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Newton N. Minow

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## Revisiting the Vast Wasteland

**Newton N. Minow\***

**Fred H. Cate\*\***

On May 9, 1961, Newton N. Minow gave his first public address as Chairman of the Federal Communications Commission (“FCC” or “Commission”).<sup>1</sup> Little was known at that time about the new Chairman, other than that he was the youngest person ever to hold the job and that he was not part of the Washington establishment.

It was widely suspected that President John F. Kennedy had chosen the young Chicago lawyer to help clean house at the Commission and in the broadcast industry, both of which were still reeling from the payola and quiz show scandals of the 1950s. It might therefore be expected that the chosen audience for his maiden speech—the National Association of Broadcasters (“NAB”)—was somewhat wary about what they might hear. Nothing, however, could have prepared them for what Minow had to say.

The industry scandals of the past he dismissed with a single sentence. “I have confidence in your health,” Minow said, turning to the reason he had come to the NAB annual convention that day, “[b]ut not in your product.”

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\* Senior Counsel, Sidley Austin Brown & Wood. Mr. Minow was Chairman of the Federal Communications Commission in the Kennedy administration. The Authors are grateful to third-year law student Catherine Knowles for her help with this Article.

\*\* Distinguished Professor, Ira C. Batman Faculty Fellow, and Faculty Advisor to the *Federal Communications Law Journal*, Indiana University School of Law—Bloomington. Professor Cate was a senior fellow of The Annenberg Washington Program in Communications Policy Studies of Northwestern University under the directorship of Mr. Minow. They have co-authored many law review and popular press articles together.

1. Newton N. Minow, *Television and the Public Interest*, Speech Before the National Association of Broadcasters (May 9, 1961).

“Your industry possesses the most powerful voice in America . . . . When television is good, nothing—not the theater, not the magazines or newspapers—nothing is better.

“But when television is bad,” Minow continued, “nothing is worse.”

With the industry leadership squarely in his sights, Minow challenged his audience: “I invite you to sit down in front of your television set when your station goes on the air and stay there without a book, magazine, newspaper, profit-and-loss sheet or rating book to distract you—and keep your eyes glued to that set until the station signs off.”

“You will see a procession of game shows, violence, audience participation shows, formula comedies about totally unbelievable families, blood and thunder, mayhem, violence, sadism, murder, Western badmen, Western good men, private eyes, gangsters, more violence and cartoons.” Minow continued: “And, endlessly, commercials—many screaming, cajoling, and offending. And most of all, boredom.”

“I can assure you that you will observe a vast wasteland.”

The speech struck a nerve in American society. Although the industry was shocked and outraged, the public’s response was, in the words of communications scholar Mary Ann Watson, “quick, abundant, and overwhelmingly positive.”<sup>2</sup> Thousands of letters flooded into the Chairman’s office, and overnight, Minow became a celebrity. “By the end of his first year on the job,” Watson writes, “Minow made more radio and TV appearances than any other member of the Kennedy administration, except the President himself.”<sup>3</sup> Minow was named “top newsmaker” in a 1961 Associated Press poll.

With that one speech, Minow altered the American vocabulary forever. His NAB address is among the most quoted of all twentieth-century speeches, and has been reprinted again and again in newspapers and anthologies. The phrase “vast wasteland” has become an icon of American culture, memorialized in hundreds of editorial cartoons, listed in *Bartlett’s Familiar Quotations*, quoted in popular fiction, and featured as the answer to questions in *Jeopardy!*, *Trivial Pursuit*, and *Who Wants to Be a Millionaire?*. “When I die,” Minow is fond of saying, “my wife and three daughters will inscribe on my tombstone—‘On to a vaster wasteland.’”

With these words Minow also launched a national debate that still continues today about the quality of video programming and the extent to which it meets the needs of the public. The debate consumed the public, as

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2. MARY ANN WATSON, *THE EXPANDING VISTA: AMERICAN TELEVISION IN THE KENNEDY YEARS* 23 (1990).

3. *Id.* at 26.

well as industry executives, government officials, and communications scholars.

Minow's famous (some would say infamous) words also marked the beginning of more than forty years—and still counting—of challenging broadcasters and other industry and government officials to improve television programming. Minow had come to the Commission at the age of thirty-five from private law practice in Chicago. After serving as a U.S. Army sergeant in the China/Burma/India Theater in World War II, he had graduated first in his class from Northwestern University Law School, clerked on the U.S. Supreme Court for Chief Justice Fred M. Vinson, and served as assistant counsel to Illinois Governor Adlai E. Stevenson, before beginning his law practice.

When he was appointed to the FCC, Minow had promised: "I'm here to do what I think needs to be done. . . . I'm not interested in being reappointed, and I don't want a job in the industry." After two years as Chairman, Minow kept that promise. When he left the Commission, Minow took a position he had been offered before going to the FCC, as Executive Vice President and General Counsel of Encyclopædia Britannica. In 1965, Minow joined Leibman, Williams, Bennett, Baird & Minow, which in 1972 merged with Sidley & Austin; in 2001 the firm became Sidley Austin Brown & Wood. In 1991, Minow retired as a managing partner to become senior counsel to the firm.

In all of his undertakings, Minow has dared broadcasters to achieve a higher vision. "Is there one person in this room," Minow asked in 1961, "who claims that broadcasting can't do better? . . . Gentlemen, your trust accounting with your beneficiaries is overdue." In the four decades since, he has not merely been a thorn in the side of an industry that he believes has failed to live up to its potential and its public service obligation but he has also been a vocal critic of complacent government officials. In the forty years since his retirement as Chairman of the FCC, Minow has worked energetically to help television live up to its promise for the public.

He has chaired the boards of Chicago Educational Television Association, the Public Broadcasting Service, and the CBS Foundation, as well as of the Rand Corp., the Carnegie Corp. of New York, and the Jewish Theological Seminary. He co-chaired the 1976 and 1980 presidential debates sponsored by the League of Women Voters, and directed the Bi-Partisan Advisory Commission for the 1988 and 1992 presidential debates, before becoming director of the successor Commission on Presidential Debates, which sponsored the 1996 and 2000 debates. He has served on numerous presidential commissions. Most recently, in February 2003, Secretary of Defense Donald Rumsfeld appointed Minow to chair the

external advisory board charged with overseeing the Department of Defense's Total Information Awareness Project.

In his 1995 book, *Abandoned in the Wasteland: Children, Television, and the First Amendment*, Minow and co-author Craig LaMay proposed federal legislation to enhance educational programming for children and help parents control their children's access to violent programming. He has chaired two Twentieth Century Fund studies, one on "Campaign Costs in the Electronic Era" and another, with Lawrence Grossman, on "Fulfilling the Promise of the Digital and Internet Age."

In 1991, Minow marked the thirtieth anniversary of his 1961 NAB speech with an address at the Gannett Foundation Media Center at Columbia University—*How Vast the Wasteland Now?*<sup>4</sup> In that speech he quoted the words of E.B. White, who after seeing experimental television demonstrated in 1938, wrote: "I believe television is going to be the test of the modern world, and that in this new opportunity to see beyond the range of our vision, we shall discover either a new and unbearable disturbance to the general peace, or a saving radiance in the sky."

"That radiance," Minow concluded in 1991, "falls unevenly today. It is still a dim light in education. It has not fulfilled its potential for children. It has neglected the needs of public television. And in the electoral process it has cast a dark shadow."

Minow's efforts have not gone unnoticed, either in Washington or across the country. He has been honored with twelve honorary doctorates, and numerous civic and professional awards, including the American Bar Association's Silver Gavel Award,<sup>5</sup> the Federal Communications Bar Association's Lifetime Achievement Award,<sup>6</sup> and a George Foster Peabody Broadcasting Award<sup>7</sup> in 1961—the only Peabody ever won by an FCC

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4. Newton N. Minow, *How Vast the Wasteland Now?*, Address at the Gannett Foundation Media Center, Columbia University, at 19 (May 9, 1991).

5. The Silver Gavel is the highest award given by the ABA. Since 1958, the ABA has presented Gavel Awards annually to recognize products in media and the arts that have been exemplary in fostering the American public understanding of the law and the legal system.

6. The Lifetime Achievement Award has been given only twice by the Federal Communications Bar Association. Minow received it in 2001 for his "vision and dedication to the field of communications." Henry Geller, who served as General Counsel at the FCC when Minow was Chairman, received the award in 1999.

7. The George Foster Peabody Awards were established in 1938 and first awarded in 1941 for radio programs broadcast in 1940. The awards recognize distinguished achievement and meritorious service by radio and television networks, stations, producing organizations, cable television organizations, and individuals.

commissioner—for having “rescue[d] the wasteland from the cowboys and private eyes. He has reminded broadcasters of their responsibilities and put new heart in the viewers.”<sup>8</sup>

He has served as a trustee of the Mayo Foundation, Northwestern University, the University of Notre Dame (where he was the first Jewish trustee), and the Carnegie Endowment for International Peace, among others. He has also served as a director on many corporate boards, including those of CBS, Encyclopædia Britannica, Field Communications, Aon, Sara Lee Corp., and the Tribune Co., as well as a Visiting Fellow of the John F. Kennedy School of Government at Harvard University, the Annenberg Professor of Communications Law and Policy at Northwestern University, Director of Northwestern’s Annenberg Washington Program in Communications Policy Studies, and a Fellow of the American Academy of Arts and Sciences.

To commemorate the fortieth anniversary of the end of his service as FCC Chairman, the *Federal Communications Law Journal* invited Newton Minow to share his thoughts on his famous speech, his remarkable career, and his view of broadcasting and the greatly expanded market for video programming today. On October 17, 2002, we sat down in Minow’s Chicago office for a wide-ranging, no-holds-barred conversation. Surrounded by walls covered floor-to-ceiling with awards, honorary degrees, legislation, cartoons, family portraits, and signed photographs of Minow with a half-century of political leaders and other luminaries—from President Kennedy to Pope Paul VI—we revisited the “vast wasteland” of 1961 and assessed the programming landscape of today.

### THE NAB SPEECH

FHC: Let’s start forty-one years ago with the speech to the NAB. I reread the 1961 speech and it is a remarkably courageous speech. Did you know how courageous it was going to be? What prompted you to give such a bold speech?

NNM: The context of the time is most important to understanding the speech. Most people today don’t remember that context. The broadcasting industry had been involved in a series of scandals. There had been congressional investigations of payola, of the fixed quiz shows on television. There had also been a series of scandals at the Federal Communications Commission, where President Eisenhower was forced to replace a Chairman of the FCC for

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8. The Peabody Awards Archives at <http://www.peabody.uga.edu/archives/>.

improprieties. That context is important to understanding how a new administration coming into Washington approached the broadcasting industry.

The second thing about the context is that I was very young, I was thirty-five. When you're thirty-five, you are less concerned about consequences than when you're sixty-five or seventy-five.

Finally, I had no instructions of any kind from the administration. Zero. I knew President Kennedy was deeply interested in television. In fact, he told me more than once that he would not have been in the White House but for television coverage of the Presidential Debates. I started off on a clean slate with nobody telling me what to do or how to do it.

FHC: In the speech you in some ways just pushed aside all of the past and seemed to say "leave the past alone," but then you chose to focus on content rather than the bureaucratic issues of Washington and the FCC.

NNM: That was deliberate. I knew this speech was important because people told me that it was traditional for the Chairman of the FCC to give a speech at the National Association of Broadcasters convention, and that this year the convention was in Washington in May. I started at the FCC either in February or March, and I turned down everything else and concentrated on this because I wanted to convey a message. I thought I was making an important peace gesture to the industry by saying, "Forget about payola. Forget about the quiz scandals. Let's start with a clean slate. But let's really be serious about public service." That was the main point.

I must have had seven, eight, ten people giving me drafts of the speech. People in the office, and I had friends outside, one in particular, John Bartlow Martin, who all gave me drafts. I took all of them, plus what I wanted to say and worked on it very hard. I finally got it the way I wanted it and then I ran over it with my staff. Several, Henry Geller (who had attended law school with Minow) and Joel Rosenbloom in particular, said "there's one thing in there you've got to take out."

I said, "What's that?"

They said, "vast wasteland."

I said, "What's wrong with that?" Actually what John Bartlow Martin had written was "vast wasteland of junk." I had crossed out

“of junk.” I said, “What’s wrong with it? It’s got a nice, rhythmic ring to it.” I decided to leave it in.

FHC: I gather the speech was not received as much of a peace gesture.

NNM: The speech was received very differently. I was a speech major and debater in college, but I never thought that those two words would become the important part of the speech.

I have thought a great deal about why people reacted that way. I think you’ve got to look at it, again, in terms of the context of the time. Television was fairly new. There was a lot of criticism of some of the deterioration, even then, of standards, even though standards were far better then than they are now. Also I think it’s because the print press didn’t like television and saw in this a way to help themselves. I think that was particularly true of *The New York Times*.

I will always remember two important phone calls I received after getting home that night. One was from Edward R. Murrow, then head of the United States Information Agency. He said, “You gave my speech.”

I said, “What do you mean?”

He said, “Look at the speech I gave two years earlier to the Radio Television News Directors.”

I had not read Ed Murrow’s speech, but later I got it and wished I had read it earlier, because it was a much better speech than the speech I gave.

The other person who called was the president’s father, Ambassador Joseph Kennedy. I thought, “Oh boy, I’m going to catch hell here.”

Instead, the president’s father said, “Newt, I followed your speech, and I’ve talked with Jack and I told him it is the best speech since his inaugural address. You stick with your guns, keep your backbone. If anybody starts giving you trouble, you call me.” I never talked with him again, but at that point, I realized that the speech was important.

The reaction was astonishing to me. Particularly astonishing was the importance the press placed upon two words—“vast wasteland”—which I didn’t think were that important. But somehow that stuck in the public mind. I had two different words in mind: “public interest.”



## BROADCASTERS AND THE PUBLIC INTEREST

FHC: And your notion of the public interest then as you laid it out then seems consistent with what you talked about ever since: children, education, and election campaigns.

NNM: The one thing that I should have done, and it was a monstrous mistake on my part, was not to have focused on another issue: the overcommercialization of the media. At that time, the NAB had a limit on commercial time. Members of the NAB were supposed to, as part of their membership, observe that limit. The people who did not belong to the NAB didn't observe it. Looking back, I should have stressed the importance of commercial time limits. I should have said that if the industry doesn't observe its own limits, which it—not the government—developed, the government would have to enforce those limits for the industry. That is done in most other countries, but we failed to address that issue.

FHC: In the years since you were Chairman, has the broadcast television industry, the NAB membership, paid more attention to the public interest?

NNM: I think not. Indeed, I would say the reverse. Governor Collins,<sup>9</sup> the man who ran the NAB when I was in the government, had a commitment to the public interest. He had come from public service himself, and saw the broadcasting industry as a public trust. I don't think that's true today.

FHC: Now, certainly throughout your career, you have been unabashedly critical of broadcasting. In fact, I read in May of 2001, you wrote in *USA Today* that these days television looks less like a "vast wasteland" and more like a "toxic waste dump."<sup>10</sup>

NNM: In 1961, when I called television a "vast wasteland," I was thinking of an endless emptiness, a fallow field waiting to be cultivated and enriched. Today, look at programs like Howard Stern and the recent broadcast by a radio station in New York of men and women engaging in sex in a Catholic church. We see the violence and toxic waste fed to our children every day.

FHC: Are there things that television does especially well? I'm particularly curious about after the September 11th attacks. What did you think of the quality of that?

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9. LeRoy Collins, thirty-third governor of Florida (January 4, 1955-January 3, 1961).

10. Newton N. Minow, *Television, More Vast than Ever, Turns Toxic*, USA TODAY, May 9, 2001, at 15A.

NNM: Television did a brilliant job. The coverage was done with sensitivity, with taste, and with a great sense of public service.

Television has done other good things. It had an enormous amount to do with the development of the Civil Rights movement, getting us out of Vietnam, the liberation of Eastern Europe. Children have benefited enormously from *Sesame Street*. When Cal Ripkin of the Baltimore Orioles broke Lou Gehrig's record of consecutive games played, television brought us that great uplifting experience.

FHC: If broadcasters can air programming like that, why don't they do it more often?

NNM: There are three reasons. The first is money. The second reason is money. And the third reason is money.

FHC: In 1961, you called broadcasting a "most honorable profession." Do you still agree with that?

NNM: I still believe that.

FHC: You seem to have had something of a history of advocating positions that were unpopular to the audience before which you were advocating them. One you seem to have repeatedly advocated to broadcasters is to be guided by a higher interest other than just ratings.

NNM: What offends me the most, and I see this particularly in younger people in the business today, is that they don't remember that they are given exclusive use of publicly owned property in exchange for the promise to provide public service. They have forgotten about the public interest. The FCC has contributed to enabling them to forget about it over the years. In 1983, Chairman Mark Fowler said a television set is nothing but a toaster with pictures. That's the wrong attitude. You have to keep reminding people that this is not an ordinary business, this is a different business affected with public responsibilities.

FHC: Would you apply the same thinking to satellite, cable and other forms of TV?

NNM: I would. Like broadcast licenses, not everybody can have a satellite license either. I remember testifying when the Fairness Doctrine was being debated in Congress. One of the Congressmen asked me why I say there is still scarcity when we now have more broadcasting stations than newspapers.

Scarcity exists as long as there are not as many opportunities per citizen as there are citizens. For example, if a newspaper dies,

which happens all the time, there is nobody standing in line to come in to replace it. But if a television channel or a radio signal becomes available, you'll have twenty, thirty, forty people screaming, "Give it to me; don't give it to the other thirty-nine applicants, give it to me." That's why there is scarcity.

FHC: You have talked about broadcasters as public trustees because they use a public resource—the airwaves. Is there any other way in which you see broadcasters as public trustees? Do cablecasters have the same public interest obligation even though they don't use the airwaves?

NNM: I've thought a great deal about that. The cable industry, and I'm a big fan of cable, built its business on its use of broadcast programs, and now after almost forty years, the cable industry has said, "We don't need you any more. We'll produce our own programs and you can forget about being carried on cable." Eighty-five percent of the American people today receive television either by wire or by satellite; only fifteen percent of the American people are receiving television the way God and General Sarnoff<sup>11</sup> intended they should: with a television antenna on the roof.

There's unfairness in the current line between cable and broadcast. Cable has two sources of revenue. When you get to my age, you have a sense of history that younger people, I find, do not have. Cable started with one source of revenue—cable subscribers. Cable did not have commercials. Now the cable people have two sources of revenue: they have both advertising and subscription revenue. Broadcasters have only one source of revenue, which is advertising. Public broadcasters have hardly any source of revenue, which is a minuscule amount from public resources and private philanthropy. Public broadcasters have to scramble to raise money, and yet must meet the same statutory standard of serving the public interest.

Almost all our problems involving broadcasting stem from this basic inequality of income. Public broadcasting could do a much better job if it had more resources. Cable, if it didn't have advertising revenue, would not be able to do all the things it does, which would be unfortunate because many programs cable produces are the most creative. Broadcasters have been left behind.

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11. David Sarnoff was a pioneer in radio and television who initiated television service at the opening of the New York World's Fair on April 20, 1939.

When I was on the board of CBS, the programming people made a presentation once a year. They would come in with a big chart and say “here is what CBS has planned. Here is what ABC has planned. Here is what NBC has planned.” I didn’t say anything the first year, but when they came back with the same chart the second year I said, “You know, the guys in Detroit that make automobiles used to have a chart. The heading was ‘General Motors, Ford and Chrysler.’ They didn’t have room on the chart for Toyota or Volkswagen or BMW or Honda or all the other manufacturers of cars coming into the United States.” I said, “You’ve got a chart with only NBC, ABC and CBS. Where is UHF television, where is cable television? You don’t realize how this has all changed and you’re myopic. Just because you’re on Sixth Avenue and NBC and ABC are a block away, is that the limit of your perspective?” I never got an answer.

Looking back at those years now, I’m not sure that public policymakers understood what was happening in the business either. The FCC’s job is to adapt public policy to technological change—but it often lags behind.

#### THE ROLE OF GOVERNMENT

FHC: And so what would you say to today’s FCC? What can the FCC do, or is it beyond the FCC now, is it Congress or the White House we should be talking about?

NNM: All of the above. Over the years, the principal failure of the occupants of the White House, members of Congress, and members of the FCC has been the lack of courage to state: “Here are the public service and public interest obligations of a broadcaster. If you want a broadcast license, you will meet these obligations or not get a license. Believe me, there will be 600,000 other people who would love to have the license if you decide to take a pass.” We have minimum wages, we have rules in this country about child labor, we set certain laws that people have to meet, and we should have done that with broadcasting. If it were my call, I’d say you have to provide a certain amount of children’s programming without commercials every day, and during campaigns certain periods of time to political candidates without charging them for it. I would say you cannot have more commercials than, let’s say six minutes an hour. In other words, these are the rules. If you don’t want to meet those requirements, there will be other people who will.

FHC: Now in 1991 you said you gave broadcasters an “A+” for technology and a “C” for programming quality. You didn’t give a grade to the regulators, though. How have the regulators done since you left the FCC?

NNM: From time to time there have been some very good people there. My friend Dean Burch,<sup>12</sup> a Republican Chairman, did a very good job. But taken as an institution, I would give the FCC, at the very best a “B- and probably a “C”.

Dean and I were friends after serving together on a bi-partisan commission dealing with public service issues. Years went by and in 1968, President Nixon was elected. Dean was a lawyer in Tucson and called me and said, “Newt, I need some advice. President-elect Nixon called me up and asked me to become Chairman of the FCC and I turned him down.”

I said, “Why did you turn him down?”

He said, “Well, I’ve got a successful law practice here, the kids are in school, I’ve got a swimming pool.”

I said, “You are making a terrible mistake. You would be a first-class idiot to turn this offer down. That’s a very important opportunity for public service at the highest level, very important to the country. You should call him back immediately before he gets somebody else, and tell him you’ve reconsidered and you want to be Chairman,” which he did.

He took the job and had not been there very long—just a few weeks, or maybe it was months—when he called me up and said, “Okay, big shot, you talked me into this, I’m here, and now I need some advice. Next time you’re in Washington, come by and have dinner with me. I’d like to get some ideas.”

I was on the board then of what was called NET, National Educational Television; it later became PBS. When I was next in New York at a board meeting, I called Dean and said “I’ll come down to Washington and have dinner.” While in New York, I heard Joan Cooney make a presentation for what became *Sesame Street*. I was very taken with that, so when we had dinner, I told him about it.

He asked, “What’s her name?”

I said, “Joan Cooney.”

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12. FCC Chairman (October 31, 1969 to March 8, 1974).

He asked if the name “Ganz” was also used.

I said, “Yes, she is called Joan Ganz Cooney.”

He said, “You won’t believe this. I asked Joan Ganz to marry me when we went to the University of Arizona. Where is she? I ought to call her.”

He got in touch with her, and he said, “How can I help you?”

She said, “I’m doing okay on the private side, but I’m trying to get a million dollars from the federal government,” from what was called HEW, now HHS, “to carry the program nationwide, but the secretary of the HEW turned us down.”

He said, “I think I can help you with that. Barry Goldwater has HHS’s budget, I think you ought to meet Barry, and you make your case and see if he can help you.”

So he took her to see Barry Goldwater, who looked at her and said, “‘Ganz,’ are you from Arizona?”

She said, “Yes.”

And he asked, “Are you related to Harry Ganz?”

She said, “That’s my uncle.”

Goldwater said, “Sit down. Harry Ganz gave me my first contribution when I first ran for public office. What can I do for you?”

So she told him the story. Senator Goldwater got Secretary Weinberger on the phone while she was there; by the time she left, she had the million dollars.

The moral of the story: Barry Goldwater is the father of Big Bird, Dean Burch helped *Sesame Street* sweep the country, and it’s very important to remember who you went to college with.

Seriously, you have to understand the big picture: The FCC is a creature of Congress. When I first was appointed to the FCC, I introduced myself to people on the Hill. I went to see the then Speaker of the House, Sam Rayburn, whom I had met in 1955 with Adlai E. Stevenson when we stayed at Lyndon Johnson’s ranch. Mr. Sam remembered me. I told him I was going to be Chairman of the FCC. He told me that we would get along just fine if I remembered one thing—that I worked for him.

That’s true. Congress is more at fault than the FCC because when the FCC tried to do something constructive, as I tried to do with

limits on commercial time, Congress immediately struck us down. We started way back when I was in the government, to put limits on commercials on smoking, and promptly heard from Congress.

One specific story makes my point. The Chairman of the House Commerce Committee, when I was in the FCC, was from Arkansas. His name was Oren Harris. One day he called and said, "I've got a constituent from Little Rock in my office complaining bitterly about what your staff is doing to him. I'd like to send him up to see you."

I said, "Fine. Who is it? What's the station?" He told me, and then I called in the staff and asked, "What's this all about?" They told me that they were holding up his television license renewal because he had zero local programs. He came to my office complaining about the FCC broadcast bureau and I said, "I wish you had been here about a half-hour ago."

He asked, "Why?"

I said, "I had the police chiefs here complaining that they didn't have enough frequencies, enough channels to catch crooks and save lives. Now if you're not going to have any local programming in Little Rock, we could give the police your channel. Nobody would miss you because you're not doing any local programming anyway. We could just run a line down from New York to Little Rock and they could get all the network programs. Who would know you were gone? That's why your license is being held up. Now would you like to think about having some local service?"

He said, "Well, of course. I didn't understand it."

Most people don't understand it. We could take away all the television channels, all the radio channels of the people who do not have a sense of public interest, the public would still be served by those broadcasters who do have a sense of public service and we could give the channels to the policemen or the firemen or the schools, or the nurses or the hospitals. Would the country be worse off?

When somebody who has just been appointed to the FCC asks if I have any advice for them I always give the same advice—don't stay in that shell surrounded by industry insiders and lobbyists. Get out and talk to the people who are not in the business, be sure you talk to general journalists, not just the people working the trade magazines, because that's a narrow world of its own that is not attached to the rest of the world.

### THE FCC, THE MARKET, AND VIEWER CHOICE

FHC: But what should the FCC be doing then? If you haven't seen improvement, if things have gotten worse, what would you have done differently? Or what would you recommend that subsequent chairmen do differently?

NNM: The basic, fundamental philosophy that I had in the government was to expand choice for the viewer. Because broadcast channels are limited to a tiny percentage of the people who would like to have licenses, the best thing the government could do would be to expand the number of channels, expand the number of alternatives that the public could receive. Therefore, we opened UHF television with the passage of the legislation in 1962 for the all-channel receiver.<sup>13</sup> We opened new opportunities for cable. At that time, broadcasters loved cable because cable was extending their signal to places their signal couldn't reach over the air. We had no idea at the time how important that would become. Our fundamental philosophy was, and should still be, to provide more choice. Let the viewer have options. That is a fundamental, basic, correct thing for the government to do.

FHC: Well, we certainly seem to have more choice today.

NNM: No question. If you are a news junkie, as I am, you can find news on television all the time. If you're a sports junkie, you can find sports all the time. If you're a movie junkie, you can find that. So in that sense, we succeeded.

FHC: What are the downsides of this new realm of choice?

NNM: The downside is that television used to be the most important unifying force in our large country that extends over 3000 miles. Television brought together people from far, far away, from Alaska and Hawaii, from South and North, and from East and West. Television made it possible for a family to share a common experience simultaneously. That unified the country, I remember particularly, when President Kennedy was assassinated. Television held our country together. I think television had a great deal to do with the success of the Civil Rights movement.

What you have now, sadly, is in one home, a husband watching one television set in one room, a wife watching another television set in another room, and the kids watching another television set in

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13. All-Channel Receiver Act of 1962, Pub. L. No. 87-529, 76 Stat. 150.



a third room. We do not have that shared, common experience, which is most unfortunate.

FHC: You have written a lot about competition and the importance of competition as one way of furthering choice. And yet it seems like the various rules promoting competition have either been eliminated or courts have struck them down. We see increasingly centralized media. Are we suffering from an absence of competition in the media marketplace?

NNM: You have to define competition. For example, when I was still in the government, I made a proposal that some people considered anti-competitive, but I believe it would have been a very good service. We were trying at that time to promote UHF television. I proposed that we would enlarge the number of stations that one owner, including the networks, could own on condition that they add UHF stations and that they would repeat at least 50% of their programs at different times and add 50% of the schedule in new programs.

This was before VCRs. Nobody had ever heard of a VCR. Suppose you missed Walter Cronkite in the news when it was on at 6:30, but you'd like to see it. We said: "CBS, you can have another affiliate, a UHF affiliate in the same city and you can rebroadcast Walter Cronkite at 9:00 or 8:00 or 10:00, whatever." That would have served the public interest. Some people said, "That's anticompetitive; you're letting them have two channels." We should think of it in terms of the viewer rather than the operator.

FHC: You have also had a lot to say about the role of markets and the fact that the market does not tend to be providing the right answers and it is not a source of all right answers here. What should the FCC of today be doing to get to a better media market?

NNM: A lot of people take issue with me on the ground that the marketplace will provide everything. I say, "If that's true, why do we have public libraries? Why do we have public parks? Why do we have public hospitals?" We do these things because the marketplace does not provide everything.

#### TELEVISION, CAMPAIGNS, AND POLITICAL DEBATE

NNM: The television marketplace fails, particularly with respect to good children's programming. The marketplace also fails in providing opportunities for political candidates to get their views across to the voters. There is no higher service in my opinion in a democracy

than providing information to the voters. And yet, we now have put a moat, or a cash register in front of the candidate's opportunity to speak to voters. Bill Bradley said a couple of years ago when he ran for the Democratic nomination for President, that "I'm a middleman between the contributor who gives me a contribution and I then turn it over to the television station to run my commercials." That's what a campaign has become. I believe that the British system in which a candidate cannot purchase television time, but is allocated a certain amount of television time is a better system.

I remember when I served on the so-called Gore Commission<sup>14</sup> that the then-President of the National Association of Broadcasters, Eddie Fritts, testified. He was complaining about the lowest unit rate. He said it would be better if we got rid of that and simply didn't sell any time and provided a certain amount of time for free. I said, "Eddie, it's a deal, done."

He said, "Uh, I didn't mean that."

We should not have a money marketplace for political discussion. We should go to a system like the British that bans political advertising and then provides public service time to political parties to air important public issues. We're going through an election period now just as you are interviewing me here in Illinois. All you see is political commercials. They've raised millions upon millions upon millions of dollars. I read in this morning's paper that it looks like campaign spending on television ads will pass a billion dollars, which will make it the most expensive race, especially in a non-presidential race year, ever. In many ways, the commercials themselves are often misleading, mean-spirited, excessively partisan, and do not contribute to rational political discussion.

I have been involved, as you know, in the presidential debates. The reason I went to the FCC in the first place was prompted by an experience during the presidential campaign of 1956. There was an international crisis a week before the election involving the Suez Canal, President Eisenhower spoke to the nation on radio and

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14. President Clinton established the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters by Exec. Order No. 13,038, 62 Fed. Reg. 12,065 (Mar. 11, 1997). The Gore Commission studied and recommended the public-interest responsibilities that should accompany the broadcasters' receipt of digital television licenses.

television. I was working for the Democratic candidate for President, Adlai E. Stevenson, who wanted to give an opposing view. He went to the networks and was turned down. The decision was that the president was speaking as president, not as a candidate and therefore Stevenson was not entitled to time. We appealed to the FCC. That was the first time I had any experience with the FCC. The FCC was so badly split it couldn't reach a decision. Finally, Mutual Radio provided time for Stevenson. Later the networks did too. That's when I first learned that broadcasters could lock out political discussions because they held the keys to the way people were informed.

I was appalled when the networks turned down President George W. Bush who wanted to speak to the nation on television about Iraq. The networks said there's no news, we're not going to carry it. That's very wrong. I believe that the country should have said to the networks, "If you think that it isn't important enough for us to hear what the President had to say about whether our sons and daughters may be going to fight in Iraq, we're just going to turn you off."

FHC: So the answer would be then for the network to provide for the television broadcasters to provide a certain amount of air time as a condition of holding their license?

NNM: Exactly.

FHC: And again, what about cable, satellite, etc.?

NNM: I would apply it to everybody.

FHC: Same type of obligation? How do you respond to the argument that nobody wants to watch half-hour political shows?

NNM: If they don't want to watch it, they can forget about being a citizen for that half hour and go to the movies.

FHC: It's important they have the option whether or not they take advantage of it.

NNM: Right.

#### TELEVISION AND CHILDREN

FHC: You commented in 1961 that you were concerned by the violence and mayhem and mindlessness of the television, then again in 1991, that you, in fact, didn't worry just that your kids would be bored by TV but that your grandchildren would actively be hurt by TV. Can you comment today?

NNM: It has only gotten worse. What upsets me most is not that violence may stimulate kids to go out and commit a crime, but that children become accepting of violence as a way to solve a problem. There have been statistics to show that a youngster by the time he reaches high school has seen thousands upon thousands upon thousands of active violence including murders. Many times when something terrible happens out on the street people say, "Gee, I thought I was watching television." We become willing to accept that as a part of daily life. We should abhor it. What violence very often does is to provide a crutch for a writer or producer to end a program on time.

FHC: So, in lieu of a subtle plot, you can have some violence. . . .

NNM: That's right and then it will be time for the next commercial. The U.S. has articulated many important values, including freedom of speech, open markets, and protection of children. Somehow, the balance has gotten seriously out of whack. We too often see children today as consumers first. We need to put them ahead of profits.

FHC: What should the Commission be doing about children's television?

NNM: I had what I thought was a good idea when I was at the FCC about having a children's hour available on network television every day. If it was a competitive burden, they could share it by alternating. One would take it Monday, one Tuesday, one Wednesday, and so forth. CBS and NBC agreed to do that. Then the president of ABC called and said, "We think it's a good idea to have a children's hour available every day, but we would like to do it ourselves. Any problem with that?"

I said, "The government is not going to tell you that's a problem. We want children's programs available on media. You can do it the way you want to do it." The result was that little happened.

FHC: When your own kids were growing up, how did you oversee their media consumption or did you?<sup>15</sup>

NNM: Actually, my wife did. We put limits on the amount of time that they could watch television. We were also very meticulous and if we saw something that was going to be important and informative and educational, we sat through the program and watched together.

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15. Minow and his wife, Jo, have three daughters. All are lawyers, graduates of the law schools of the University of Chicago, Yale, and Stanford. Nell is a shareholder activist and movie critic, Martha is a professor at Harvard Law School, and Mary is an author and consultant on library law and a frequent writer for the American Library Association.

We saw Leonard Bernstein programs on music, programs that were specials, in those days there was an NBC series called *Omnibus*, where they broadcast wonderful things, like *Peter Pan*. We would watch it with the kids; that's very important. Parents wouldn't turn their children over to strangers, yet they too often turn them over to television as a babysitter.

#### TELEVISION AS AN INSTRUMENT OF FOREIGN POLICY

FHC: Now, you have turned a fair amount of attention recently to the role of television, not just domestically, but internationally—especially in Europe and in Cuba—in what way should the broadcasters be proceeding? Or should the FCC be regulating the particular media for different public service obligations?

NNM: I am not sure there are domestic broadcasters who can do that. It's really our Voice of America and Radio Free Europe, and so on. When Communism collapsed in Eastern and Central Europe, Congress created the International Media Fund,<sup>16</sup> I served on its board. We had a small amount of money with which we made grants to local citizens in Hungary, Poland, Czechoslovakia, Romania, and Bulgaria to either create a small radio station, small newspaper or magazine to help them get started. We didn't tell them what to say, but we wanted to encourage an independent free press. We should have been doing that all through the Middle East; we should have been doing that all along.

What's really wrong in many countries is that we failed to explain the values of freedom, the values of democracy. There's a colossal irony here. We are great at selling our product, our Coca-Cola, our Nike shoes, our movies, our music, our everything, but we cannot get across our basic principles that make this a great, great country.

I am very critical of our government for starving our agencies, like the Voice of America, Radio Free Europe/Radio Liberty, Radio Free Asia, and Radio Free Afghanistan. As Tom Friedman put it in *The New York Times*: "It is no easy trick to lose a P.R. war to two mass murders [Osama bin Laden and Saddam Hussein]—but we've

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16. The International Media Fund is a private, nonprofit organization that receives funding from the U.S. government. The Fund supports independent print, radio, and television media in Central and Eastern Europe with training courses, workshops, and purchases of equipment.

been doing just that lately. It is not enough for the White House to label them 'evildoers.' We have to take the P.R. war right to them, just like the real one."<sup>17</sup>

There's a commercial broadcaster named Norman Pattiz who is founder and Chairman of Westwood One, America's largest radio network. I don't know him, but I've read a lot about him. He serves on the Broadcasting Board of Governors,<sup>18</sup> the board Congress created to oversee all U.S. government and government-sponsored, non-military, international broadcasting. He went to the Middle East and concluded that what we should do is create a new radio service. That service is now in existence under the name Radio Sawa, to broadcast American music plus news every hour. Radio Sawa now has one of the largest audiences of young people in the Middle East. We've got to do much more of that.

Why should this be such a struggle? It should be so obvious that we've got to learn how to communicate to the world. I wrote a letter the other day to *The Wall Street Journal* about an American journalist in Iraq who reported that Iraqis hate Saddam Hussein, but hate the United States even more than they hate Saddam Hussein, because they identify us with bombing and sanctions. They all listen to radio and get their ideas about the rest of the world from the BBC, from Israeli radio, from Iranian radio, and now from Radio Sawa. Why are we not communicating that sanctions and bombing will end the day that Saddam is out power? Why? It's a no-brainer. It's simply a matter of connecting the dots.

I think back to World War II when I served in the Army. When Franklin Roosevelt or Winston Churchill spoke they learned that a few words could be as powerful as bombs.

### NEW TECHNOLOGY

FHC: We haven't talked much about new technology, the Internet, the various handheld devices people use to receive information. Does this somehow alter the role of television? Does it somehow make a public interest mandate less important?

NNM: I think that the new technologies will get married, or they are getting married already. Some people say that television and

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17. Thomas L. Friedman, *One War, Two Fronts*, N.Y. TIMES, Nov. 2, 2001, at A25.

18. The Broadcasting Board of Governors was created with the 1998 Foreign Affairs Reform and Restructuring Act, Pub. L. No. 105-277, 112 Stat. 2681-761 (1998).

computers will eventually merge into one. They are probably right. If we get to a point where everybody is a producer of programming, and you don't need a license at a scarce channel anymore to provide programming, then the fundamental rationale for regulating broadcasting has to undergo a serious reexamination. Our whole system rests now on the fact that holding a broadcast license is a privilege. The key is the exclusivity of a broadcast license. If that exclusivity disappears, then the regulatory structure will have to change.

FHC: I take it that even if there were no scarcity, you would still see a role for a concept of "public interest"?

NNM: I would. I know that there are a lot of people who say public interest is too broad, that nobody knows what the public interest is. Some people have said to me, public interest is what interests the public. X-rated movies interest the public. We could fill the ozone with X-rated movies. Would that be serving the public interest? I think not. Each of us might have some different idea of the public interest but some things are very clear and undebatable. Children's protection, and service to children I don't think is debatable. The democratic process is the public interest: If you're going to have a free society, you have to have an informed electorate; I think that's the public interest. You can argue about other things, but those two seem to me to be so basic, so fundamental, so elemental, that there ought not to be much disagreement.

#### DIGITAL TELEVISION

FHC: Let's talk for a minute about digital TV, something you've been very active in, and including this recent proposal with you and Lawrence Grossman<sup>19</sup> for a digital opportunity of investing in education. What's that?

NNM: Three times in the last three centuries, the United States made a big investment in education. In the eighteenth century, the Northwest Ordinance provided public schools as a basic part of a new country. In the nineteenth century, we created Land-Grant colleges. That law was sponsored by a Republican congressman from Vermont, named Justin Smith Morrill, who was an uneducated farmer, but who dreamed that everybody should be able to have a college

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19. Former President of NBC News and of the Public Broadcasting Service and Co-Chair with Newton N. Minow of the Century Foundation's digital promise project.

education. He persuaded Congress to pass a law that President Lincoln signed during the Civil War. The whole law is as big as my hand. I've read it many times. It basically said, that for every member of Congress and every U.S. senator, 30,000 acres of federally owned land would be transferred to each state on condition that the state create a Land-Grant college. Until that time, the only people who went to college were white males studying to be a lawyer or doctor or a minister. This opened college to women, to minorities, to people who wanted to become farmers or engineers. It transformed American higher education. That was very important.

In the twentieth century we passed the G.I. Bill. Millions of men and women who served in the armed forces could have a college education and go to a college of their choice.

I believe in the twenty-first century that money coming from the auctions of the spectrum should go into a fund for education in the digital age. Specifically, Larry Grossman and I think that the great libraries should be able to digitize their materials and make them available to everybody; we have a great vision of what ought to be done. I went to see Vermont Senator Jim Jeffords, who at that time was the Republican chairman of the Senate Education Subcommittee. With his encouragement and the encouragement of a bipartisan group of leaders in the Congress, legislation has now been introduced.<sup>20</sup> The principle is very realistic. We are hoping that funds will be earmarked from the proceeds of future spectrum auctions to go towards the educational use of digital technology.

### PUBLIC BROADCASTING

FHC: You have had a tremendous amount of experience with public broadcasting. At one point you proposed the 2% annual fee on broadcasters to fund public broadcasting better. What do you see as the special role for public broadcasting particularly in the face of so many new media and ways of obtaining information?

NNM: Public broadcasting has to redefine its mission. It is becoming much more involved in local communities, teaming up with local schools, universities, museums, libraries, providing a window to what's going on in that community. Public broadcasting—and this

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20. See Digital Opportunity Investment Trust Act, S. 2603, 107th Cong. (2002); Wireless Technology Investment and Digital Dividends Act, H.R. 4641, 107th Cong. (2002).



is an argument I've had with our local station, WTTW, for many years when I served as chairman of its board—should repeat its programs often. We're beginning to learn how to do that; nobody should watch public television from station sign-on to station sign-off. You should be doing other things: you should be reading a book; you should be reading to your kids; you should be watching commercial television; you should be doing a lot of other things. We should do fewer programs of quality and repeat them often. We are beginning to do that, for example, with Ken Burns's great series on the Civil War. We ought to be giving people many, many chances to see great programs instead of trying to provide something new all the time.

### THE FIRST AMENDMENT

FHC: Let me ask you the question that you would expect from me. What is the role of the First Amendment in your view of broadcasting and the public interest?

NNM: The First Amendment has been broadly misunderstood. The First Amendment was properly analyzed by Justice Byron White in the *Red Lion*<sup>21</sup> case. It's the right of the viewer and the listener, not the broadcaster that's paramount. When the cable people argue that their First Amendment rights have been impaired, I say, in communities where cable is a local monopoly, you are essentially like a local telephone company. Do you have First Amendment rights or does the person who uses the telephone have First Amendment rights? Is it your right or is it Mr. and Ms. Viewer? The courts have managed to screw this up badly. Certainly the First Amendment protects a broadcaster when he puts on a program where somebody takes a controversial position—the government cannot interfere with that except perhaps to say the other side ought to be heard too. I don't think that conflicts with the First Amendment at all. I think the fairness doctrine is constitutional. The First Amendment has been used in my opinion, and stretched and abused to avoid any sense of public responsibility. We confuse, in Justice Potter Stewart's words, the question of whether you have the right to do something with whether it is the right thing to do. Broadcast lawyers only want to talk about rights, not responsibilities.

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21. *Red Lion Brdcast. Co. v. FCC*, 395 U.S. 367 (1969).

FHC: And would you see that as a bright-line rule in the way that the court has between broadcasting and newspapers? That newspapers would be under a totally different First Amendment regime?

NNM: The Supreme Court has made that clear. Under *Miami Herald*,<sup>22</sup> you don't need an exclusive license to have a newspaper; you're not using something which is denied to others. That's the essential point. That's why I go back to the way we were talking about licensing before. If the FCC in its first week in business in the 1930s had said, "If you want to apply for a license, here are the terms and conditions under which a license will be granted," would that have violated the First Amendment? Of course not. Broadcasters would have said, "Fine, we'll do that, we'll provide an hour of children's programs, we'll do this, because those are the terms of the license." If you don't like it don't apply for a license. You know who says this better than I? Senator John McCain. He put it this way: "What the broadcasters fail to see, in my view, is that they agree to act in the public interest when they use an asset that is owned by the American public. That is what makes them different from a newspaper or magazine. . . . [If broadcasters] believe there is no obligation, then they shouldn't sign the statement that says they agree to act in the public interest. Don't sign it, OK?"<sup>23</sup> I agree with Senator McCain.

#### REFLECTIONS ON THE PAST AND THE FUTURE

FHC: Tell me, if you will, about your departure from the Commission.

NNM: I had promised President Kennedy I would serve two years. Two years and a day after I arrived in Washington I called the White House. It was the only time I ever asked for an appointment. A few days later I walked in to see the President. I'll never forget what he said. He looked at me and said, "You are the only person I brought down here who never asked to see me. I know what you want. You want to go home." I told him that I was ready to go home. He asked me if I wanted another job, I told him no—that I was ready to leave Washington.

The President asked if I would stay until he got somebody else and I told him I would. I suggested that he consider Don McGannon. Don was in broadcasting as head of Westinghouse Broadcasting.

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22. *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241 (1974).

23. Newton N. Minow, Address to the Economic Club (Apr. 16, 1997), *reprinted in* 143 E. CONG. REC. 774 (Apr. 29, 1997) (quoting Senator John McCain).

Don was a terrific guy, committed to the public interest. But he had ten kids and was not interested in moving to Washington. So it took four or five or six months to get a replacement and that was it.<sup>24</sup>

FHC: You have had what anyone would regard as an extraordinary variety of illustrious public service positions. When you look across those, what are the ones that you've enjoyed the most or where you've felt you made the biggest difference to the country?

NNM: I like to think I made a big difference to the country in 1976 with the presidential debates. That is both because of the unique opportunity I was given by the League of Women Voters and also because I think I had the confidence of the Republicans and the Democrats. Both sides agreed that I would be fair. I hope that the work I did as co-chair of the presidential debates was an important contribution. And our leadership in developing communications satellites in 1962 and new public television stations turned out to be very important.

FHC: You seem indestructibly optimistic. For an entire career—at the FCC, at Public Broadcasting Service, at Carnegie, at Annenberg—you have talked about the importance of education, children, the use of the airwaves for candidates and public broadcasting, yet you say you do not see improvement out there. How do you keep doing this? How do you keep feeling so optimistic about humankind and its activities?

NNM: If you are not optimistic, there is no point living. There are many, many, many kind, decent, public-spirited people in broadcasting who agree with me.

FHC: How do you get your own news each day, through television, newspapers?

NNM: I'm a radio and television junkie. Radio, unfortunately, is not doing the kind of job in the news that it used to do except for public radio. Public radio has improved 5000%—the most improved broadcast service around. When I get up in the morning I have National Public Radio on, then I turn to the television network morning programs to see what's going on, I turn to the Internet, I

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24. E. William Henry, a Democrat from Tennessee, was sworn in as Chairman of the FCC on October 2, 1962, and served until May 1, 1966.

read four papers every day, I read twenty-seven magazines during the week, I'm a news junkie. I watch television with a book or a magazine in my hand and try to do two things at once.

I'm often asked about my favorite television program, and that's not much of a contest: It is *CBS Sunday Morning*, which was started by Charles Kuralt, produced by Shad Northshield. It is the best program on television. I also love *The Sopranos*. My wife said to me one day when I told this to someone, "How could you say that? You're always advocating better, higher-class television, and you like *The Sopranos*?" I said, "Oops, I meant to say the Three Tenors."

FHC: Many people have commented about how increasing partisan and bitter politics have become and yet you sit in your office surrounded by pictures of people from all parties. What is the key to maintaining the level of trust and integrity you have?

NNM: I am not partisan; I became a Democrat because I worked for Adlai E. Stevenson when he was governor. I vote for Republicans from time to time. I'm friendly with a number of people in the Bush administration. I'm turned off by the current partisanship on both sides. I can't stand the extremists of the right and the left.

FHC: You know the *Journal* is published entirely by students who have an interest in communications law. I am curious what advice you would offer them, not so much about communications, per se, but about embarking on a field of practice as lawyers, as legal advisors, in an area as rapidly changing and as technologically rich as communications is. What would you say to them?

NNM: Most important is to earn the trust of your client. The best way to do that is to be trustworthy. The problem is so many people end up being merely hired guns—they do whatever their client tells them. That's a mistake. The law is an honorable profession if you keep your independence.

