial program involves a personal attack upon an individual or organization, the licensee must transmit the text of the broadcast to the person or group attacked, wherever located, either prior to or at the time of the broadcast, with a specific offer of his station's facilities for an adequate response.[26]

The Commission released its Fairness Primer in 1964.[27] Speaking of the large number of fairness complaints brought before it, the Commission emphasized the fundamental importance of the context of each case. It further provided that should the complaint set forth sufficient facts to warrant further Commission consideration, ". . . it will promptly advise the licensee of the complaint and request the licensee's comments on the matter. Full opportunity is given to the licensee to set out all programs which he has presented, or plans to present, with respect to the issue in question during an appropriate time period."[28] Significantly, the Primer contained a section specifically directed to the personal attack issue. That section emphasized the affirmative duty of the broadcaster to take appropriate steps to insure that persons attacked were made aware of the nature of the attacks as well as their opportunities to respond.[29] This is so ". . . where there are statements in connection with a controversial issue of public importance, attacking an individual's or group's integrity, character, or honesty or like personal qualities."[30]

Due to the ineffectiveness of the Public Notices of 1963 and 1964, the F.C.C. issued in April of 1966 a Notice of Proposed Rule Making.[31] The purpose behind it was twofold:

> First, it will emphasize and make more precise licensee obligation in this important area. Second, it will assist the Commission in taking effective action in appropriate circumstances when the procedures are not followed.[32]

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25. *Id.*
26. *Id.* at 1900.
27. 29 Fed. Reg. 10415 (1964).
28. *Id.* at 10416.
29. *Id.* at 10420-10421.
30. *Id.* at 10415.
31. 31 Fed. Reg. 5710 (1966).
32. *Id.*

The rules themselves were adopted in July of 1967.[33] The following comment is found in the included memorandum opinion:

> Statements that the rules will discourage, rather than encourage, controversial programming ignore the fact the rules do no more than restate existing substantive policy—a policy designed to encourage controversial programming by insuring that more than one viewpoint on issues of public importance are carried over licensee's facilities.[34]

As we have seen, the Fairness Doctrine has two prongs, dealing with the personal attack issue, and the more general controversy issue, respectively. The personal attack regulation clearly applies to the problem of the use of Chicano stereotypes:

> Personal attacks; political editorials
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> (a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person *or group*, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person *or group* attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over licensee's facilities. (author's italics)[35]

Mexican-Americans, as an identifiable group, must insist on compliance with the above regulation by broadcasters who continue to air comments derogatory to the Chicano people.

The Fairness Doctrine is designed to foster debate, making the broadcast industry more relevant by encouraging the presentation of contrasting views. Denying Chicanos access to media facilities is the antithesis of this responsible approach to programming, and Chicanos must therefore monitor radio and television stations in their communities to learn if they are meeting their public responsibilities. Stations presenting anti-Chicano biases in their commercials, news reporting, talk shows, etc., should be requested to cease such activities and make equal time available for community leaders to respond. Nor should such leaders hesitate to report to the Federal Communications Commission any violations of the Fairness Doctrine which they feel have taken place.

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33. 10 P&F Radio Reg. 2d 1901 (1967).
34. *Id.* at 1908.
35. 32 Fed. Reg. 10303. *Twice amended,* 32 Fed. Reg. 11531, 33 Fed. Reg. 5362.

B. *Media Access and the First Amendment*

In 1964 the Supreme Court noted that,

> A broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations.[36]

With the 1969 *Red Lion* decision, the Court adapted the First Amendment to the exigencies of modern broadcasting, viewing the F.C.C.'s Fairness Doctrine as encouraging the interchange of opinion. Such encouragement was considered to be well within the Commission's authority:

> In light of the fact that the 'public interest' in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public . . . we think the Fairness Doctrine and its component personal attack and political editorializing regulations are legitimate exercises of Congressionally delegated authority.[37]

The general view that even First Amendment rights do not always take priority over the public interest, is one of broad application. In *Food Employees Local 509 v. Logan Valley Plaza, Inc.*,[38] the Court held that a community shopping center, open and freely accessible, was the functional equivalent of a business block for First Amendment purposes, the mere fact of private ownership of the land occupied by the shopping center not justifying absolute injunction against peaceful nonemployee picketing of one of the stores located there. In that case, Mr. Justice Marshall recalled the words of Mr. Justice Black's majority opinion in *Marsh v. Alabama:*[39] "Ownership does not mean absolute domination. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by statutory and Constitutional rights of those who use it."

It is difficult to imagine a context where the 'property' is more opened to the public than in the broadcasting industry. And yet, this industry has failed so far to present a balanced, unbiased view of the problems of the barrio. In 1968, the Kerner Commission condemned media representation of black Americans in these words:

> The absence of Negro faces and activities from the media has an effect on white audiences as well as black. If what the white American reads in the newspapers or sees on

36. Office of Communication, United Church of Christ v. F.C.C., 359 F.2d 994, 1003 (1964).
37. Red Lion, *supra* note 20, at 1804.
38. 391 U.S. 308 (1968).
39. 321 U.S. 501 (1946).

> television conditions his expectation of what is ordinary and normal in the larger society, he will neither understand nor accept the black American. By failing to portray the Negro as a matter of routine and in the context of the total society, the news media have, we believe, contributed to the black-white schism in the country.[40]

These words, written in 1968, are doubly true in 1972 for the Mexican-American community, a large and socially deprived portion of society about which little is known by the dominant culture beyond stereotypes propagated, certainly at least in part, by the broadcasting industry. The industry's failure in this regard is grievous not only to the barrio, but to the public's right to be informed. As the Court said in *Red Lion*, "It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here."[41]

While the forgoing may not provide a case for prior restraint of first amendment rights, it does show the need for opportunity to respond to controversial positions taken by broadcast licensees.

This opportunity-to-respond approach has been used in other contexts. Thus, in *Banzhaf v. F.C.C.*,[42] the Court of Appeals affirmed an F.C.C. ruling requiring radio and television stations which carried cigarette advertising to devote a significant amount of broadcast time to present the case against cigarette smoking. The court viewed this ruling as a positive approach serving ". . . affirmatively to provide information."[43]

When the pervasiveness of the electronic media is considered—and the limited number of forums available the licensee's obligation to be responsive to the public need becomes even more significant. The F.C.C., in its Commission Policy on Programming, stated:

> Particular areas of interest and types of appropriate service may, of course, differ from community to community, and from time to time. However, the Commission does expect its broadcast licensees to take the necessary steps to inform themselves of the real needs and interests of the areas they serve, and to provide programming which in fact constitutes a diligent effort, in good faith, to provide for those needs and interests.[44]

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40. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, at 383 (1968).

41. Red Lion, *supra* note 20, at 1807. *See also* Stanley v. Georgia, 89 S. Ct. 1247 (1969); Martin v. City of Struthers, 63 S. Ct. 862, 863 (1943); Griswold v. Connecticut, 85 S. Ct. 1678, 1680 (1965).

42. 405 F.2d 1082 (1968).

43. *Id.* at 1103.

44. Public Notice 91874 (July 29, 1960); 20 P&F Radio Reg. 1901, 1913 (1960).

While emphasizing that its list is not all-encompassing, the Commission does include as usually necessary the opportunity for local self-expression, the development and use of local talent, public affairs programs, and service to minority groups.[45] And it has been held that if the program proposals of none of several applicants for a license meet the needs of the area to be served, the Commission may refuse to grant a license to any of the applicants.[46] In addition, the Commission may order investigatory hearings to determine efforts made by licensees to fulfill their responsibilities.[47] And the applicant's obligation includes providing information to show steps taken to inform themselves of the real needs and interests of the area they wish to serve.[48]

The recently issued "assured prime time" rule reflects this interest in adequate coverage for the local service area, as opposed to the easier practice of simply pumping in network programming. By that rule, where in the top fifty markets there are three or more operating commercial TV stations, such stations are prohibited from broadcasting more than a stated amount of network programming or previously-run feature films during evening prime time.[49]

In the words of the F.C.C.'s Policy Statement on Comparitive Broadcast Hearings,[50] ". . . there are two primary objectives toward which the process of comparison should be directed. They are, first, the best practicable service to the public, and, second, a maximum diffusion of control of the media of mass communications."[51] The Commission went on to note that:

> The value of these objectives is clear. Diversification of control is . . . desirable where a government licensing system limits access by the public to the use of radio and television facilities. Equally basic is a broadcast system which meets the needs of . . . the area to be served. . . . Since independence and individuality of approach are elements of rendering good program service, the primary goals of good service and diversification of control are also fully compatible.[52]

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45. 20 P&F Radio Reg. at 1913.
46. *See, e.g.*, Clarksburg Pub. Co. v. F.C.C., 255 F.2d 511 (1955); Great Lakes Broadcasting Co. v. F.C.C., 289 F.2d 754 (1960).
47. *See, e.g.*, Omaha Local Television Programming Inquiry, 25 P&F Radio Reg. 601 (1962).
48. *See, e.g.*, Vernon Broadcasting Corp., 13 P&F Radio Reg. 2d 753 (1968).
49. 38 U.S.L.W. 2604 (1970).
50. 1 F.C.C.2d 393 (1965). The policy statement applies, however, only to contests between new applicants, and not to a challenge by an applicant at a license renewal against an incumbent.
51. *Id.* at 394.
52. *Id.*

In addition to diversification of control, the following considerations weigh heavily in comparitive broadcast hearings before the F.C.C.:

1. Full-time active participation in station operation by the owners.[53] The integration of ownership and management functions is considered as fundamentally important.[54] But while integration is important per se, its value is increased if the participating owners are local residents with experience in the field.[55] Past participation in local civic affairs is considered as evidence of local residence background.[56]

2. Proposed program service. The applicants bear the responsibility for showing that their program proposals ". . . are designed to meet the needs and interests of the public in that area."[57]

WATCHING THE WATCHDOG

It is unlikely, however, that responsiveness and flexibility, as indicia of good service to the local community, are attainable without access to the licensee's facilities being allowed to local minority groups. At first examination the Commission seemed to agree in *Lamar Life Braodcasting Co.*,[58] where it said:

> In making its judgement, the Commission has taken into account that this particular area is entering into a critical period in race relations, and that the broadcasting stations, such as here involved, can make a most worthwhile contribution to the resolution of problems arising in this respect.[59]

However, the history of this case indicates a less than positive approach to the problem of race relations on the part of the F.C.C.

Lamar Life involved an action by church groups and civil rights leaders to prevent the renewal of the license of television station WLBT in Jackson, Mississippi, on the grounds of a clearly demonstrated anti-black policy. WLBT, in this case, advocated racial segregation and presented no balancing viewpoints. The F.C.C. renewed WLBT's licence for one year. The case was appealed, and the appellate court held the F.C.C.'s action errone-

53. *Id.* at 395-396.
54. *See, e.g.*, Blancett Broadcasting Co., 14 P&F Radio Reg. 2d 173, 178 (*Init.* Dec., 1968).
55. *See, e.g.*, Chapman Radio and Television Co., 14 Radio Reg. 2d 6, 58 (*Init.* Dec. 1968).
56. *See, e.g.*, Lorain Community Broadcasting Co., 13 P&F Radio Reg. 2d 382, 387 (*Rev. Bd.* 1968).
57. 1 F.C.C.2d at 397.
58. 5 P&F Radio Reg. 205 (1965).
59. *Id.* at 219.

ous, remanding the case back to the Commission.[60] In his opinion, Judge Burger made his position clear:

> We recognize that the Commission was confronted with a difficult problem and difficult choices, but it perhaps would not go too far to say it elected to post the wolf to guard the sheep in the hope that the wolf would mend his ways because some protection was needed at once and none but the wolf was handy. This is not a case, however, where the wolf had either promised or demonstrated any capacity and willingness to change, for WLBT had stoutly denied appellants' charges of programming misconduct and violations. (footnote omitted). In these circumstances a pious hope on the Commission's part for better things from WLBT is not a substitute for evidence and findings.[61]

At the rehearing, despite Judge Burger's strong language, the Commission again renewed WLBT's license on the ground that the intervenors had failed to completely prove their case.[62] The decision was again appealed, and Judge Burger this time removed the matter from the Commission's hands, holding the F.C.C.'s action unsupported by the substantial evidence found in the whole record. He ordered that WLBT's license be vacated.[63] Speaking critically of the Commission's approach to the case, he said, "It was not the correct role of the examiner of the Commission to sit back and simply provide a forum for the intervenors; the Commission's duties did not end by allowing appellants to intervene; its duties began at that stage."[64] Judge Burger was clearly troubled by the Commission's exercise of administrative discretion here. He wrote, "The record before us leaves us with a profound concern over the entire handling of this case following the remand to the commission."[65]

It is therefore imperative that community leaders and attornies not only avail themselves of the tools provided by the Federal Communications Commission in their fight against the use of harmful ethnic stereotypes by the broadcasting industry, but that they also apply constant pressure to the F.C.C. itself to live up to its own articulated standards.

CONCLUSION

The Mexican-American community has a right to affect the massively influential programming of the broadcast industry.

60. United Church of Christ, *supra* note 36, at 1009.
61. *Id.* at 1008.
62. 13 P&F Radio Reg. 2d 769 (1968).
63. United Church of Christ, F.C.C., 38 U.S.L.W. 2002; 16 P&F Radio Reg. 2d 1095 (1969).
64. *Id.*
65. *Id.*

This right is based on the industry's legal obligation to operate in the public interest. In view of the mostly negative presentation of the Chicano and his heritage on our airwaves, every Mexican-American organization should become familiar with F.C.C. regulations governing this problem, should monitor their local radio and television stations, should demand response time when appropriate, should immediately report any intolerable occurance to the Commission in Washington, D.C., and should then follow closely the actions of the Commission itself. For it is the task of the community to safeguard its own interests.