The BBC Gets a New Chairman and a Lot of Trouble

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"Long live the new Chairman of the BBC." In somewhat more prosaic terms, this is the chant of the political right in the United Kingdom today, but other less laudatory cries are coming from the left wing as a result of the recent death of the BBC Chairman and his replacement by an old trade union nemesis.

This ideological clash over the appointment of a leader of the BBC and, more importantly the future of one of the most important news and information services in the world began to heat up during my sabbatical visit to Great Britain. On August 26th, Stuart Young, the Chairman of the BBC, died suddenly, precipitating a debate within the government and in Fleet Street, the print media redoubt, over the policies of the BBC, what should be done about them and the kind of chairman who should be appointed to lead the corporation.

Government oversight of the broadcast media in the United Kingdom is much different than in the United States. There is no regulatory agency like the Federal Communications Commission. There is a broadcasting department in the Home Office to advise the Home Secretary on major policy issues for consideration by the Prime Minister and cabinet, and the Department of Trade and Industry controls the grant of frequencies. But in order to distance the government from day to day operation of broadcasting and the consideration of program content, a royal charter is issued by each succeeding monarch continuing an independent board of governors. The board of twelve is the BBC and the chairman is first among equals. He or she controls the agenda of the board, sets its tone, molds the budget, and perhaps most importantly, is influential in hiring and firing the top forty staff members, including the Director-General, who are delegated to run the corporation’s broadcasting and other communications activities on a daily basis.

From Prime Minister Thatcher’s perspective, the opportunity to appoint a new chairman could not have come at a more welcome time. In the past year-and-one-half the board and the staff have been embroiled in a series of controversies that have raised questions about the judgment and fairness of the “Beeb” relating to program content. Hard right Tory backbenchers have been in full cry to bring the corporation to heel, perceiving an anti-establishment bias in the programming.

The first row broke in July of last year when a reporter for The London Sunday Times posed this question to Mrs. Thatcher at an Inter-democratic Union dinner in Wash-
ingston. "I believe you said to the American Lawyers a week ago that the way to cut down on terrorism is to starve them of the oxygen of publicity. How would you feel if one of the British television networks like BBC or ITV (the independent commercial television service) ran a lengthy profile on say somebody like the Irish chief of staff in the near future?"

Answering the supposedly hypothetical question, the Prime Minister replied, "If they were to do that I would condemn them utterly." Mrs. Thatcher had been set up. Such a documentary was known to be in the works at BBC and her condemnation on the public record made it impossible for the Home Office to work quietly behind the scenes as it usually does to convey the government's concern and to influence the board's decision whether to air the offending program. This is referred to as "playing mood music" to the corporation out of the hearing of the public.

The fat was in the fire and three days later the Home Secretary, Leon Brittan, apparently without consulting Mrs. Thatcher, sent Stuart Young a letter which, while acknowledging the Corporation's independent decision making power in the matter, engaged in a heavy-handed effort to get the board to scrap the program, one in a series called "Real Lives."

The board, meeting in special session, decided that "it would be unwise for this programme...to be transmitted in its present form: the programme's intention would continue to be misread and misinterpreted."

The decision to change or delete the program and the government's handling of the situation in the first place led to a heated public debate and a one-day protest strike by television journalists blacking out radio and television news on all channels including ITV, a service governed by a different entity, the Independent Broadcasting Authority. Ultimately, the Director-General of BBC reclaimed from a vacillating board the right to decide when and with what changes the program would be aired. It was finally transmitted in October of last year.

The atmosphere of informal regulation between the Thatcher Government, the Corporation and the staff had been poisoned. The toxicity increased with two additional flaps shortly after Mr. Young died and while the government was considering his replacement. BBC in its "Premier" series on Sunday evenings ran a four-part program entitled "The Monocled Mutineer," a docudrama about Percy Toplis, who allegedly led at Etaples in northern France the one major mutiny of British soldiers during World War I. The officers were all portrayed as mean-spirited, unthinking, uncompromising bullies from the upper-class who brought the mutiny on themselves. Immediately, right wing Conservative MPs complained publicly and officially to the new Home Secretary Douglas Hurd, who had replaced Brittan in a cabinet shuffle, that the program was another example of bias within the BBC.

Before this fresh controversy had even abated, Ian Curteis, a television writer, accused the BBC staff of cancelling his multimillion dollar drama about the Falklands War because he had refused to make script changes that would have placed the government's decision making during the war in a less favorable light. BBC Television's managing director denied the allegation of bias, saying, "It would be irresponsible of the BBC at a time when the country is leading up to an election to embark on a play portraying a Prime Minister in office, other ministers and MPs."

The three-hour play was to be shown next April 2nd, a time when the country is likely to be involved in a general election campaign, passing in part on the government's handling of the Falklands War.

Amid calls by Conservative Party members for a debate on left-wing bias over the airwaves at the party's annual conference in Bournemouth and a protest letter writing campaign instigated by then Conservative Deputy Chairman Jeffrey Archer, who later resigned his party post in a scandal involving a prostitute, Mrs. Thatcher made her choice of a new BBC chairman.

Everyone in the media knows of her "short list" of serious candidates for the top job at BBC but apparently no one outside a small group within the government knew who was on the list, least of all the political and media reporters at the *Laden Times*. Within a short period in September that venerable newspaper floated the names of Lord King, chairman of British Airways, and Sir Patrick Nairne, master of St. Catherine's College, Oxford.

Apparently, the *Times* people were as surprised as the rest of the populace when the Prime Minister appointed one of their own, Marmaduke Hussey, a director of Times Newspapers and former managing director.

Normally the appointment of a newsperson to chair an organization whose strength has, since its creation, been news and public affairs would have been greeted with near unanimous approbation. But this was hardly a normal appointment. In 1978, the aristocratic Hussey (Rugby, Oxford, the Grenadier Guards with a wife who is a lady in waiting to the Queen) was at the helm of Lord Thomson's
Times newspapers group, which was generating tremendous losses for Thomson. In his attempt, at Thomson’s behest, to reduce labor costs and labor control of production, Hussey precipitated a long and bitter strike shutting down the Times for eleven months. This attempt to achieve cost reduction and firmer management control failed. In the end the paper was so badly weakened that Thomson sold the Times and the Sunday Times to Rupert Murdoch, now owner of the New York Post and papers of similar stripe around the world. Murdoch appointed Hussey a director of the Times papers, a more or less ceremonial post.

It is no wonder then that critical reactions to the appointment from the left were not slow in coming. Gerald Kaufman, the Labor Party's shadow Home Secretary, said the appointment was “outrageous” and that if Labor wins the coming election the new government would try to remove him, something never before attempted by any government. Broadcasting union leader Alan Sapper termed the appointment “a disaster” and the deputy general secretary of the National Union of Journalists, Jacob Ecclestone, said, “Mr. Hussey’s background does not give us any confidence that he is equipped to defend the public interest in broadcasting against Government interference and the privatization lobby.”

Ecclestone’s remark cuts to the heart of the matter. Given the long tradition that the government does not directly interfere with the operations and program content of BBC, the question remains whether a sitting government could and should attempt to control the hitherto independent corporation by making a purely ideological appointment of its chairman.

There is little doubt that Thatcher’s appointment is highly ideological, despite Hussey’s statements that he has not attended a political meeting in forty years and belongs to no party. Hussey’s appointment was reportedly sold to the Prime Minister by the Home Secretary Mr. Hurd on the basis of his union-bashing reputation. And a spokesman at the Conservative Party Central Office, a bastion of Thatcherite sentiment, explained the appointment as making it “bloody clear” that things would have to change at Broadcasting House.

From my observations during what I thought was the height of the turmoil, I conclude that the change the Thatcherites seek is one

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The Duopoly Scheme of British Broadcasting in a Nutshell

In 1922 the British Broadcasting Corporation or BBC (a.k.a., “The Beeb” or “Auntie”) was set up as a radio (and later television) monopoly in the British Isles by royal charter. The appointed Board of Governors which is the BBC, consists of a chairman and eleven other members appointed for five-year terms. The terms are not staggered by legislative design as in the case of the FCC, but over the course of time they have become so through resignation or death in office. The high commissioners of Wales, Scotland, and Northern Ireland are always members of the board. To some extent the Prime Minister’s appointment of other members takes into account social, cultural, and economic diversity.

The board hires and can fire the top forty executives who run the corporation’s operations on a daily basis and theoretically, at least, are answerable to the board. The board also has ultimate authority for the budget and broadcast policy, and, in turn is answerable to Parliament for its actions. But parliamentary oversight is not intended to be of the close, daily variety and is only invoked when something seriously goes wrong. Short of attempting to change the royal charter or firing board members (actions which have never been taken), closer government control may be sought through the Prime Minister’s power of appointment to the board (see page 9 of this issue).

The corporation operates two television channels, BBC1 and BBC2 and four radio channels—all non-commercial. They have a potential reception rate in the United Kingdom in excess of 95 percent of the population. With so few channels in operation, programming is mixed or balanced except for Radio 1 which plays popular music continuously.

The corporation’s operations are financed by an annual broadcasting fee set by the government and imposed on each household that receives radio and television transmissions. Evasion of the fee is widespread and requires the “Beeb” to use detector vans to discover unauthorized receivers. The problems engendered by the mandatory fee have resulted in calls for change, either in the form of commercialization of the program service or a voluntary pay subscription system. If the Conservative Party wins the coming election, these options and perhaps even privatization of the corporation will be given serious consideration.

In September 1955, BBC’s monopoly of the airwaves came to an end when the Broadcasting Act of 1954 set up the Independence Broadcasting Authority (IBA) to administer an independent com-
toward greater blandness in programming and a retreat of broad-
cast journalists from the relatively modern phenomenon of seriously questioning the policies of the party in power (here in the United States this goes back only as far as the Vietnam war and the Watergate scandal).

However the turmoil was just beginning. In recent months Mrs. Thatcher and her Conservative Party have engaged in a number of "hardball" actions in their drive to bring the BBC into line. At the end of October the Conservative Party issued a report unprecedented in British party politics attacking the Beeb for biased and emotional television coverage of the American raid on Libya. It accused the broadcasting organization of promoting anti-American feelings and called for a thorough review of BBC television operations. Then on January 31st of this year, Scotland Yard, at the behest of the Scottish Lord Advocate,

Continued on page 25

commercial television channel (ITV). In 1983, the government authorized the creation of a second commercial channel—Channel Four, a more culturally-oriented channel. There is also one national commercial radio channel and a few struggling local commercial stations. Like BBC, the IBA has a twelve-member board. The board's structure is similar to that of the BBC. Again, like the "Beeb," IBA owns the transmitters but unlike the BBC, the Authority contracts with some fifteen independent regional companies to manage and program for the two commercial channels. While for the most part there is one contracting company to a region, in the London region Channel Three is shared by Thames Television during the week and, from 5:45 p.m. on Friday through the weekend, by London Weekend Television (LWT). IBA retains ultimate control over the programming presented by its contractors and is answerable to Parliament for that programming. Despite the IBA's publication of program guidelines for its contractors, it too has had to suffer through occasional heavy criticism from the government and politicians, most notably in the case of Thames' docudrama "Death of a Princess," which caused serious diplomatic strain between the British and Saudi governments.

Normally, the contracts with the regional companies are for eight-year periods but the IBA will terminate a contract for serious breach by a regional company. To encourage greater stability, stronger programming and fairer economic return for the regional companies, IBA has recently proposed to the Home Office legislative changes which would permit contracts of twelve years in duration.

Revenue to run the independent television system comes from commercials and the sale of programs abroad. Thames, for instance, sold its controversial "Death of a Princess" to PBS. Advertisers have absolutely no control over programming and their commercials are closely scrutinized by IBA officials. One advertising campaign by Saatchi and Saatchi, a leading British agency, with the thrust that "Heineken refreshes the parts" could not be launched on television because the IBA does not permit the implication that alcohol has beneficial properties.

How do the two systems of broadcasting, one governmental and one quasi-free enterprise coexist? Reasonably well. Their respective turfs are well-defined, and when proposals were recently floated by members of the Conservative Party to end the broadcasting fee and force the BBC to take advertising, the BBC, IBA, the regional contractors and the ITCA (a trade association representing the regional contractors) spoke with one voice in opposing commercials on the "Beeb."

But that doesn't mean that the entities in this mixed system are not above a little one-upmanship. At 8:00 p.m. on September 22, 1955 just as ITV debuted on the air, BBC radio's most popular evening soap "The Archers" just happened to have one of its most important characters, Grace Archer, dash into a blazing stable in an attempt to rescue a horse. More than 16 million persons (a phenomenal number for radio in the United Kingdom) listened in horror as the gallant Grace burned to death. Only the creator of the series maintained that the timing of Grace's untimely end was coincidental. —Harvey Zuckman
a Conservative Party member of the House of Lords, raided BBC headquarters in Glasgow and seized two van-loads of tapes and papers relating to a scrubbed BBC program on the government's secret project "Zircon" to put up a spy satellite over the Soviet Union.

This attempt at quieting the BBC seems doomed to failure just as similar attempts to turn back the clock on broadcast journalism during the Nixon administration failed. For one thing, the use of the appointment power by the Thatcher Government simply can't carry this much baggage. Granted, the BBC Chairman is an important figure in Britain's broadcasting scheme. But his would only be one vote for radical change. He would have to get a majority of the Board of Governors to go along. While all members presently serving are Thatcher appointees, they are a fairly diverse lot coming from nearly all segments of British society and geographic regions. Radical revision of the way the BBC does business would be hard to sell.

Moreover, should the new chairman attempt a large-scale firing of top management in order to effectuate different programming decisions, this might well provoke a serious job action by Britain's broadcast journalists. The last time they were provoked, there was a twenty-four hour blackout of news on television and radio. It should be noted, however, that Alasdair Milne was forced out as BBCA Director-General just two days before the now famous Scotland Yard raid without any union job action being taken.

At best the appointment of a new chairman may result in some tempering of attitudes at the BBC but that will come only through the exercise of gentle persuasion and diplomacy, skills Mr. Hussey has not previously been noted for.

In short, the royal charter system granting the BBC independence from the government of the day will likely continue to work unless the royal charter itself is revoked, an unprecedented action which could lead to a constitutional crisis for the government in power.

We Americans as well as the Brits get richer for the "Beeb's" independence. Enterprising BBC reporters and camera operators around the globe inform us of stories the other news-gathering organizations miss, including some that do not square with the world view taken by Western governments. These stories are then refined by American news services. And soon BBC radio's "World Service" will be available to us in part directly through the facilities of American Public Radio. We also receive cultural, educational and entertainment programs from BBC television retransmitted by the Public Broadcasting Service (PBS) and cablecast by the Arts and Entertainment Network, providing viewpoints such as those of the IRA's alleged chief of staff to which we might not otherwise be exposed.

All in all I must agree with the recent assessment of BBC's situation made by Simon Jenkins of the London Sunday Times. "The irony of the present row is that the BBC's strongest claim to inviolability is its journalistic independence. It has been maintained for half a century, with much metaphorical bloodshed, and it has sometimes been abused. But it is admired worldwide as a symbol of British political pluralism and tolerance. It is the one thing about the BBC that each government seems eager to change."

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FROM THE CHAIRMAN
Continued from page 2

tested. Nevertheless, I believe that the Electronic Communications Privacy Act of 1986 represents a very significant milestone in what is obviously an increasingly complex environment.

I also want to take note of the other excellent articles and commentaries in this issue by: FCC Commissioner and Chairman nominee Dennis Patrick, and FCC General Counsel Diane Killory; James Mooney, President of the National Cable Television Association; Jack Valenti, President of the Motion Picture Association of America; Cameron DeVore, former Chairman of our Forum Committee on Communications Law; and Robert Nelon on commercial speech (especially as it relates to cigarette and alcoholic beverage advertising). The interplay of commercial speech and the First Amendment is a complex and evolving area of the law, one on which our Committee intends to focus special attention in a seminar planned for next Spring (June 5) in Washington, D.C. More details on this and other Forum Committee programs are included elsewhere in the Communications Lawyer and will be discussed by me in future Chairman's columns.

Finally, I'm happy to welcome back Harvey Zuckman, Editor Emeritus of Communications Lawyer, to our shores. Harvey's return is highlighted by his articles that pertain to British broadcasting.