

**Part Three:  
Defending The People's Right To Know**

**The Legal History of the Responsibility of Emerging Television Stations in the South to Inform the Public about the Direct Action Campaign for Civil Rights.**

I.

Without the news media, the modern civil rights movement “would have been as a bird without wings,” civil rights hero Rep. John Lewis, D-Ga., is fond of saying about news coverage in the 1950s and 1960s.

More to the point: The still-fledgling national network television news operations focused the nation's eyes on the sit-ins, marches and voting rights efforts of the era, reports that combined with standout reporting by a number of courageous newspaper journalists to touch the conscience of a nation.

In combination, those reports — the images and the words and the photos — broke through the bias, ignorance and neglect that had characterized news reporting by mainstream news outlets large and small. In earlier times, violence against black Americans was often reported as “race riots,” blamed on the victims.

News reports — and occasionally, photos — of racial protests were minimal and often took a negative tone, if not outright criticism. Even when reporting on all-too-frequent lynchings, reports typically lacked any sense of outrage, if not by design then by an inability to do more than record the event because of reticence or hostility from news sources.

Typical, a survey of reports of the first half of the 20th century shows, was this observation noted in the January 2000 edition of the *Journal of Black Studies*, in an article by Richard M. Perloff of Cleveland State University titled, “The Press and Lynching of African Americans:”

“In July 1930, newspaper men poked around Emelle, Alabama, trying to ferret out details of the lynching of a Black man as well as several other slayings. A few White residents who had been on hand when the men were killed refused to talk about the events to reporters from The Tuscaloosa News. “What the hell are you newspapermen doing here,” asked a White man who had been part of the vigilante group. “We’re just killing a few negroes that we’ve waited too damn long about leaving for the buzzards. That’s not news.”

Much of the early reporting, and some would say the most thorough and accurate news accounts, would come from the black press — newspapers like the *Chicago Defender*, *Birmingham World*, *Los Angeles Sentinel*, the *Richmond (Va.) Afro-American*, *Ebony* and *Jet* magazines, to name a few.

Dorothy Butler Gilliam, an award-winning reporter and editor at *The Washington Post*, began her career at the Memphis-based weekly newspaper *Tri-State Defender*. In a 2018 essay posted in the online journal “Think,” she wrote: “Black reporters played a crucial role in the years before and during the height of the civil rights movement. Reporters risked their own safety to slip in and out of the South to tell of the brutality, lynching and fears that ruled there.”

At a historic 1987 symposium at the University of Mississippi that gathered many of the journalists who covered the civil rights movement over the past 20 and more years, the *Los Angeles Times* reported, “Chester Higgins, who worked for various black newspapers and magazines during the period, said the black press made crucial contributions to the coverage. He cited as an example a *Jet* magazine photo showing the mutilated body of Emmett Till, a black youth from Chicago who was murdered by white racists while visiting Mississippi in 1955. Publication of that picture galvanized support all over the country for the plight of blacks in the South.”

For black Americans, mainstream newspapers not only failed to have accurate reports on the civil rights movement, but had neglected minority audiences in their communities.

In an Alabama Public Radio report in 2013, part of an award-winning series on the movement, Pulitzer Prize-winning journalist and journalism professor Craig Flournoy said that, “If you picked up a white newspaper, you as a black person didn’t exist ... here was no record of you being born, no record of you graduating from high school much less college, no record of you getting married, no record of your promotion and no record of you dying.”

Still, there were newspapers that attempted to cover the movement and protests in their communities — often drawing criticism and even violent reactions.

From that *Los Angeles Times* report about the 1987 University of Mississippi three-day symposium: “Our newspaper offices were shot at,” Charles Dunagin, editor of the *Enterprise-Journal* in McComb, Miss., recalled. “A stink bomb was thrown into the building.” One night, the Ku Klux Klan tossed a firebomb into his home as he and his family were sleeping, he said, but the bomb was unlit.

In the report, Dunagin said the biggest failure of the Mississippi press during the civil rights struggle was in not getting the “behind-the-scenes” story of what was happening. But, he added, “most of us didn’t know what was happening ourselves.”

Harry Ashmore, who was executive editor of the *Arkansas Gazette* during the Little Rock

school integration crisis, noted network television didn't always accurately report the civil rights story:

“Television didn't have the capacity to tell the underlying story of what happened. This story didn't begin at Central High School; it began a long time before World War II with a series of lawsuits by the NAACP ... that changed the whole balance (of Southern society) and wiped out states' rights. Little Rock was just the first showdown.”

Still, the new medium of network television news nightly brought the civil rights movement — from peaceful protest to violent confrontations — into American living rooms, an impossibility just 10 years earlier.

“The civil-rights revolution in the South began when a man and the eye of the television film camera came together, giving the camera a focal point for events breaking from state to state, and the man, Martin Luther King Jr., high exposure on television sets from coast to coast,” journalists Robert Donovan and Ray Scherer wrote in their seminal history of television news, “Unsilent Revolution.”

Researcher Nikki Livingston wrote in January 2018 in the blog “Gender, Race and Class in the History of the United States” that “In the decade before the movement, AT&T completed its national coaxial cable and microwave relay network in 1951. This allowed for the distribution of television programming across the continental United States. The following year, 108 stations were broadcasting to 17 million homes. Toward the end of the 1950s, nearly 90 percent of U.S. households had televisions and 559 stations were broadcasting across the country. During that decade, 70 million television sets were sold in the U.S. That's more than the number of children born in the 1950s (40.5 million).”

Viewers also were exposed to ground-breaking documentaries about the movement. Two outstanding examples, both from 1961: “ABC Bell & Howell Close-up!: Walk in My Shoes,” an emotion-filled look at the lives of people involved in the civil rights movement and “CBS Reports: Who Speaks for Birmingham,” which reported on the racial divide between the white and black communities of Birmingham, Ala., and how views in each community on integration differed greatly.

Author Riann LoGrasso, writing on how the media covered the civil rights movement, said that “by the early 1960s, almost 90 percent of Americans owned a television set. Television replaced radio as a main source of how Americans received their news. Television became ‘the chosen instrument’ for media coverage during the civil rights movement. Without the rise of television, the civil rights movement arguably would not have been as effective, or may not have even reached success as it did.

“With Americans physically able to see the civil rights movement, it had a huge impact on American reactions. From 1954-1960, the media focused on items such as the coverage of segregation in schools, Montgomery bus boycott and the rise of Martin Luther King. This can be considered the first phase of media coverage. The first phase of the media was generally more factual and for the most part showed interest in supporting

the civil rights movement.

“The next phase of media coverage covered events such as the 1960 lunch counter sit-ins and mass public demonstrations of the 1963 March on Washington D.C. The second phase journalists and the media were generally seen as allies to the civil rights movement.”

LaGrasso also makes a case for a shift in news coverage in the mid-1960s: “The final phase, which took place after 1965, civil rights leaders worked for economic and political equality for African Americans across the country. In this phase, distrust in the media started to form. Many African Americans became more aware of the white-dominated world of news coverage and became skeptical of what information is being shown to the public.”

Still, she says, “Television coverage impacted each phase in many different ways. It was the chosen medium and without television the Civil Rights Act may not have achieved the success that it did.”

Even here, though, a distinction can be drawn between “national” and “local” on what Americans were seeing on the evening news. William G. Thomas of the University of Nebraska, writing in 2004 for *Southern Spaces* magazine, said, “In the American South, local television news coverage had immediate and significant effects. This essay argues that local television news broadcasts in Virginia in the 50s began to address the segregation issue in ways substantially more balanced and desegregated than the print media, while a major television station in Jackson, Miss., worked hard to defend segregation and deny access to opposing voices, both local and national.”

Thomas wrote that “Generally, those who consider television news as a powerful force for change refer to the nationally broadcast images of police dogs and firehoses turned on the demonstrators in Birmingham. They see this moment and other similar ones that followed, such as the violence at the (Edmund) Pettus Bridge in Selma, as key turning points when Americans witnessed violence, repression and hatred directed at African Americans and began to change their minds about the U. S. South and segregation.”

In “Unsilent Revolution,” Donovan and Scherer — drawing in part from that 1987 University of Mississippi symposium, wrote of the dangers for reporters in covering the movement and how years later they viewed that coverage.

They quote Eugene Roberts Jr., a reporter for *The New York Times* for three years and later Pulitzer Prize-winning editor of *The Philadelphia Inquirer*, as saying it was coverage of civil right that made him first realize “the force of television news.” They wrote, “Police dogs looked like police dogs in newspaper and magazine photos, but on television the dogs snarled.”

The book also quotes Wallace Westfeld, then a reporter for *The Tennessean* in Nashville and later executive producer of the “Huntley-Brinkley Report,” as saying TV news gave

the civil rights struggle “a color and attraction and emphasis that newspapers couldn’t do. Even without commentary, a shot of a big white man spitting and cursing at black children did more to open up the national intellect than my stories could ever do.”

Many reports about news coverage of the civil rights movement do note that critics at the time often said the presence of TV cameras caused violence. Certainly, many noted, the bulky equipment of the time — particularly the need for bright lights when filming at night — attracted both demonstrators eager for news coverage and those elements in the community who wished to stop both the reports and the demonstrations.

Reports of the era’s newsgathering are filled with incidents in which on-air reporters and cameramen were attacked, sometimes severely beaten or threatened by gun-wielding assailants. At times, the networks would make such attacks part of the daily news report; NBC’s Richard Valeriani was hit in the head with an axe handle while observing a demonstration — and the next day, he reported on-air from his hospital bed, head bandages and all.

Local TV and newspaper reports in the South often were at odds, at least in the early years of the movement, from what the national audiences were seeing and reading. On one day in 1963 when *The New York Times* headlined on its front page, “Violence Erupts at Racial Protest in Alabama” — with photos of a police dog biting the arm of one man, and of firehoses directed at several demonstrators — *The Birmingham News* had no reports on the front page of any kind about the violence in its city, with a main headline about potential imposition of martial law in Haiti.

Likely the most blatant example of local TV censorship of the local TV news about the civil rights movement was the conduct of ownership of WLBT in Jackson, Miss, which displayed an on-screen “cable trouble” card whenever the nightly network news program showed any coverage of the movement.

In “Unsilent Revolution,” the station is reported also to “sometimes, prior to news reports on the ‘Today’ show” have an announcer “warn, ‘What you are about to see is an example of biased, managed northern news. Be sure to tune in to 725 to hear your local newscast.’”

In 1964, the Church of Christ and local African-American leaders challenged renewal of WLBT’s license on the grounds it was failing to properly serve a large portion of its audience — black viewers. Eventually the original owners lost the license and it was awarded to a predominately black group.

As the civil rights movement entered the 1960s, news coverage, particularly on television, devoted more airtime to coverage beyond nightly news.

Scherer and Donovan note wide, live coverage of Dr. Martin Luther King’s “I have a dream” speech, delivered in the afternoon — with extensive coverage of the accompanying march through Washington into the night. They also write of NBC

devoting an entire evening schedule to a three-hour documentary, “The American Revolution of ‘63” days after the march.

The two authors also quote the president of NBC, Robert Kintner, as saying the network took that step because, “Waiting outside the American home, in the days before television, was a human face that seldom had entered there: the negro citizen, who was not welcomed as a guest, a colleague, an acquaintance. Television put negro Americans into the living rooms of millions of white Americans for the first time.”

And throughout the civil rights movement, so it did.

## II.

When network television stations NBC and CBS were founded in 1941, the average citizen was still also seeing and hearing reports at their local movie theater in “news segments” before the feature presentation and radio and print still dominated local, regional, national and international news dissemination to the general public. *Brown v. Board of Education* was front page news in *The New York Times*, but a then-emerging technology dating to the 1920s was being previsionsed as a way to bring the average citizen closer to current events. ABC television was added in 1948.

As the civil rights movement began in Montgomery, the black press and courageous southern newspaper editors gave the public a forthright account of southern resistance to *Brown v. Board of Education* and presented, at least outside the courtroom, local coverage of the trial of Emmett Till’s killers, the events at Little Rock’s Central High School and other watershed moments early in the movement. Dr. King was interviewed by television reporters in 1955 and television inserted itself quite rapidly as a new way of adding images to voice in the coverage of newsworthy events.

Both print and early television included courageous black and white advocates of social change who educated the public about the movement’s protests of racial segregation, but both the white-owned print media and early television also included those owners who used newspapers and television broadcast licenses to encourage and empower southern resistance to the movement. A key factor in this vital aspect of the movement — and the role of the institutions which were gatekeepers of our First Amendment freedoms — was the distinction between the responsibility of a newspaper owner and the responsibility of the owner of a television station owner who held a license to broadcast, awarded to that “station” by the Federal Communications Commission (FCC). Cities like Nashville had experienced separate newspapers — one in favor of racial inclusion and the other sympathetic to pro-segregation forces. Early television faced a unique challenge because citizens of a particular community had only one NBC, CBS and/or ABC affiliate as their source of news footage and narrative.

A seminal case illustrating this aspect of the movement was *Office of Communication of the United Church of Christ v. The Federal Communications Commission and Lamar Life Broadcasting Company* (359 F.2d 994, D.C. Cir. 1966), a case which became the

subject of a book by Kay Mills, “Changing Channels: The Civil Rights Case that Transformed Television” (University of Mississippi Press 2004). The case arose from an FCC decision to grant one-year renewal of a license to owners operating WLBT TV in Jackson, Miss.

The United Church of Christ, and other parties, filed a petition with the commission to present evidence and arguments opposing the renewal application. The petitioners alleged that the owner and licensee of WLBT was deliberately using its license to sustain and advance southern white opposition to desegregation and to deny air time to the movement or those who supported it. The FCC dismissed the petition and, without a hearing, took the unusual step of granting a restricted and conditional renewal of the license for one year from June 1, 1965, with conditions, thus establishing a de facto probationary period. Not to be lost in this history is that this renewal was granted to a station that had been the source of news in Jackson since 1953, under the same ownership.

The issue in the case, remarkably described as an issue of first impression under Section 309 of the Federal Communications Act (FCA) as it existed in 1965, was whether or not the United Church of Christ, and the other parties challenging the license renewal, had standing as parties of interest regarding the granting or denial of the broadcast license to WLBT. More specifically, the question presented was whether or not these parties, as representatives of the listening public of a federally licensed television station, could require the FCC to conduct an evidentiary hearing on their claims of racial bias before renewing the station’s license.

As early as 1955, the year of the bus boycott, members of the listening public of station WLBT claimed it had deliberately interrupted the broadcast of a program about race relations issues that included the appearance of Thurgood Marshall in his capacity as general counsel of the NAACP Legal Defense Fund, Inc. The interruption was effectuated by the display of an image reading, “Sorry, cable trouble.” Subsequent complaints alleged the airing of programs encouraging continued support for segregation while denying airtime for opposing views. The context of the case was thus typical of southern resistance to desegregation.

The court’s first opinion noted that when WLBT sought renewal of its license in 1958, the FCC at first deferred renewal because of these complaints, but then granted a three-year renewal. The court recognized the requirement of “fair use” of a broadcast license, but held that, in the opinion of the commission, WLBT’s incidents of noncompliance with the FCA were isolated. In 1962, during the events surrounding Mississippi Gov. Ross Barnett’s personal involvement in denying the admission of James Meredith to the all-white University of Mississippi, on the basis of Meredith’s race, the FCC received additional complaints that WLBT and other Mississippi radio and television stations presented programs promoting resistance to racial integration and denying airtime for any opposing view.

The commission requested reports from licensees, and during an ongoing investigation that extended into the spring of 1964, WLBT submitted an application for another three-

year renewal. The Office of Communications of the United Church of Christ (UCC) filed a petition before the FCC, arguing for denial of WLBT's application for renewal. Specifically, they sought to intervene in their own behalf and as representatives of television viewers in the State of Mississippi and particularly UCC's members within WLBT's prime service area.

The petition specifically alleged the failure of WLBT to serve the general public, emphasizing its failure to provide a fair and balanced presentation of controversial public issues, especially those issues concerning black citizens who comprised almost 45 percent of the total population within the station's prime service area. The commission denied the petition to intervene, asserting that only those who had a direct interest, as distinguished from the interest of the general public, in the alleged violations that influenced the licensee's renewal application, could claim standing.

Summarily deciding this central standing issue, i.e., the question whether or not WLBT met the "public interest" standard, the commission held no hearing and approved another three-year license. Arguably, begging the central question raised by the parties opposed to license renewal, the commission observed that broadcast stations like WLBT were in a unique position to contribute to the resolution of race relations issues in their broadcast area. Thus, after almost 10 years of complaints, the commission allowed WLBT yet another opportunity, absent any hearing, to demonstrate its willingness and ability to resolve the issue of fair and balanced programming related to the civil rights movement.

The commission did describe its renewal as "probationary" and did order WLBT to initiate discussions with community leaders, including the petitioners in the case and other representatives of the civil rights movement. It also ordered WLBT to terminate any racially-biased programming. Noting the legitimacy of the petitioner's allegations, the FCC nevertheless justified its action by seeing the issue presented as requiring a political decision entrusted to the commission.

The commission also justified its holding by seeing the case as one of first impression and without precedent, observing that prior challenges to license renewals had been based on economic injury and electrical interference [citing *NBC v. FCC (KOA)*, 132 F.2d 545 (1942), affirmed, 319 U.S. 239 (1943), and *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940)]. However, the very cases cited by the commission, holding that economic injury and electrical interference could be the basis for objection to license renewal, had expanded the commission's own prior denials of such standing arguments.

This obviously became the central issue on appeal, and the federal circuit court observed that standing had never been a static issue. The court noted, for example, that in *NBC v. FCC*, it held that if standing were restricted only to persons with an economic interest, educational and non-profit radio stations, both of which were prime sources of public-interest broadcasting, would be denied standing in the license renewal process. Moreover, in the cases allowing standing based on economic interest or electrical interference, the rationale had been that standing is extended to parties not on the basis of their private interest, but to protect the public interest served by broadcasting, the purpose of §402 of



the Federal Communications Act, which was in effect at the time of those cases.

Thus, the court reasoned, standing is afforded, under these and similar cases, to private petitioners as representatives of the general public. In fact, the circuit court observed, congressional reports have emphasized that the principal concern in limiting standing is not an undifferentiated fear of the number of parties given access to the process. Instead, standing requirements could and should be applied so as to insure that parties to the process have a legitimate interest in the matter of license renewal and not merely a desire to delay the process for private benefit, unrelated to the public interest. So viewed, the circuit court reasoned there is no more genuine interest in the matter of a broadcaster's license renewal than the interest of the broadcast public served by the station, citing the analogy of the Interstate Commerce Commission's consideration of complaints of racial discrimination in railroad dining cars, in *Henderson v. United States*, 339 U.S. 816 (1950).

The court's recognition of the legitimacy of the rights of a radio or television station's listeners or viewers distinguished the special responsibility of a broadcaster, as compared to the responsibility of the publisher of a newspaper. The court saw newspapers and broadcasters as having common traits, but emphasized that, unlike the newspaper owner, the broadcaster is the beneficiary of a franchise that gives it unique access to its listening or viewing area and that such a special franchise is in the nature of a public trust, subject to a responsibility for fair and balanced programming. (Keep in mind that at the time of these seminal cases, a station like WLBT was the earliest network affiliate in its viewing area, being connected to one of only three national television companies, the National Broadcasting Company, NBC.)

Finally, the court held, while the commission itself is the agency responsible for protecting the public's interest, it cannot itself directly monitor compliance of individual broadcasters and thus cannot legitimately assert that a broadcaster's listening public cannot or should not assist in the process of agency regulation through licensing. It is here that the court seemed most critical of the commission's denial of standing in the UCC case, writing that the promotion of the public interest is at the very heart of the role of the broadcaster, e.g., WLBT, and cannot be separated from the station's economic interests. The court explained that, rather than interfering with the broadcaster's private business affairs, the public's participation in the integrity of the broadcast licensing process fulfills a duty to monitor the integrity of the television programming that directly affects the listening community.

Revealing the flaw in the commission's argument, both logically and experientially, the circuit court rejected the proposition that the commission could protect the interests of its listeners or viewers on its own, while denying them formal standing to participate in proceedings which raised questions regarding unfair or imbalanced programming on public issues such as civil rights. The strongest factual evidence of the need for direct participation was revealed by the lack of any significant action of the commission regarding WLBT's license, *in spite of a decade of complaints on behalf of its viewing public*. The court concluded on these facts that viewer participation must be recognized in

the license renewal process before the commission.

The threshold issue having been determined, the circuit court held that responsible and representative community organizations, professional societies, churches and educational institutions are usually close to community issues and motivated by public interests rather than private commercial interests. Such groups should therefore be allowed formal standing in these cases with discretion afforded the commission as to the number of groups necessary for the adequate presentation of the public's concerns or complaints. Thus, under Section 309 of the FCA, the commission would be required to hold a hearing on a renewal application where there are genuine disputes of material facts related to the public interest at stake *or* where the commission is unable to make the necessary finding absent factual evidence from such representative parties.

That had not been done in the instant case. In spite of the fact that the commission recognized the petitioners' ongoing complaints as sufficient to raise questions about WLBT's future performance, the commission, by a divided vote, granted a one-year renewal of the license *sua sponte*, absent any specific affirmative findings that renewal would serve the public's interest. The commission in fact granted the renewal to allow WLBT to somehow demonstrate that it was willing to fairly serve the public's interest, ignoring, the court held, alleged issues of racial bias, supported by disputed facts that should have been considered in an evidentiary hearing. The court thus concluded that where the issues at stake might call for the non-renewal of WLBT's license and the consideration of other ownership applications, the commission's renewal of the license was erroneous.

On remand, in *Office of Communication of United Church of Christ v. FCC*, 425 F.2d 543 (D.C. Cir. 1969), the circuit court considered the hearing mandated by the decision in the first appeal. In that proceeding, the hearing examiner afforded WLBT the benefit of the one-year renewal decision and then held that the petitioners had been given every opportunity to sustain their allegations of racial bias and had failed to do so.

In the second appeal, the circuit court immediately questioned the examiner's perspective of the evidence, noting that the commission had already determined that the petitioner's evidence had been sufficient to deny a traditional three-year renewal. More specifically, from a procedural standpoint, the examiner cast the petitioners as plaintiffs and the licensee as the defendant. The resulting burden of proof imposed on the petitioners apparently replaced the commission's responsibility, on remand, to conduct its own *de novo* investigation of all the facts and determine if there were grounds for denial of the licensee's application for renewal of its traditional license.

The court questioned the examiner's fundamental view of the kind and scope of evidence presented at the hearing on remand. Despite the court's admonition in the first appeal that the commission could not effectively self-monitor licensees, the examiner completely disregarded the petitioners' play-back of seven days of monitoring and ignored its explicit evidence that during that time at least one broadcast showing lunch-counter sit-ins in protest of racially segregated facilities was cut off, so that the picture disappeared

from the television screens of viewers. The court also found that the examiner ignored or belittled explicit evidence of the use of racial slurs by WLBT commentators, on the ground that such evidence was indefinite as to dates or circumstances.

The violation of process, the circuit court explained, was not a question of whether such evidence, in the end, would justify nonrenewal of WLBT's license, but rather the issue at stake was that the examiner improperly placed the entire burden of proof on the petitioners as it would be placed on a plaintiff in a civil trial and that the examiner treated testimonial evidence as mere allegations. This, the court held, was a violation of the commission's affirmative duty to develop the pertinent record in a manner that sustains the principle that a broadcast licensee is *entrusted* with a public resource.

The court rejected the commission's acceptance of the examiner's perspective of the case and vacated its summary ruling that WLBT had afforded a reasonable opportunity for the use of its facilities by the community groups to which it was accountable. The court of appeals held that the issue, which had been misstated throughout the case on remand, was that WLBT had, at all times, the responsibility of proving itself qualified for the renewal of its three-year broadcast license. Finally, the court held that WLBT had no entitlement to operate the station while additional hearings were held and that applications should be entertained for the license under which WLBT was operating, without any interruption in service to the viewing public.