

THE ESTABLISHMENT OF THE BROADCASTING BOARD OF GOVERNORS (BBG) AS
A FIREWALL FOR UNITED STATES GOVERNMENT-FUNDED NONMILITARY
INTERNATIONAL BROADCASTERS

by

MURENDEHLE MULHEVA JUWAYEYI

(Under the Direction of William Eyre Lee)

This study examines why the U.S. government established the BBG firewall over civilian international broadcasters and shifted its policy from exercising editorial control over the broadcasters to granting them professional independence after the end of the Cold War. As part of the examination, the study shows how the BBG firewall is unique in comparison with previous entities that governed the broadcasters during the Cold War—the USIA, the BIB, and the Board for Radio Broadcasting to Cuba. The study also shows how the BBG firewall is unique even in comparison with the Corporation for Public Broadcasting (CPB) that governs public broadcasters and acts as a firewall for them. Legally, the study considers whether the government was obligated to give the broadcasters professional independence by establishing the BBG firewall. In the final analysis, the study discusses how lawmakers wanted the firewall to function to protect the professional independence of the broadcasters and to ensure their credibility. The study also considers why lawmakers and policymakers thought such credibility would benefit the United States. As such, the study develops four major concepts—editorial control, firewall, professional independence, and credibility—as they apply specifically to civilian international broadcasters.

INDEX WORDS: Broadcasting Board of Governors (BBG) Firewall, Civilian International Broadcasters, Credibility, Editorial Control, Government-Funded Nonmilitary International Broadcasters, Government-Speech Doctrine, Professional Independence

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DEDICATION

For Justina Juwayeyi, the late McDadlly and Edna Juwayeyi, the late Welford Chipendo and the very much alive Phyllis Chipendo.

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CHAPTER ONE

INTRODUCTION

The United States government has been funding nonmilitary international broadcasters for more than sixty years.¹ During the Cold War, the broadcasters were vital foreign policy instruments. Voice of America (VOA) operated under the United States Information Agency (USIA) and broadcast programs to people in various regions of the world to inform them about the United States and, consequently, to counter the influence and propaganda of the communist Soviet Union.² Radio/TV Marti operated under the Board for Radio Broadcasting to Cuba, which was also under the USIA, and broadcast programs to people in Cuba to counter the legitimacy of the communist government led by Fidel Castro.³ Radio Free Europe (RFE) and Radio Liberty (RL) both operated under the Board for International Broadcasting (BIB). They broadcast programs to people in countries in Eastern and Central Europe to counter the influence of the Soviet Union in the countries.⁴

These government-funded nonmilitary international broadcasters are also known as civilian international broadcasters. The use of this term differentiates them from government-funded military international broadcasters like the Armed Forces Network (AFN), whose

¹ See, e.g., ALAN HIEL JR., VOICE OF AMERICA: A HISTORY 32-46 (2003).

² See, e.g., LAURIEN ALEXANDRE, THE VOICE OF AMERICA: FROM DÉTENTE TO THE REAGAN DOCTRINE 4 (1998).

³ See Radio Broadcasting to Cuba Act of 1983, Pub. L. No. 98-111, §§ 3(a)-(f), 5(a)-(e), 97 Stat. 749-751 (1983) (codified as amended at 22 U.S.C §§1465(a), 1465(c) (2006)); See DAVID A. HENNES, U.S. INTERNATIONAL BROADCASTING: AN ASSESSMENT FOR REFORM 6-7 (1991), available at http://web.lexis-nexis.com.proxy-remote.galib.uga.edu/congcomp/document?_m=0047213ba55db23d04e43d10e2b53be5&_docnum=2&wchp=dGLbVzz-zSkSA&_md5=ff299779962a41f5e9e0a44dfbda231d.

⁴ See Board for International Broadcasting Act of 1973, Pub. L. No. 93-129, §§ 3(a), 4(a)(1), 7 -8(a), 87 Stat. 457-460 (1973), repealed by United States International Broadcasting Act of 1994, Pub. L. No. 103-236, §§ 310, 312, 108 Stat. 442, 444 (1994) (codified as amended at 22 U.S.C § 6209 (2006)). See Carnes Lord, *Psychological-Political Instruments*, in ATTACKING TERRORISM 220, 222 (Audrey Kurth Cronin and James M. Ludes, eds., 2004). See also GEORGE R. URBAN, RADIO FREE EUROPE AND THE PURSUIT OF DEMOCRACY: MY WAR WITHIN THE COLD WAR (1997). See also ROBERT T. HOLT, RADIO FREE EUROPE (1958). See also JAMES CRITCHLOW, RADIO HOLE-IN-THE-HEAD: RADIO LIBERTY: AN INSIDER'S STORY OF COLD WAR BROADCASTING (1995).

international programs target U.S. Armed Forces stationed abroad.⁵ The term also differentiates civilian international broadcasters from private international broadcasters like Trans World Radio (TWR), Adventist World Radio (AWR), and Far East Broadcasting Company (FEBC). Like civilian international broadcasters, these U.S.-based religious broadcasters are also involved in the broadcast of programs internationally to the citizens of foreign countries.⁶ The difference is that unlike civilian international broadcasters and government-funded military international broadcasters, these private international broadcasters use private funds and not government funds.⁷

As the proprietor and financier of civilian international broadcasters, the government is responsible for dictating their organizational structure and their overall functions. The government also exercised significant editorial control over them throughout the Cold War. When the Cold War ended, the government reorganized the governing structure of the broadcasters in a way that was supposed to boost their professional independence. The government established the Broadcasting Board of Governors (BBG) in 1994, placed the broadcasters under the Board and made the Board a firewall for them.⁸ In 1998, the government strengthened the BBG firewall by explicitly restricting government officials from interfering with the professional independence of broadcast journalists.⁹ This study examines why the U.S. government established the BBG firewall over civilian international broadcasters and shifted its

⁵ See Broadcasting Board of Governors, *About the Agency: the Broadcasting Board of Governors* (Oct. 4, 2009), <http://www.bbg.gov/about/index.html>; See American Forces Network, *American Forces Radio and Television Service, Purpose/Mission* (Mar. 2, 2009), <http://afrts.dodmedia.osd.mil/>.

⁶ See JAMES L. WOOD, HISTORY OF INTERNATIONAL BROADCASTING 216 (1992); See 2 JAMES L. WOOD, HISTORY OF INTERNATIONAL BROADCASTING 174-190 (1992).

⁷ See 2 WOOD, *supra* note 6, at 178. The scholar described the activities of privately funded religious international broadcasters, such as Trans World Radio (TWR) and Far East Broadcasting Company (FEBC), and showed that they are different from U.S. civilian international broadcasters like VOA.

⁸ United States International Broadcasting Act §§ 310, 312.

⁹ Foreign Affairs Agencies Consolidation Act of 1998, Pub. L. No. 105-277, sec. 1322 §§ 304(a)(1)-(3)(A)(B), sec. 1323(i) § 305(d), 112 Stat. 2778-2780 (1998) (codified as amended at 22 U.S.C. §§ 6203(a)(1), 6203(B), 6204(d) (2006)).

policy from exercising editorial control over the broadcasters to granting them professional independence after the end of the Cold War. As part of the examination, the study shows how the BBG firewall is unique in comparison with previous entities that governed the broadcasters during the Cold War—the USIA, the BIB, and the Board for Radio Broadcasting to Cuba. The study also shows how the BBG firewall is unique even in comparison with the Corporation for Public Broadcasting (CPB) that governs public broadcasters and acts as a firewall for them. Legally, the study considers whether the government was obligated to give the broadcasters professional independence by establishing the BBG firewall. In the final analysis, the study discusses how lawmakers wanted the firewall to function to protect the professional independence of the broadcasters and to ensure their credibility. The study also considers why lawmakers and policymakers thought such credibility would benefit the United States. As such, the study develops four major concepts—editorial control, firewall, professional independence, and credibility—as they apply specifically to civilian international broadcasters.

Editorial control typically means the making of decisions on the content of material to disseminate through any medium. Government editorial control in this study refers to the way government officials made decisions on the content of propaganda materials and programs disseminated by the propaganda entities the government established since World War I and throughout the Cold War. For broadcast journalists at civilian international broadcasters, obeying such instructions often meant they had to violate the professional standards of journalism. Not surprisingly, the broadcast journalists just as frequently complained about government editorial control.

The broadcast journalists contended that government officials telling them what to say in their programs made them mere mouthpieces of the government instead of the professional

journalists they aspired to be. More importantly, they claimed that the lack of professional independence made them less credible to their listeners and did not serve to advance the foreign policy objectives of the United States.¹⁰ Credibility when referring to a media organization means the perception of media consumers that materials disseminated by the media organization are unbiased and objective in nature. This is the sense of media consumers that the media organization is not pushing a particular subjective position.

Foreign listeners may or may not have known that the U.S. government funded the broadcasters and frequently told them what to say. This meant that the credibility of the broadcasters was never really affected—one way or the other. Foreign listeners listened to whatever programs the broadcasters broadcast regardless of whether the government was involved in deciding the content of the programs. The people who really wanted professional independence and credibility for the broadcasters were not these foreign listeners but some government officials and broadcast journalists. They are the ones who had their dreams realized when the government established the BBG firewall.

The term firewall is used to describe various forms of barriers. In construction and engineering, it typically refers to a barrier that built into any structure that would inhibit the spread of fire throughout the structure. The term firewall in computer science refers to a barrier that keeps out unwanted information. The BBG firewall has to act as a political and bureaucratic barrier that does two major things. First, the firewall keeps government officials from interfering with the journalistic independence of broadcast journalists. Second, the firewall promotes credibility by allowing the broadcast journalists to operate independently. Previous attempts by the government to protect the professional independence of the broadcasters had not been as significant as the BBG firewall.

¹⁰ See HIEL JR., *supra* note 1, at 58-64.

The term professional independence generally means the ability to work independently without pressure or interference. Professional independence for civilian international broadcasters means the ability of broadcast journalists to operate without government officials telling them what to say in their programs. Government officials violated this professional independence over so many years during the Cold War when they told the broadcast journalists what to say in their programs before the establishment of the BBG firewall. Surprisingly, the actual process of establishing the BBG firewall as it occurred in Congress has not been the subject of much scholarly examination.

Filling in the Gaps in the Literature: Significance of the Study

The lack of scholarly literature on the establishment of the BBG firewall could be because the firewall is a relatively recent creation. Many of the books, dissertations, and periodical journal and law review articles published on U.S. civilian international broadcasting have focused on VOA, RFE, RL, Radio/TV Marti, the USIA, or the BIB as they operated during the Cold War. These studies are relevant to this study only to the extent that they offer some insights into the history of civilian international broadcasting and thereby inform the analysis in chapter 2. The fact that none of these previous studies focused specifically and entirely on the establishment of the BBG firewall means that there are some significant gaps in the literature that this study seeks to fill. The few studies that have actually examined the establishment of the BBG firewall have done so rather briefly and as part of broader studies on other aspects of civilian international broadcasting.

One case in point is Alan Hiel who dedicated a chapter in his book on the history of VOA to discussing the establishment of the BBG firewall. He showed how turf battles and political posturing complicated the process of establishing the firewall. Lawmakers, policymakers, and

broadcast journalists became involved somehow in the battles.¹¹ The result of this decidedly political and bureaucratic battle was the BBG firewall, which, in his words, was “the first time that the long-sought ‘I’ word, ‘independence,’ had been applied by law to America’s Voice.”¹² He surmised that the BBG firewall came about because of the end of the Cold War, the need to save money, the acquiescence of Secretary of State Madeleine Albright, and the realization by some officials at the State Department that independent civilian international broadcasters could be beneficial for the country.¹³ Alan Hiel’s examination was rather insufficient in examining how Congress wanted the firewall to function.

James L. Wood discussed the review of the structure of civilian international broadcasters that began in the early 1990s and led to the establishment of the BBG firewall. To a lesser extent than Alan Hiel, he too examined the process of establishing the BBG firewall. He discussed, albeit briefly, the structure of civilian international broadcasting after the government established the BBG firewall.¹⁴ His examination was even less comprehensive than Alan Hiel’s and offered much less of an analysis of how the BBG firewall was supposed to function. In this regard, both studies are not much different from the studies that policy analysts at the Congressional Research Services (CRS) conducted in which they analyzed the political and economical climate that existed in the early 1990s when the government began the process of reorganizing the structure of civilian international broadcasters.

What is most remarkable about the policy studies published by analysts at the CRS is the amount of details they offered on the broader process of reorganizing civilian international broadcasters that occurred in the early 1990s. David A. Hennes showed that calls to reorganize

¹¹ *See id.* at 354-368.

¹² *Id.* at 354.

¹³ *Id.* at 368.

¹⁴ *See, e.g.,* 2 WOOD, *supra* note 6, at 34.

civilian international broadcasters had started as early as 1989 after the fall of the Berlin Wall.¹⁵ A number of issues were considered and a number of proposals on how to proceed with the reorganization were on the table.¹⁶ Kennon H. Nakamura and Susan B. Epstein showed that part of the reorganization process involved considering whether to continue broadcasting through RFE and RL after the end of the Cold War.¹⁷

Lawmakers and policy makers also considered the need to create a specialized international broadcaster to reach China, the Middle East, and Asia.¹⁸ Another consideration was how to make Radio/TV Marti more effective in reaching its target audience in Cuba.¹⁹ All these considerations influenced the reorganization process in some way and somehow influenced the way Congress ultimately organized civilian international broadcasters under the BBG firewall. Like the historical studies by Alan Hiel and James Wood, these policy studies did not show exactly how lawmakers wanted the BBG firewall to function to protect the professional independence of civilian international broadcasters. They did not show why and how the establishment of the BBG firewall was significant in the history of civilian international broadcasting, nor did they show what benefits would accrue to the U.S. government by establishing the BBG firewall.

¹⁵ See, e.g., generally DAVID A. HENNES, CHINA/ASIA BROADCASTING: PROPOSALS FOR NEW U.S. SURROGATE SERVICES (1992), available at http://web.lexis-nexis.com.proxy-remote.galib.uga.edu/congcomp/document?_m=93da5987dbebaca8ebe4a8081d3c1e3a&_docnum=1&wchp=dGLzVtb-zSkSA&_md5=3de2bc6d25e7d9.

¹⁶ See *id.*

¹⁷ See, e.g., generally KENNON H. NAKAMURA & SUSAN B. EPSTEIN, INTERNATIONAL BROADCASTING: CONSOLIDATION OF U.S. RADIO SERVICES (1994), available at http://web.lexis-nexis.com.proxy-remote.galib.uga.edu/congcomp/attachment/a.pdf?_m=1a954d3b6147fff21313dee40968f9aa&wchp=dGLzVtb-zSkSA&_md5=f3dd942e3e1244acef21a326172ec61d&ie=a.pdf.

¹⁸ See, e.g., generally HENNES, *supra* note 15.

¹⁹ See, e.g., generally SUSAN B. EPSTEIN & MARK P. SULLIVAN, RADIO AND TELEVISION BROADCASTING TO CUBA: BACKGROUND AND CURRENT ISSUES (1994), available at http://web.lexis-nexis.com.proxy-remote.galib.uga.edu/congcomp/document?_m=de13263d620478a7ddc2d6400aad3fb0&_docnum=1&wchp=dGLzVtb-zSkSA&_md5=3d4434c324c450c8e2d9e6927.

This study places the establishment of the BBG firewall in the context of the history of civilian international broadcasting and in the context of U.S. government dissemination of propaganda since World War I and World War II through the Committee on Public Information (CPI) and the Office of War Information (OWI) respectively. The study shows why the establishment of the BBG firewall was a unique event in the history of U.S. government dissemination of propaganda, and not just in the history of U.S. civilian international broadcasting. Most significantly, the analysis in this study, unlike previous studies, involves examining why the government established the BBG firewall, how the government wanted the BBG firewall to function to protect the professional independence of civilian international broadcasters, and what foreign policy benefits the government sought to have by establishing the BBG firewall.

Additionally, the study also hopes to contribute to the literature on government speech by examining the constitutionality of government propaganda and the constitutionality of government officials exercising editorial control over instruments of government propaganda. Legal scholars like Mark Yudof and Robert Kamenshine, among others, examined the constitutionality of government speech and the dangers of government speech in society. They were primarily concerned with the danger that the government could indoctrinate the public and create false majorities to support its policies while also violating the free speech rights of the public.²⁰ A small part of the focus of some of these studies was on the dissemination of government-funded propaganda through the CPI and the OWI during World Wars I and II respectively.²¹ The studies did not focus on government-funded propaganda going outside the

²⁰ See generally Robert D. Kamenshine, *The First Amendment's Implied Political Establishment Clause*, 67 CALIF. L. REV. 1104, 1104-1153 (1979). See generally MARK YUDOF, *WHEN GOVERNMENT SPEAKS: POLITICS, LAW, AND GOVERNMENT EXPRESSION IN AMERICA* (1983).

²¹ YUDOF, *supra* note 20, at 62-65.

United States let alone government-funded propaganda through civilian international broadcasters, which is the focus of this study on the BBG. Their focus was also not on whether government officials had the right to exercise editorial control over instruments of government-funded propaganda like the programs broadcast by civilian international broadcasters. These studies are subject to greater examination as part of the analysis in chapter 3.

Suffice it to say here that this study contributes to the literature on government speech in the following way. First, the study considers whether the programs disseminated by civilian international broadcasters are government speech. Second, if the programs are in fact government speech, the study then considers whether the government has a right to exercise editorial control over the broadcasters. Finally, assuming the government has a right to exercise editorial control over the broadcasters, the study considers why the government refuses to exercise this editorial control and allows the BBG firewall to protect the professional independence of the broadcasters. The study answers the following research questions.

Research Questions

RQ₁: Why did the government disseminate propaganda during World War I and World War II through the OWI and the CPI, respectively, and exercise editorial control over them?

RQ₂: Why did the government disseminate propaganda through VOA, RFE/RL, and Radio/TV Marti during the Cold War and exercise editorial control over the broadcasters?

RQ₃: How is the BBG firewall different in comparison with the USIA, the BIB, the Board for Radio Broadcasting to Cuba, and the CPB firewall that insulates public broadcasters from government editorial control?

RQ₄: Did the government legally have to relinquish the editorial control it exerted over civilian international broadcasters by establishing the BBG firewall to protect their professional independence?

RQ₅: Why did government officials think that establishing the BBG firewall and granting civilian international broadcasters professional independence would give the broadcasters credibility and would advance the foreign policy objectives of the United States?

RQ₆: What conclusions can be drawn as to why the government established the BBG firewall to protect the professional independence of civilian international broadcasters after the end of the Cold War?

Research Methods

The study uses a combination of legal and historical research methods and analyzes various secondary and primary sources, including books, journal and law review articles, court cases, and government documents. Most of these sources are available at the University of Georgia Main Library, including materials available through the Web-based Galileo system. Some sources are available at the University of Georgia Law Library and the various libraries within the University System of Georgia and other university libraries. Other sources are available through the respective Web sites of the BBG, BBG broadcasters, Congress, the Government Printing Office (GPO), and the Supreme Court. The following is an outline of the chapters in the study.

Chapter Outline

-Chapter 2 discusses the history of U.S. government dissemination of propaganda, from the CPI during World War I, and the OWI and VOA during World War II. It also discusses the activities of VOA during the Cold War, the establishment of various civilian international broadcasters

throughout the Cold War, and the editorial control the government exercised over all the broadcasters.

-Chapter 3 discusses the significance of the BBG firewall in comparison with the USIA, the BIB, the Board for Radio Broadcasting to Cuba, the CPB, and in the broader history of U.S. government dissemination of propaganda.

-Chapter 4 discusses the legal literature on government speech, presents the government-speech doctrine, and considers whether the government has a legal obligation to protect the professional independence of civilian international broadcasters by insulating them under the BBG firewall.

-Chapter 5 discusses the process of review that occurred before the reorganization of civilian international broadcasters and the various recommendations that the entities that carried out the review made on how to reorganize the broadcasters and how to ensure their professional independence.

-Chapter 6 discusses the actual reorganization of civilian international broadcasters, including the search for professional independence for the broadcasters, the way lawmakers and policy makers went about structuring the BBG firewall, and the way they wanted the BBG firewall to function for the benefit of U.S. foreign policy.

-Chapter 7 presents the conclusion and a discussion of possible future research areas.

CHAPTER TWO

GOVERNMENT EDITORIAL CONTROL OVER PROPAGANDA ENTITIES

To understand the significance of the BBG firewall, one must understand the modern history of U.S. government dissemination of propaganda going back to World Wars I and II and the entities the government created during these times of crises to disseminate propaganda. Government officials were intimately involved in deciding what propaganda materials to disseminate through them. When the government started international broadcasting during World War II, it similarly exercised editorial control over VOA and continued to exercise this control even after the end of the War when VOA was broadcasting during the Cold War. Remarkably, over the years the government took some incremental steps to give VOA and other civilian international broadcasters' professional independence. This chapter examines the history of U.S. government dissemination of propaganda and shows that the establishment of the BBG firewall was the culmination of these gradual steps toward giving the broadcasters professional independence.

World War I and World War II Propaganda: The CPI and the OWI

President Woodrow Wilson created the CPI by executive order during World War I and appointed George Creel its head.²² George Creel brought together a collection of journalists, scholars, artists, and other public information specialists and charged them with the responsibility of turning public opinion around in favor of the War.²³ The CPI used various tactics—including newspaper stories, movies, and even the drastic step of censorship—to control the agenda and public opinion even before the United States became involved in fighting in the

²² See, e.g., JAMES R. MOCK & CEDRIC LARSON, *WORDS THAT WON THE WAR: THE STORY OF THE COMMITTEE ON PUBLIC INFORMATION 9-18* (1939).

²³ See *id.* at 43.

War.²⁴ The CPI also included the secretaries of War and the Navy. This inclusion of government officials in the administrative structure of the CPI was to be expected. Government involvement in the hiring of the personnel to work at the Committee was also not surprising. After all, the CPI was an entity created by the government and funded by the government. Ralph Haswell Lutz said the CPI was very active in selling the War.²⁵ A few CPI agents even operated outside the United States in Europe.²⁶

For most Americans, though, the way the government was directly involved in the dissemination of various propaganda stories in the media through the CPI was disturbing. Government officials were involved in making decisions about the content to disseminate in the media and thus exercised significant editorial control over the CPI. President Wilson and other government officials must have known that the CPI was going to be unpopular with the American public. Americans had held a strong distaste for government propaganda from the very foundation of the country.²⁷ Some of their ancestors had left England to escape from a British monarchy that had tried to impose upon them a religious orthodoxy.²⁸ The founding fathers had passed a bill of rights to protect themselves and their descendants from any form of domination by the government, including domination in the form of government propaganda through the establishment of a religious orthodoxy as prohibited by the First Amendment.²⁹ The First Amendment states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

²⁴ *See id.*

²⁵ Ralph Haswell Lutz, *Studies of World War Propaganda, 1914-33*, 5 J. MODERN HIS. 496, 513 (1933); *See* Allen W. Palmer & Edward L. Carter, *The Smith-Mundt Act's Ban on Domestic Propaganda: An Analysis of the Cold War Statute Limiting Access to Public Diplomacy*, 11 COMM. L. & POL'Y 1, 5 (2006).

²⁶ Lutz, *supra* note 25, at 513.

²⁷ *See* RICHARD W. BULLIET, PAMELA KYLE CROSSLEY, DANIEL R. HEADRICK, STEVEN W. HIRSCH, LYMAN L. JOHNSON & DAVID NORTHRUP, *THE EARTH AND ITS PEOPLES: A GLOBAL HISTORY* 485-488 (2000).

²⁸ *See* GEORGE C. EDWARDS III, MARTIN P. WATTENBERG & ROBERT L. LINEBERRY, *GOVERNMENT IN AMERICA: PEOPLE, POLITICS, AND POLICY* 57 (2002).

²⁹ *See id.*

right of the people peaceably to assemble, and to petition the government for a redress of grievances.”³⁰

The multifaceted approach to the conduct of propaganda that the CPI employed may have had some short-term success in achieving public opinion change in the form of support for the War.³¹ On the other hand, generations of Americans had grown up knowing that government propaganda was seemingly a form of government domination and an abridgement of their First Amendment right. They were unaccustomed to the government deciding what media materials to disseminate, such as the government was doing through the CPI. Consequently, the CPI and its programs eventually became unpopular with the public and were perhaps even ineffective in achieving the public opinion change the government wanted in the long term. The public felt that the programs amounted to a government attempt to indoctrinate them with its preferred policies and to move them to support these policies in violation of their freedom to make up their own minds.³²

As it turned out, with the establishment of the CPI, the government had started a pattern of establishing entities to disseminate propaganda during times of war. When World War II erupted in Europe in the early 1940s, President Theodore Roosevelt established the Office of War Information (OWI) to do what the CPI had done during World War I. Even before the Japanese attack on Pearl Harbor, President Roosevelt’s advisers had urged him to establish an agency like the CPI. He was not so sure about pursuing this course of action because he was aware of how unpopular the CPI had been. Besides, he questioned the merits of propaganda.³³ He nevertheless embarked on a propaganda campaign similar to the one President Wilson had

³⁰ U.S. CONST. amend. I.

³¹ ALAN M. WINKLER, *THE POLITICS OF PROPAGANDA* 2-3 (1978).

³² *Id.* at 3-5.

³³ HOLLY COWAN SHULMAN, *THE VOICE OF AMERICA: PROPAGANDA AND DEMOCRACY, 1941-1945* 11-54 (1990).

carried out during World War I using the OWI. The goal was to prepare the public for possible U.S. involvement in any impending war.³⁴ He enlisted the support of famous American writers like Archibald McLeish, Robert E. Sherwood and John Steinbeck to prepare stories that ran in the media urging the public to do their patriotic duty and support their government if war erupted.³⁵

The task of the OWI was considerably more difficult in comparison with that of the CPI, though. Americans had the opportunity to read a lot of literature on the activities of the CPI after World War I and concluded that their government duped them into the War. They determined that they were not going to be duped again and took on a distinctly isolationist worldview in the years before World War II. For them, the propaganda activities of the OWI were very suspicious because they were eerily similar to the activities of the CPI during World War I. They quite rightly assumed that their sole purpose was to influence them to support any war that was on the horizon. As a result, unpopularity came quickly for the OWI, perhaps even more quickly than it had come for the CPI because the public was not as gullible.³⁶ Like the CPI, the OWI did operate to some extent outside the United States.³⁷

Some government officials have suggested that activities like the ones carried out by the CPI and the OWI should be considered public affairs activities rather than public diplomacy.

They say this is because the government engaged in them to teach Americans about their

³⁴ Richard W. Steele, *The Great Debate: Roosevelt, the Media, and the Coming of the War, 1940-1941*, 71 THE J. AM. HIS., 69, 69 (Jun 1984); See WOOD, *supra* note 6, at 75-79.

³⁵ Peter Buitenhuis, *Prelude to War: The Interventionist Propaganda of Archibald McLeish, Robert E. Sherwood, Joseph Steinbeck*, 26 CANADIAN REV. AM. STUD. 1, 1 (1996); See HIEL JR., *supra* note 1, at 33-34. See also Walter Wanger, *OWI and Motion Pictures*, 7 PUB. OPINION Q. 100 (1943) (describing the relationship between the OWI and the movie industry).

³⁶ See Richard W. Steele, *Preparing the Public for War: Efforts to Establish a National Propaganda Agency, 1940-41*, 75 AMERICAN HISTORICAL REVIEW 1640, 1642 (1970). See MANFRED JONAS, ISOLATIONISM IN AMERICA 1935-1941 169-205 (1966) (discussing isolationism in America prior to World War II).

³⁷ See EDWARD W. BARRETT, TRUTH IS OUR WEAPON 8-13 (1953).

country's foreign policy rather than to inform foreign audiences about the United States.³⁸ One scholar said that early American diplomats invented the term “public diplomacy” as “a euphemism for the word modern Americans abhor—propaganda.”³⁹ Such parsing of words on the appropriate terminology to use only reflects the ambivalence that government officials have about using the term propaganda. In fact, government officials have made every effort to make propaganda not to appear as propaganda but rather as credible information, regardless of where the target audience for the information is located—inside the United States or abroad.

Presumably, the rationale has always been that calling propaganda what it is would diminish the effectiveness of the propaganda because of the negative feelings associated with the term. The irony is that the negative feelings the term propaganda elicits in most Americans and most people generally belie the religious origins of the term—from the Catholic Church.⁴⁰ At the core, propaganda is, by another description, about “the management of attitudes by the manipulation of significant symbols.”⁴¹ Propaganda or public diplomacy has been and will likely remain an integral part of the conduct of U.S. foreign policy for years to come, especially during times of crises, such as was the case during World Wars I and II.⁴² During World War II, the government also began disseminating propaganda internationally through VOA.

³⁸ See United States Advisory Commission on Public Diplomacy 1989 Report 18 (1989), *microformed on Sup. Docs. No. Y3.AD 9/12: 1/989* (U.S. Gov't Printing Office).

³⁹ FITZHUGH GREEN, *AMERICAN PROPAGANDA* 3 (1988). See generally DWIGHT I HITCHCOCK, JR., *U.S. PUBLIC DIPLOMACY* 10 (1988) (offering a history of U.S. public diplomacy).

⁴⁰ Terry L. Diebel and Walter R. Roberts, *Culture and Information: Two Foreign Policy Functions*, 4 *THE WASHINGTON PAPERS* 17 (1976). The authors described how the Catholic Church first used the term “propaganda” to name the committee Pope Gregory XV established to disseminate the Christian message to countries in all four corners of the world: The name of the committee was, in Latin, *congregatio de propaganda fide*.

⁴¹ Harold D. Laswell, *The Theory of Political Propaganda*, 21 *AM. POL. SCI. REV.* 627, 627 (1927).

⁴² See, e.g., Foreign Affairs Agencies Consolidation Act §§ 1321(1)-(4).

VOA as a Wartime Broadcaster

Congress had passed the legal provisions that later enabled the government to begin to broadcast propaganda internationally through VOA before World War I. A provision in the Radio Act of 1912 allowed the President to appropriate for government use the facilities of private radio operators during a war, a national disaster, or the threat of a war or a national disaster.⁴³ President Wilson appropriated the facilities of private radio companies and delegated them to the Navy using authority given to him under the Act. The government carried out radio transmissions for logistical purposes through the Navy using these facilities.⁴⁴

Erik Barnouw showed that the involvement of the Navy in radio transmissions during the War brought some order to the private radio industry in the United States as it existed at the time. In this sense, then, U.S. Navy operation of the facilities of private radio companies during the War was a pivotal event in the development of radio in the United States.⁴⁵ Another benefit of having the Navy run radio companies during the War was that it brought the government into a realm that had hitherto been occupied only by private radio companies—international radio transmission.⁴⁶

After the War, the United States government did not actively pursue the development of an official propaganda international broadcaster as countries in Europe did. This would change with the eruption of World War II. By the time the War started, other countries like Britain, the Soviet Union, Germany, Italy, France, and Japan, were already broadcasting propaganda internationally, and the United States needed to keep up with them.⁴⁷ Congress had included the

⁴³ Radio Act of 1912, Pub. L. No. 62-264, § 2, 37 Stat. 303 (1912).

⁴⁴ See Jerry Ray Redding, *American Private International Broadcasting: What Went Wrong—and Why* 53-55 (1977) (unpublished Ph.D dissertation, Ohio State University) (on file with Main Library, University of Georgia).

⁴⁵ See ERIK BARNOUW *A TOWER IN BABEL* 52 (1962).

⁴⁶ See Redding, *supra* note 44, at 53-55.

⁴⁷ See John B. Whitton, *War by Radio*, 19 FOREIGN AFF. 584, 584-596 (1941); See George F. Church, *Short Waves and Propaganda*, 3 PUB. OPINION Q. 209, 209-222 (1939); See generally Redding, *supra* note 44.

provision in the Radio Act of 1912 that allowed the President to appropriate the facilities of private broadcasters in the Radio Act of 1927, and the legislature later included the provision in the Communications Act of 1934.⁴⁸ President Roosevelt used the provision in the Communications Act to appropriate the facilities of private radio broadcasters and to begin international broadcasting. Major radio companies continued to operate with government support in a non-profit capacity while the government used their facilities to prepare and transmit programs.⁴⁹ VOA came into being as part of this arrangement with private broadcasters and began operating as the first official U.S. government international broadcaster in New York on February 24, 1942.⁵⁰

Remarkably, the journalists who broadcast the first VOA programs made an effort, even at this early stage, to present VOA as a professionally independent credible and objective broadcaster to foreign audiences. Speaking in German on February 24, 1942, William Harlan Hale made the first reference to “Voices from America”: “We bring you Voices from America. Today, and daily from now on, we shall speak to you about America and the war. The news may be good for us. The news may be bad. But we shall tell you the truth.”⁵¹ Thus, the very first broadcast from VOA defined the broadcaster as one that would strive to tell objective, truthful information regardless of whether the information benefited the United States.

VOA followed the first German broadcast with broadcasts in French, Italian, and English and broadcast as much as twenty-four hours a day, seven days a week during the War. The programs

⁴⁸ Radio Act of 1927, Pub. L. No. 69-632, § 6, 644 Stat. 1165 (1927); Communications Act of 1934, Pub. L. No. 73-416, § 606(c), 48 Stat. 1104 (1934). *See* Redding, *supra* note 44, at 54.

⁴⁹ *See generally* ROBERT W. PIRSEIN, *THE VOICE OF AMERICA: AN HISTORY OF THE INTERNATIONAL BROADCASTING ACTIVITIES OF THE UNITED STATES GOVERNMENT 1940-1962* (1979).

⁵⁰ *See* HIEL JR., *supra* note 1, at 32-46. *But see* SHULMAN, *supra* note 33, at 24-25. Holly Cowan Shulman stated that by late January 1942 John Houseman and Robert Sherwood “had arranged for three daily fifteen minute broadcasts in German, French, and Italian.”

⁵¹ *E.g.*, HIEL JR., *supra* note 1, at 32.

were broadcast via shortwave and relay stations, and as prerecorded programs sent to various outposts abroad.⁵²

Despite this declaration of objectivity in the first broadcast, the reality was that VOA was really more of a war propaganda instrument than a professional, objective broadcaster. Government officials decided what went into VOA programs. Whatever scruples they may have had about imposing editorial control over the broadcaster or concerns that broadcast journalists may have had about their professional independence paled in comparison with the urgency of the War and the need to get VOA to speak for the United States in a way that advanced U.S. foreign policy objectives during the War. The professional independence of VOA journalists during this time of global conflict could not have been a major concern and expecting them to operate independent of the government would have been too idealistic at this early stage in the history of the broadcaster. The War raging in Europe meant that the government had to maximize its use of VOA to disseminate propaganda, and one way to do this was to have government officials in control of programming.

In fact, the broadcaster was among other entities, including the Coordinator of Information (COI), Coordinator of Inter-American Affairs (CIAA), and the Foreign Information Service (FIS), that moved information back and forth, all of which the government needed to execute the War. This implicated VOA in the activities of these entities, and they frequently shared information with the broadcaster, which, conceivably, made the broadcaster even less objective. The exigencies of War meant that the broadcaster could not broadcast all information but only information that advanced the War effort and did not jeopardize the lives of military personnel.⁵³

⁵² Leonard Carlton, *Voice of America: The Overseas Radio Bureau*, 7 PUB. OPINION Q. 46, 46-48 (1943).

⁵³ See, e.g., PIRSEIN, *supra* note 49, at 1-40.

The government operated VOA at this time much like it had operated the CPI and the OWI during World Wars I and II, but this time the propaganda was going outside the United States. Just as the government had used the CPI and the OWI to try to change public opinion by disseminating propaganda domestically, the government used VOA to advance U.S. objectives abroad during the War. Questions about the role of VOA and the role of government officials in dealing with VOA and determining the content of VOA programs would come to the forefront only after the end of the War.

VOA as a “Peacetime” Broadcaster

Reorienting VOA from being a wartime broadcaster to becoming a peacetime broadcaster was a highly contentious political issue. The problem was that lawmakers and policy makers were not sure what to do with the broadcaster after the end of the War.⁵⁴ Some of them thought VOA had been a temporary creation that the government had used during the War and had to discontinue using after the end of the War. In keeping with the limited government and free market zeitgeist that is at the core of American capitalism, these government officials also believed that the government had to leave the arena of international broadcasting altogether and allow the private international broadcasters that had previously conducted international broadcasting before the War to start broadcasting again.⁵⁵ Other lawmakers and policy makers asserted the need to maintain a U.S. presence in Europe through international broadcasting.⁵⁶

Congress had received a report from a committee consisting of a group of lawmakers from both the House and the Senate that had gone to Europe in 1947 to investigate U.S. information activities. In a separate appendix to the report, the committee detailed its findings on

⁵⁴ See Redding, *supra* note 44, at 182-209.

⁵⁵ See *id.* at 53-55.

⁵⁶ See William Benton, *The Voice of America*, 13 DEP'T ST. BULL. 712, 712-714 (1945); See William Benton, *The Voice of America Abroad*, 19 J. EDUC. SOC. 211, 211-217 (Dec., 1945).

the extent of U.S. involvement in European countries. The committee recommended vigorous U.S. involvement in the dissemination of information in Europe to counter the threat of communist ideology emanating from the Soviet Union. President Harry Truman was among those who believed in the need for continued U.S. government involvement in international broadcasting, and he set up the McMahon Commission to review what to do with VOA after the War. The McMahon Commission was chaired by Arthur McMahon, a Columbia University professor, and affirmed the need for the United States to maintain a presence in international broadcasting and to inform the citizens of foreign nations about the United States.⁵⁷

Officials at the State Department eventually managed to salvage something out of what had been the wartime infrastructure of U.S. information services that the government could use for peacetime information services, assuming, that is, Congress provided the funding for the services.⁵⁸ Congress was much divided on the future of VOA, with Democrats supporting the program and Republicans divided among themselves over whether to support the program.⁵⁹ The future of VOA was threatened by policy differences that manifested themselves in the slashing of the VOA budget—drastically. So drastic were the cuts that VOA had to outsource the production of programs to private radio companies. This lean period in the history of VOA was about to change, though.⁶⁰

Just as it had been the advent of crises, World Wars I and II, that had convinced the government to venture into propaganda dissemination, so too it was a crisis that convinced the government about the wisdom of maintaining VOA service. An Iron Curtain was—in the words of Winston Churchill, the venerable British wartime prime minister—“about to descend across

⁵⁷ *E.g.*, HIEL JR., *supra* note 1, at 45.

⁵⁸ *See id* at 46.

⁵⁹ H. BRADFORD WESTERFIELD, *FOREIGN POLICY AND PARTY POLITICS* 75 (1955).

⁶⁰ *See* HIEL JR., *supra* note 1, at 58-78.

the continent.” The continent Churchill was speaking of when he gave this address in Fulton, Missouri in October 1946 was Europe, and the curtain he referred to was the specter of the spread of communism propagated by the Soviet Union.⁶¹ The Iron Curtain did indeed descend, as the Soviet Union continued to engage in dangerous political risk-taking in Europe.⁶² Among other foreign policy initiatives, the United States responded to the Soviet threat by starting the VOA Russian service on February 17, 1947.⁶³

In the space of a few months, the talk of abolishing VOA outright became talk of how to sustain VOA services to counter the communist propaganda the Soviets were disseminating via Radio Moscow. As Hiel noted, the attacks by the Soviet Union on the West were “virulent,” and thus inadvertently saved both VOA and postwar BBC. The one thing the United States and U.S. allies in Europe like Britain needed was a way to counter the Soviet propaganda. From the specter of probable abolishment, VOA rose again to resume its role of informing the world the “truth” about America.⁶⁴

United States Information and Educational Exchange Act of 1948

Congress gave VOA the legal mandate to broadcast in a civilian capacity when the legislature passed the United States Information and Educational Exchange Act of 1948, also known as the Smith-Mundt Act, after the co-sponsors of the law, Senator Alexander Smith of

⁶¹ E.g., Jeremy K. Ward, *Winston Churchill and the “Iron Curtain” Speech*, 1 *HIS. TCHR.* 5, 11 (Jan. 1968); See HIEL JR., *supra* note 1, at 47.

⁶² See Howard Jones and Randall B. Woods, *Origins of the Cold War in Europe and the Near East: Recent Historiography and the National Security Imperative*, in *AMERICA IN THE WORLD: THE HISTORIOGRAPHY OF AMERICAN FOREIGN RELATIONS SINCE 1941* 234-269 (Michael J. Hogan ed., 1995); See THOMAS G. PATERSON, *ON EVERY FRONT: THE MAKING AND UNMAKING OF THE COLD WAR 79-95* (1992); See WALTER L. HIXSON, *PARTING THE CURTAIN: PROPAGANDA, CULTURE, AND THE COLD WAR, 1945-1961* 29-55 (1997). See also COMM. ON FOREIGN AFFAIRS, 80TH CONG., *NATIONAL AND INTERNATIONAL MOVEMENTS: THE STRATEGY AND TACTICS OF WORLD COMMUNISM* (Comm. Print 1948). See also COMM. ON FOREIGN AFFAIRS, 80TH CONG., *THE UNITED STATES INFORMATION SERVICE IN EUROPE* (Comm. Print 1948).

⁶³ HIEL JR., *supra* note 1, at 47.

⁶⁴ HIEL JR. *supra* note 1, at 47-48; See also Philo C. Washburn, *Voice of America and Radio Moscow Newscasts to the Third World*, 32 *J. BROADCASTING AND ELECTRONIC MEDIA* 197 (Spring, 1988) (discussing the dissemination of VOA and Radio Moscow programs to developing countries).

New Jersey and Representative Karl Mundt of South Dakota.⁶⁵ This law legalized the dissemination abroad of information about the United States, the American people, and U.S. government policies through various media, including radio.⁶⁶ Since VOA was the only civilian international broadcaster at the time, VOA became the channel for disseminating the radio programs.

The law did not explicitly ban the dissemination of propaganda materials inside the United States, but it did not authorize their dissemination either. Congress framed the law in a way that left no doubt that lawmakers intended to keep the radio programs and the other materials prepared for international propaganda away from Americans as much as was possible.⁶⁷ An explicit ban on the domestic dissemination of the materials would come later.⁶⁸

A provision in the Smith-Mundt Act also authorized the establishment of the United States Advisory Commission on Information and the United States Advisory Commission on Education to advise the secretary of state on the various policies and programs to adopt and to create as required by the Act. The Act explicitly recognized the dissemination of such information abroad as conducting public diplomacy.⁶⁹ All these together with VOA were part of the grand instrument of international public diplomacy that came about after the end of World War II. The desperation of World War I and World War II that had fueled the need for propaganda was replaced by the Cold War. At the time of the passing of the Smith-Mundt Act in

⁶⁵ *Id.* at 47.

⁶⁶ United States Information and Educational Exchange Act (Smith-Mundt Act) of 1948, Pub. L. No. 80-142, §§ 601(1)-(2), 62 Stat. 10 (1948) (codified as amended at 22 U.S.C § 1461 (2006)).

⁶⁷ See United States Information and Educational Exchange Act § 501 (stating only that the materials disseminated under this section abroad were to be made available in English at all reasonable times to the domestic press and by request to lawmakers and thereby implying that the materials were not to be disseminated domestically).

⁶⁸ See Charles F. Gormly, *The United States Information Agency Domestic Dissemination Ban: Arguments for Repeal*, 9 ADMIN. L. J. AM. U. 191, 195-198 (1995); See Palmer & Carter, *supra* note 25, at 10-11.

⁶⁹ United States Information and Educational Exchange Act §§ 601(1)-(2).

1948, the U.S. government was funding Radio in the American Sector (RIAS) and would go on to establish a couple of broadcasters in the next few years.

RIAS, RFE, and RL

In 1946, the U.S. government established RIAS in the American sector of Berlin, West Germany to serve the Americans there. This broadcaster was initially not a public diplomacy international broadcaster in the ilk of VOA. The broadcaster did eventually begin to serve East Germany and thereby took on the functions of disseminating public diplomacy programs.⁷⁰ Throughout the decades, the U.S. government funded the broadcaster and exerted considerable editorial control over it. The German government was the main funder of the broadcaster after the end of the Cold War in the years 1990 and 1991, with the U.S. government making a much smaller contribution.⁷¹ In 1992, the U.S. government funded RIAS for the last time and has since removed itself from involvement with the broadcaster because the reunification of East Germany and West Germany has meant there is no legal basis for continued U.S. involvement with the broadcaster.⁷²

Radio Free Europe (RFE) started to broadcast in 1950, initially to the following countries: Bulgaria, Czechoslovakia, Hungary, Poland, and Romania. Three years later in 1953, Radio Liberty (RL) began broadcasting to the Soviet Union in Russian and fifteen other languages of the various nations under the Soviet Union. The broadcasters operated as semi-private international broadcasters and received assistance from the Central Intelligence Agency

⁷⁰ HENNES, *supra* note 3, at 3.

⁷¹ *Id.* at 3.

⁷² *Id.* at 8. The policy analyst asserted that the German government paid \$97 million for RIAS operations in fiscal years 1990 and 1991 while the U.S. government paid \$3 million and \$1.5 million in fiscal years 1990 and 1991 respectively, *id.* at 3 n. 3.

(C.I.A). Since their establishment, they have had their headquarters in Munich, previously a city in West Germany but today part of unified Germany.⁷³

RFE and RL by law had to play the role that local media in countries in Eastern and Central Europe should have been playing but did not play, usually because of government repression of the press in these countries. Due to their functions, those involved with U.S. international broadcasting referred to these broadcasters as surrogate services broadcasters. In other words, the broadcasters acted as surrogate sources of information for people in these countries who could not rely on their domestic media to receive accurate news. In this respect, they were different from VOA that broadcast programs to inform foreign audiences about the US and U.S. government policies, and was known as a generalist services broadcaster. Surrogate broadcasters were supposed to be more professionally independent from the government than generalist broadcasters.⁷⁴

Arguably, the government had less incentive to exercise editorial control over RFE/RL because their role, unlike that of VOA, was not to speak on behalf of the U.S. government. Contrary to this expectation, government officials still told the broadcasters what to say in their programs in the same way they told VOA what to say.⁷⁵ Presumably, the editorial control the government exercised over RFE/RL was still much less than the control the government exercised over VOA. Government officials continued telling VOA what to say when they brought the broadcaster under the authority of the USIA.

⁷³ Radio Free Europe/Radio Liberty, *A Brief History of RFE/RL* (Mar. 12, 2009), <http://www.rferl.org/info/history/133.html>; See also GENE SOSIN, SPARKS OF LIBERTY: AN INSIDER'S MEMOIR OF RADIO LIBERTY (1999).

⁷⁴ E.g., CARNES LORD, LOSING HEARTS AND MINDS?: PUBLIC DIPLOMACY AND STRATEGIC INFLUENCE IN THE AGE OF TERROR 89 (2006).

⁷⁵ See, e.g., *The State Department, USIA, and Related Agencies Authorization Act for Fiscal Years 1994-1995: Hearings and Markup on H.R. 2333 Before the H. Comm. on Foreign Affairs and Its Subcomm. on International Operations*, 103d Cong. 336-338 (1993) [hereinafter *Hearings and Markup on H.R. 2333*]. (statement of Dr. Mary G.F. Bitterman, Private Consultant on Communication and International Affairs and Former Director, VOA).

The USIA

After the end of World War II, the government initially placed VOA in the International Information Administration (IIA) within the State Department; the broadcaster remained within the IIA until 1953 when the government established the USIA.⁷⁶ President Dwight D. Eisenhower signed an executive order on August 1, 1953, establishing the Agency to administer U.S. government public diplomacy programs, including VOA. It was around the same time that the government moved the headquarters of VOA from New York to Washington, D.C.⁷⁷

During the potentially destructive Cold War between the United States and the Soviet Union, a continuous struggle ensued among broadcast journalists, officials at the USIA, policy makers and lawmakers over the content of VOA programs. VOA broadcasts were a foreign policy instrument—a vital, perhaps critical, instrument—in waging the ideological war. Some felt that there was no need to maintain any appearances of journalistic objectivity, balance, or fairness in light of the extreme anti-U.S. propaganda coming from the Soviet Union. They reasoned that self-serving biased journalism was okay as long as such journalism served to advance U.S. foreign policy objectives with respect to the Soviet Union. Other people in government disagreed with such a prescription and believed that the best way VOA could be effective was to stick to being objective, balanced, and fair—all the precepts of good journalism. They felt that this would enhance the reputation of VOA as a broadcaster that told the truth and would in effect advance U.S. government foreign policy objectives.⁷⁸

⁷⁶ Reorg. Plan No. 8 of 1953, 18 F.R. 4542, *reprinted in* 67 Stat. 642 (1953).

⁷⁷ *E.g.*, HIEL JR., *supra* note 1, at 55-56.

⁷⁸ *See* DAVID KRUGLER, *THE VOICE OF AMERICA AND THE DOMESTIC PROPAGANDA BATTLES, 1945-1953* 73-95 (2000); *See* SCOTT LUCAS, *FREEDOM'S WAR: THE AMERICAN CRUSADE AGAINST THE SOVIET UNION* 11-29 (1999); *See also* Aleksandr Solzhenitsyn, *The Soft Voice of America*, April 30, 1982 NAT'L REV. 477, 477-78 (discussing the role of VOA during the Cold War).

The McCarthy hunt for communists in the early 1950s only made the situation worse.⁷⁹ Communism seemed to be on the rise in the United States at the time, and according to Senator Joseph R. McCarthy, the federal government had many secret communists or communist sympathizers. True, some people in the United States had dabbled in some communist ideology and had some communist sympathies, particularly members of the elite.⁸⁰ Nevertheless, communism was hardly the plague Senator McCarthy claimed the ideology was in the federal government. All the same, beginning in 1953, the Senator launched a vicious purge of communists at VOA. The possibility that the people working at VOA could be communists was very dangerous because they were in some respects on the frontline of waging the Cold War. So terrible was the McCarthy inquest at VOA that morale diminished among broadcast journalists and pushed at least one employee to commit suicide.⁸¹ In the end, the McCarthy hunt for communists proved that the only communists that existed were mainly in Senator McCarthy's head. The suffering was real, though, and it would be a long time before VOA recovered from the McCarthy communist hunt.⁸² Meanwhile, the search for professional independence continued.

To foster professional independence and professional integrity for the journalists at VOA, some broadcast journalists in conjunction with some lawmakers and policy makers articulated a VOA Charter in 1960 to serve as a guide.⁸³ The articulation of the VOA Charter was the first significant step the government had taken to protect the professional independence of VOA. Implicit in the articulation of the Charter was a belief that VOA broadcasts were most effective

⁷⁹ See RICHARD PELL, *NOT LIKE US: HOW EUROPEANS HAVE LOVED HATED, AND TRANSFORMED AMERICAN CULTURE SINCE WORLD WAR II* 64-93 (1997). See HIEL JR., *supra* note 1, at 51-57.

⁸⁰ See PELL, *supra* note 79, at 69.

⁸¹ HIEL JR., *supra* note 1, at 53. See ARCH PUDDINGTON, *BROADCASTING FREEDOM: THE COLD WAR TRIUMPH OF RADIO FREE EUROPE AND RADIO LIBERTY* 11 (2000).

⁸² See HIEL JR., *supra* note 1, at 56-57.

⁸³ See *id.* at 64-67.

in achieving U.S. foreign policy objectives when they were truthful and objective. This notion is also known as the “newsroom metaphor” and has been controversial because VOA and other civilian international broadcasters have often been unable to live up to the standard.⁸⁴

Even after the articulation of the Charter, though, some USIA officials exerted considerable pressure on VOA to cast aside the journalistic standards of objectivity and to tow the government line, especially during times of crisis. For instance, when the Soviet Union deployed missiles to Cuba in 1962, censorship by government officials of VOA programs that covered the ensuing crisis was the order of the day.⁸⁵ In some cases, such pressure led to passing a story as true that was not true.⁸⁶

The USIA was responsible for various other functions besides the dissemination of propaganda abroad. Visitor exchanges between the United States and other countries were the responsibility of the USIA. U.S. participation in international cultural activities and sports came under the purview of the USIA too, as did the participation of other countries in similar activities in the United States. Congress authorized the USIA to establish cultural posts in countries around the world and to carry out activities that promoted American culture.⁸⁷ Under President Jimmy Carter’s Reorganization Plan Number 2, the USIA was briefly renamed the International Communications Agency (ICA).⁸⁸ Reorganization Plan Number 2 also reorganized and combined the United States Advisory Commission on Information with the United States Advisory Commission on Education into one entity.⁸⁹ The government restored the original

⁸⁴ PHILLIP S. MULLER, *UNEARTHING THE POLITICS OF GLOBALIZATION* 164-166 (2003).

⁸⁵ See HIEL JR., *supra* note 1, at 68-72.

⁸⁶ NICHOLAS J. CULL, *THE COLD WAR AND THE UNITED STATES INFORMATION AGENCY* 189-226 (2008).

⁸⁷ Mutual Educational and Cultural Exchange Act (Fulbright-Hays Act) of 1961, Pub. L. No. 87-256, § 101 et. seq., 75 Stat. 527-538 (1961) (codified as amended at 22 U.S.C 2451 et. seq (2006)).

⁸⁸ Reorg. Plan no. 2 of 1977, 42 F.R. 62461 *reprinted in* 91 Stat. 1636.

⁸⁹ 91 Stat. 1638-1639.

name USIA from ICA during the Reagan administration to avoid confusion with the CIA, the intelligence agency.⁹⁰

Ban on the Domestic Dissemination of USIA Materials

As government officials continued to tell VOA how to operate and what to broadcast throughout the Cold War, they also became strident in their resolve to keep the public diplomacy materials prepared by the USIA, including VOA programs, from reaching Americans. The government had not explicitly banned these materials from domestic dissemination when it passed the Smith-Mundt Act of 1948.⁹¹ Essentially, the government in 1948 only made it difficult to disseminate these materials domestically but made no explicit ban on disseminating them until years later. In fact, a more accurate description is that the ban on the domestic dissemination of propaganda materials evolved gradually as the Cold War became even colder.

The evolution of the ban on the domestic dissemination of propaganda materials really began in 1965. Congress that year passed a joint resolution allowing the distribution of a film prepared by the USIA on the life of John F. Kennedy—entitled *Years of Lightning, Day of Drums*—inside the US.⁹² Critically, the law also stated that the fact that Congress had allowed the domestic distribution of the film did not mean that the legislature had allowed the domestic distribution of other USIA materials. The law also prohibited the broadcast of any documentary film produced with public funds on the life of any government employee.⁹³ As government employees, the men and women working for the USIA were covered under this ban.⁹⁴ Perhaps

⁹⁰ Department of State, the International Communication Agency, and the Board for International Broadcasting Authorization Act, Fiscal Years 1982 and 1983, Pub. L. No. 97-241, § 303, 96 Stat. 291 (1982).

⁹¹ See United States Information and Educational Exchange Act (Smith-Mundt Act) § 501.

⁹² Joint Resolution of October 20, 1965, Pub. L. No. 89-274, § 2, 79 Stat. 1009 (1965).

⁹³ *Id.* § 1.

⁹⁴ *Id.* § 4.

the government wanted to protect the identity of its employees at the USIA who were involved in the dissemination of propaganda.

In 1972, Congress amended the Smith-Mundt Act to ban explicitly the dissemination of the programs produced by the USIA for foreign audiences, with the exception of material on “Problems of Communism.” These materials the government allowed the GPO to continue selling.⁹⁵ RFE and RL were not subject to the ban that VOA was subject to because they were not under the USIA. Some scholars cited this apparent contradiction in policy as one of the reasons why the ban had to be done away with altogether.⁹⁶ Seven years after Congress passed the 1972 amendment, the legislature in 1979 amended the law again to allow the distribution inside the United States of materials entitled “English Teaching Forum” besides the material entitled “Problems of Communism” that had been exempted from the ban in the 1972 amendment.⁹⁷

The materials that were exempt from the ban in 1972 and 1979 were perhaps materials that government officials considered innocuous enough to disseminate inside the United States or materials that served to advance the anti-communist agenda that was at the core of U.S. foreign policy during the Cold War. Surely, government officials concluded that materials on English and materials on the problems of communism were hardly a threat to Americans. In fact, the material on the problems of communism probably reminded Americans about the dangers of

⁹⁵ Foreign Relations Authorization Act of 1972, Pub. L. No. 92-352, § 204, 62 Stat. 9 (amending the Smith-Mundt Act to say that all other materials—except material entitled “Problems of Communism”—were banned from domestic dissemination “at all reasonable times” as had been previously provided for in the Act).

⁹⁶ See Gormly, *supra* note 68, at 205-207.

⁹⁷ Department of State Authorization Act, Fiscal Years 1980 and 1981, Pub. L. No. 96-60, § 208, 93 Stat. 401(1981) (codified as amended at 22 U.S.C §1461(2006)) (amending the Smith-Mundt Act to allow the distribution of “English Teaching Forum” inside the United States); See also ALLEN C. HANSEN, *USIA: PUBLIC DIPLOMACY IN THE COMPUTER AGE* (1989) (describing “English Teaching Forum” as a quarterly publication for teachers of English).

communist ideology and thereby served to keep them from espousing communism, just as government officials preferred they not do.

The exemption of these materials from the ban did not mark a policy shift toward abolishing the ban. Quite to the contrary, Congress reiterated its commitment to ensuring that the programs and materials the USIA produced for dissemination to these foreign audiences did not reach the American audience when the legislature passed the Zorinsky amendment in 1985, so called because Senator Edward Zorinsky of Nebraska sponsored the amendment to the law.⁹⁸ The ban remained in place and Congress granted no more exemptions to the ban until after the end of the Cold War.

In 1990, Congress recognized the need to make the propaganda materials prepared by the USIA for foreign audiences available inside the United States to a wider extent than allowed under the Smith-Mundt Act as amended at the time.⁹⁹ The legislature amended the Smith-Mundt Act again to include a provision that allowed propaganda materials prepared for dissemination abroad to be available at the State Department for review by members of the domestic U.S. media twelve years after their first broadcast internationally and available to members of Congress on request. Under the law as amended in 1990, Congress maintained that the dissemination outside the United States of materials on problems with communism and materials on English was permissible at any time as previously provided for in the law as amended in 1979.¹⁰⁰

⁹⁸ Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. No. 99-93, § 208, 99 Stat. 431 (codified as amended at 22 U.S.C §§ 1461—1a (2006)) (amending the Smith-Mundt Act of 1948 to state that no funds provided to the USIA should be used to influence public opinion within the U.S. and no materials produced for dissemination abroad should be distributed within the U.S.; this ban did not apply to material disseminated in compliance with the Mutual Educational and Cultural Exchange Act (Fulbright-Hays Act); Palmer & Carter, *supra* note 25, at 11.

⁹⁹ Gormly, *supra* note 68, at 198. Palmer & Carter, *supra* note 25, at 11.

¹⁰⁰ Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, Pub. L. No. 101-246, § 202, 104 Stat. 49 (codified as amended at 22 U.S.C § 1461(b)(1) (2006)) (amending the Smith-Mundt Act to state that the director of

Anyone inside the United States may acquire materials on problems of communism and materials on English at the GPO, and the domestic media can review any material prepared for dissemination abroad at the State Department twelve years after the first dissemination abroad of the material. This should give Americans legal access to most of the materials of international broadcasters. Of course the availability of these materials through the Internet and the Web have made the ban itself mostly moot. Allowing members of the domestic media to have access to propaganda materials was one significant shift in policy that marked the conduct of U.S. government public diplomacy after the end of the Cold War. The ban is a relic of the Cold War and the government should rescind the ban.

In fact, the timeline for the relaxation of the ban on domestic dissemination parallels that of the relaxation of the editorial control that the government exercised on civilian international broadcasters during the Cold War. Over the years, Congress passed laws that exempted certain materials from the ban but also restated the ban. One could infer that by going to such lengths to keep these programs from Americans, the government was admitting that the programs were in fact propaganda and were not good for Americans. Ultimately, the government relaxed the ban after the end of the Cold War, right about the same time it was relaxing the editorial control it exerted over civilian international broadcasters and giving them professional independence by establishing the BBG firewall. The granting of professional independence to civilian international broadcasters had been just as incremental as the relaxation of the ban on domestic dissemination.

Prior to the establishment of the BBG firewall, the government had incrementally allowed civilian international broadcasters to have a measure of professional independence over

the USIA should make the material prepared for dissemination abroad available to the national archivist twelve years after the material was initially disseminated and that the archivist should be responsible for regulating the use of the material by people seeking to distribute the material inside the United States).

the years. The articulation of the VOA Charter in 1960 was a step in the incremental journey toward giving the broadcasters professional independence. Legalizing this charter years later was another step toward giving the broadcasters professional independence; this is discussed later in the chapter. Another step the government took on the journey toward giving civilian international broadcasters professional independence was the creation of the BIB firewall.

The BIB Firewall

Congress established the BIB to govern RFE and RL when the legislature passed the Board for International Broadcasting Act of 1973. A provision in the Act combined the two broadcasters to create RFE/RL and placed them under the governing authority of the BIB.¹⁰¹ The structure and constitution of the BIB was meant to ensure the ability of the broadcaster to act as a firewall for RFE/RL.

First, the BIB had to have seven members. The President was responsible for appointing the five members of the BIB in consultation with the Senate and the other two members were to serve as ex-officio, non-voting members; the President had to declare one of the members chair of the Board.¹⁰² Only three members of the Board could be from the same political party.¹⁰³ The bipartisan structure of the BIB was meant to enhance the ability of the Board to protect the professional independence of RFE/RL by ensuring that no party could dominate the decision-making process and thereby use the broadcasters to achieve its own agenda. Members of the Board were entitled to compensation for their services, but ex-officio members were not entitled to compensation.¹⁰⁴

¹⁰¹ Board for International Broadcasting Act § 3(a); *See* Radio Free Europe/Radio Liberty, *A Brief History of RFE/RL*, (Mar. 12, 2009), <http://www.rferl.org/info/history/133.html>.

¹⁰² Board for International Broadcasting Act § 3(b)(1).

¹⁰³ *Id.*

¹⁰⁴ *Id.* § 3(b)(5).

A second feature designed to enable the BIB to function as a firewall was the explicit mandate that Congress gave the Board to respect the professional independence of RFE/RL. As a governing entity over RFE/RL, the BIB had to fulfill various administrative functions and had to ensure that the broadcasters operated in a way that supported U.S. foreign policy.¹⁰⁵ In doing all this, the BIB had to respect the “professional independence and integrity of Radio Free Europe/Radio Liberty.”¹⁰⁶ As written, this provision in the law suggests that the BIB had to protect RFE/RL from itself, suggesting that BIB members had to refrain from telling the broadcasters what to broadcast. On the other hand, Congress by asserting the need for RFE/RL to be professionally independent clearly meant to protect the broadcasters from any professional interference, including interference coming from government officials telling the broadcasters what to broadcast. Ensuring the professional independence of RFE/RL was meant to protect the credibility of the broadcasters with their listeners. In a sense, credibility was more important for RFE/RL than it was for VOA because they had to inform audiences about events in their own countries and not just the policies of the United States, as VOA had to do.

Besides the provision telling the BIB to respect the professional independence of RFE/RL, a third feature of the BIB firewall had to do with the way the Board received funds. The government was responsible for providing funds to the BIB, but the Board could also receive funds from private sources in the form of donations.¹⁰⁷ Allowing the BIB to receive funds from private sources and not just from the government meant that the Board and the broadcasters were not completely reliant on the government for support and the government could not use the control it had over funds to exert editorial control over the broadcasters. The broadcasters had access to other sources of income besides the government, which meant that in

¹⁰⁵ *Id.* §§ 4(a)(1)-5(c).

¹⁰⁶ *Id.* § 9(b).

¹⁰⁷ Board for International Broadcasting Act §§ 7-8(a).

theory they could broadcast what they wanted. They were assured that even if government officials withdrew government funds because they did not like what they broadcast, they could always use the funds they received from private donations.

By making the BIB bipartisan, by telling the BIB to respect the professional independence of RFE/RL, and by allowing the BIB to receive funds from private sources, Congress made the BIB a firewall over RFE/RL. The bipartisan structure of the BIB was to become a feature of all the governing boards over civilian international broadcasters that Congress established in later years, including the BBG. Ten years after establishing the BIB in 1973, Congress established a similar board to the BIB when the legislature introduced radio broadcasting to Cuba in 1983.

The Board for Radio Broadcasting to Cuba

With the passing in Congress of the Radio Broadcasting to Cuba Act of 1983, broadcasting programs to Cuba began.¹⁰⁸ The USIA through VOA was responsible for carrying out radio broadcasting to Cuba. These programs had to be designated as either “Voice of America: Cuba Service” or as “Voice of America: Radio Marti program.”¹⁰⁹ Congress also established an advisory board within the Office of the President called the Board for Radio Broadcasting to Cuba.

The Board had to consist of nine members appointed by the President in consultation with the Senate and with the agreement of the Senators. No more than five members could belong to the same political party. The President had to appoint one member to chair the Board. Members of the Board had to receive compensation for their services, except the ex-officio

¹⁰⁸ *See generally* Radio Broadcasting to Cuba Act of 1983.

¹⁰⁹ *Id.* §§ 3(a)-(f).

members.¹¹⁰ One could assume from the bipartisan structure of the Board that the government intended for the Board to act as a firewall for radio broadcasting to Cuba in the same way that the BIB acted as a firewall for RFE and RL. As in the case of the BIB, this bipartisan structure of the Board for Radio Broadcasting to Cuba ensured that no single party could dominate the decision-making process of the Board. In this respect, the Board was a firewall that protected radio broadcasting to Cuba from potential abuse by the party in power.

Even so, no actual legal provision existed in the law explicitly making the Board for a firewall for radio broadcasting to Cuba. The Board had to fulfill various administrative functions under the authorizing law with respect to radio broadcasting to Cuba.¹¹¹ The main responsibility of the Board was to provide advice on policy. Congress charged the Board with the duty of reporting to the President and the director and associate director of the USIA about the effectiveness of radio broadcasting to Cuba, and the Board had to make various other decisions.¹¹² VOA Cuba Broadcasting became Radio Marti in 1983, and TV Marti came around in 1988.¹¹³ Two other broadcasters the government established are WorldNet satellite television network and VOA Wireless File.¹¹⁴

WorldNet Satellite Television and VOA Wireless File

WorldNet satellite television started operating as USIA's satellite television network when the network carried a press conference during an experimental broadcast in 1983. The satellite television network evolved into a channel through which to broadcast news about the United States to the world abroad. Charles Z. Wick, who was the director of USIA at the time, was instrumental in the establishment of WorldNet, which was separate from VOA. This

¹¹⁰ *Id.* §§ 5(a)-(e).

¹¹¹ *Id.* §§ 5(a)-(h).

¹¹² *Id.* §§ 5(b), (f).

¹¹³ HENNES, *supra* note 3, at 5.

¹¹⁴ *Id.*

television service disseminated programs across the globe.¹¹⁵ WorldNet satellite television also had to adhere to the VOA Charter.¹¹⁶ WorldNet broadcast programs were either interactive dialogues or regular programs. The dialogues involved the participation of U.S. experts in dialogues with foreign journalists, and regular programs catered more to the interests of audiences in specific countries.¹¹⁷ Congress suspended the program service of WorldNet satellite television in 1988 because the service was not reaching the required two million people; the law stipulated that Congress had to discontinue the service if the service was not reaching at least two million people.¹¹⁸

Wireless file began as a means for the USIA to transmit electronically various materials that explained U.S. government policies and activities to USIA posts around the world. Transmission of materials was in Arabic, Spanish, and French to USIA posts in various countries through an automated transfer system.¹¹⁹ These posts would then provide these materials to journalists in the host countries who then used these materials for their journalism. USIA initiated express file in 1987 and transmitted copy directly to 26 media houses in European countries and Israel.¹²⁰ Besides Wireless File, the USIA transmitted advice to the various posts of the USIA worldwide through U.S.-Infonet.¹²¹ Altogether, VOA, RIAS, Radio/TV Marti, WorldNet satellite television service, and USIA Wireless File were under the Bureau of Broadcasting (BoB), which was itself under the USIA and received funds from Congress through

¹¹⁵ United States Advisory Commission on Public Diplomacy 1989 Report, *supra* note 38, at 43; HIEL JR., *supra* note 1, at 342; HANSEN, *supra* note 97, at 109-114.

¹¹⁶ Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. No. 100-204, § 207, 101 Stat. 1374 (codified as amended at 22 U.S.C. § 1463 (2006)).

¹¹⁷ United States Advisory Commission on Public Diplomacy 1989 Report, *supra* note 38, at 43.

¹¹⁸ United States Advisory Commission on Public Diplomacy 1989 Report, *supra* note 38, at 44; Foreign Relations Authorization Act, Fiscal Years 1988-1989 §§ 208-209(a)-(e)(1)-(3).

¹¹⁹ United States Advisory Commission on Public Diplomacy 1989 Report, *supra* note 38, at 49.

¹²⁰ *Id.*

¹²¹ *Id.*

appropriations.¹²² Throughout this period, the VOA Charter, formulated in the 1960s to ensure the professional independence of VOA, served only as a guide for VOA operations and those of the other broadcasters. They were expected to adhere to the professional standards set out in the Charter, but they continued to fail to meet these standards because of pressure from government officials to tow the government line even when towing the government line meant a lack of professionalism.¹²³ One reason the Charter was not as effective at ensuring their professional independence was that the Charter did not have the force of law.¹²⁴

Legalization of the VOA Charter

In 1976, Congress passed the Foreign Relations Authorization Act of 1977 that included the VOA Charter as a guide for journalists to follow in broadcasting and thereby legalized the Charter.¹²⁵ Senator Charles H. Percy, Republican of Illinois, and Representative Bella S. Abzug, Democrat of New York, co-sponsored the bill that included the Charter, and President Gerald Ford signed the Charter into law on July 12, 1976.¹²⁶ Implicit in the legalization of the Charter was the belief that by making the Charter the law that broadcast journalists at VOA should follow, government officials who had in the past exercised editorial control over the broadcast journalists at VOA and the other broadcasters could no longer exercise such editorial control. The hope was that these officials would allow broadcast journalists to fulfill the professional obligations of their duty by following the provisions in the Charter.¹²⁷ Included in the Charter were the following provisions:

¹²² See HENNES, *supra* note 3, at 3-10.

¹²³ See HIEL JR., *supra* note 1, at 152-173.

¹²⁴ See *id.*

¹²⁵ Foreign Relations Authorization Act of 1977, Pub. L. No. 94-350, § 206 90 Stat. 831 (codified as amended at 22 U.S.C. §§ 1463 (2006)).

¹²⁶ See HIEL JR., *supra* note 1, at 176.

¹²⁷ *Id.*

1. VOA will serve as a consistently reliable and authoritative source of news.
VOA news will be accurate, objective, and comprehensive.
2. VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.
3. VOA will present the policies of the United States clearly and effectively, and will present responsible discussion and opinion on these policies.¹²⁸

The first two points in the Charter required broadcast journalists to adhere to the professional standards of journalism by being accurate, objective and balanced. By legalizing these two points of the Charter, Congress had effectively changed the points from being mere guidelines to being legal provisions. Broadcast journalists were now legally required to follow the provisions. The third point of the VOA Charter required VOA to make known to the world the policies of the U.S. government. Since the articulation of the Charter in 1960, this point had been used to justify the broadcast of the editorials by VOA that presented the policies of the U.S. government.¹²⁹ Some VOA journalists had always regarded the requirement to broadcast the editorials on U.S. policies as a violation of their professional independence.¹³⁰

The legalization of this principle in the Charter also meant that it was no longer just a guiding principle but a legal provision. Broadcast journalists were required under the legal provision in the Charter to broadcast the editorials. The Charter seemed to make the journalists more beholden to the government than before and not as independent as they had hoped to be. Even though the other points in the Charter liberated VOA journalists to broadcast without the

¹²⁸ Foreign Relations Authorization Act of 1977 § 206; HIEL JR., *supra* note 1, at 152-177.

¹²⁹ See, e.g., *The Radio Free China Act of 1992: Hearing on S. 2985 Before the S. Comm. on Foreign Relations* 102d Cong. (1992) [hereinafter *The Radio Free China Act of 1992: Hearing on S. 2985*] (statement of Chase G. Untermeyer, Associate Director for Broadcasting, Director, VOA, USIA).

¹³⁰ See HIEL JR., *supra* note 1, at 210.

fear that they were somehow transgressing U.S. government foreign policy, they never fully realized their professional role as objective journalists with professional independence.¹³¹ The quest for professional independence continued in Congress and at the USIA and at VOA.¹³² This quest eventually led to the establishment of the BBG in 1994.

¹³¹ See HIEL JR., *supra* note 1, at 178-198. See JAMES L. TYSON, INTERNATIONAL BROADCASTING AND NATIONAL SECURITY 44 (1983). The scholar showed that the Charter did indeed have some limited impact in that journalists could point to the Charter and say that they were required by law to practice journalism the way the Charter said they had to practice journalism.

¹³² See HIEL JR., *supra* note 1, at 178-198.

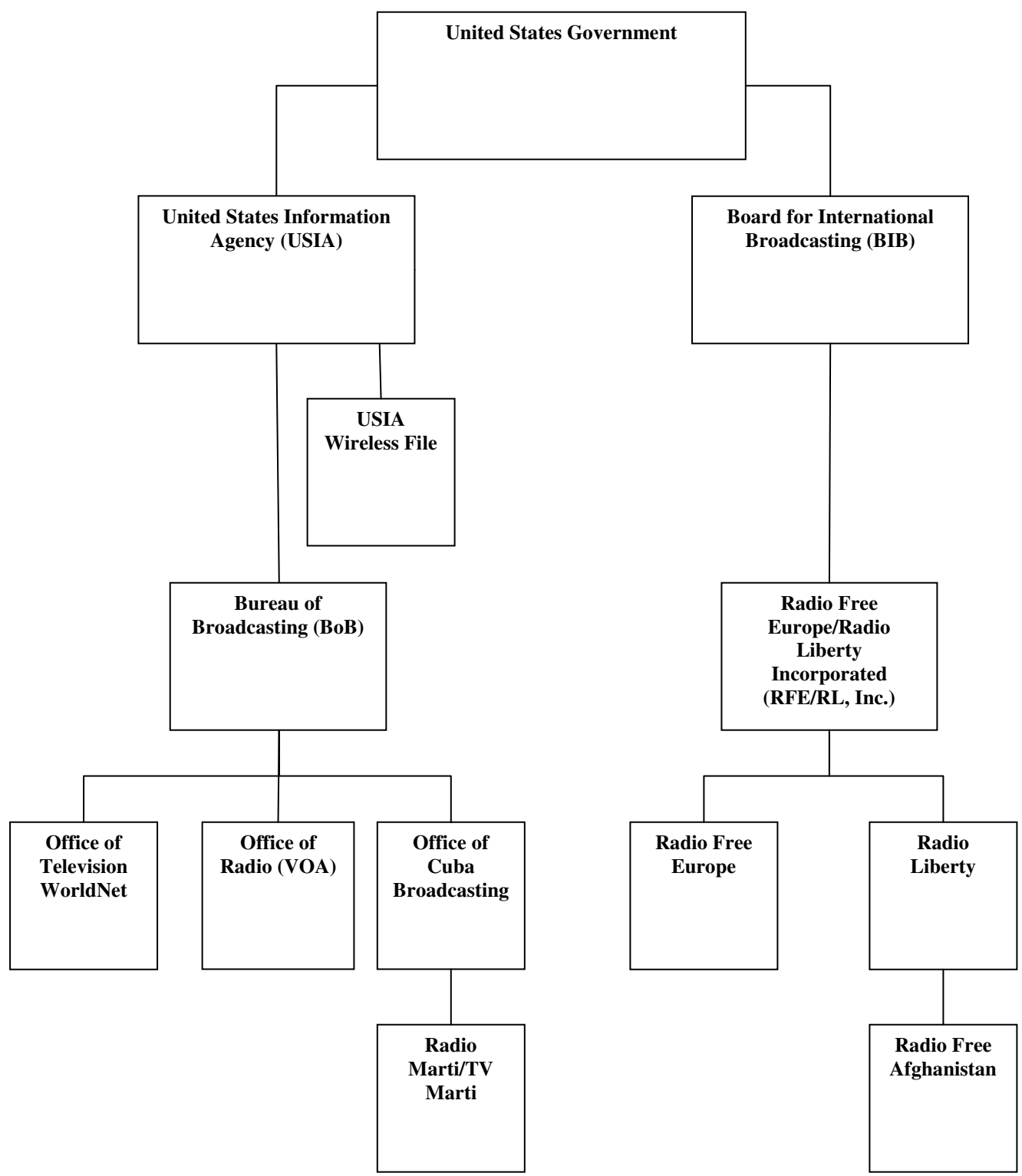


Figure 1.1: Structure of U.S. Civilian International Broadcasters before the BBG from Kim Andrew Elliot, *New Structures for International Broadcasting*, 1991 MURROW REP. 8.

CHAPTER THREE

THE BBG

The establishment of the BBG was a milestone in the long journey toward achieving professional independence for VOA and other civilian international broadcasters.¹³³ In some ways, the BBG is like previous entities that had governed civilian international broadcasters. On the other hand, the BBG is also significantly different from these previous entities with respect to the authority that the government has given the Board. The overarching goal of the chapter is to show the uniqueness of the BBG firewall in the broader history not only of U.S. civilian international broadcasting but also of U.S. government dissemination of propaganda. This chapter presents the legal provisions that made the BBG firewall. Most significantly, the chapter analyzes how the BBG is different from not only previous entities that governed civilian international broadcasters but also the CPB that governs public broadcasters.

Congress established the BBG within the USIA when the legislature passed the United States International Broadcasting Act of 1994 that President Bill Clinton signed into law.¹³⁴ To serve on the BBG, eight members have to be appointed by the President, and the Senate has to provide advice and to agree to the appointments of the members.¹³⁵ The secretary of state has to serve as an ex-officio member.¹³⁶ One-half of the members of the BBG have to be from one political party, and the other half from the other political party, effectively ensuring that the BBG remains bipartisan.¹³⁷ The director of the USIA has to appoint the chair of the BBG.¹³⁸ All the

¹³³ S. Rep. 102-98 (1991).

¹³⁴ United States International Broadcasting Act § 304.

¹³⁵ *Id.* § 304(b)(1)(A).

¹³⁶ *Id.* § 306 (stating that the secretary of state has to provide foreign policy guidance but not explicitly referring to the appointment of the secretary of state as an ex-officio member).

¹³⁷ *Id.* § 304(b)(B)(3).

¹³⁸ *Id.*

BBG members have to receive compensation, presumably—since the Act does not state this explicitly—except the secretary of state who serves as an ex-officio member.¹³⁹

In passing the United States International Broadcasting Act, Congress inadvertently excluded the VOA Charter.¹⁴⁰ To fix this anomaly, Congress later amended the Act to include the VOA Charter by passing the Foreign Relations Authorization Act of 1994-1995.¹⁴¹ All civilian international broadcasters have to operate in accordance with the VOA Charter.¹⁴² The Act also provided the legal mandate for the establishment of Radio Free Asia (RFA) to broadcast programs to audiences in Asia.¹⁴³ Congress was explicit in saying that RFA was not a federal agency.¹⁴⁴ With the passing of this Act, Congress also established the International Broadcasting Bureau (IBB) under the BBG with the specific functions of governing the broadcast activities of VOA and Radio/TV Marti and providing technical assistance to these broadcasters and to RFE and RL, which Congress also placed under the BBG.¹⁴⁵ The United States International Broadcasting Act had provisions that transferred personnel from the BIB to the USIA, the BBG, or the IBB and repealed the Board for International Broadcasting Act.¹⁴⁶

Four years after passing the United States International Broadcasting Act, Congress passed the Foreign Affairs Agencies Consolidation Act of 1998 that made the BBG independent from the USIA and abolished the USIA but kept the BBG as a part of the executive branch of

¹³⁹ *Id.* § 304(3)(e).

¹⁴⁰ HIEL JR., *supra* note 1, at 355-356.

¹⁴¹ United States International Broadcasting Act §§ 303(b)(1)-(3).

¹⁴² *Id.* §§ 303(a)(1)-b(9), 305(a)(3) (stating that the BBG has to ensure “that United States international broadcasting is conducted in accordance with the standards and principles contained in section 303,” which includes the VOA Charter).

¹⁴³ *Id.* §§ 309(a)1-2.

¹⁴⁴ *Id.* § 309(i).

¹⁴⁵ *Id.* § 307(a) (stating that the IBB established under this section would carry out all nonmilitary international broadcasting except those described in sections 308 and 309: these sections described those nonmilitary international broadcasting services that would be carried out by RFE/RL and RFA respectively, meaning the remaining services under the IBB would be those carried out by VOA and Radio/TV Marti).

¹⁴⁶ *Id.* §§ 310(c), (e).

government.¹⁴⁷ The most important provisions of the Foreign Affairs Agencies Consolidation Act are the provisions that guarantee the professional integrity of the journalists under the BBG, which, because of the consolidation of U.S. civilian international broadcasting as carried out under the United States International Broadcasting Act, includes all civilian international broadcasters.¹⁴⁸

The specific provisions that guarantee the professional independence and integrity of the journalists proscribe the inspector general, the secretary of state, and the Board—and not necessarily members of Congress and other government officials—from interfering in the activities of the broadcasters by stating:

RESPECT FOR JOURNALISTIC INTEGRITY OF BROADCASTERS.-The Inspector General shall respect the journalistic integrity of all the broadcasters covered by this title and may not evaluate the philosophical or political perspectives reflected in the content of broadcasts.¹⁴⁹

PROFESSIONAL INDEPENDENCE OF BROADCASTERS.-The Secretary of State and the Board, in carrying out their functions, shall respect the professional independence and integrity of the International Broadcasting Bureau, its broadcasting services, and the grantees of the Board.¹⁵⁰

This specific wording in the provisions notwithstanding, there can be no doubt that the overall aim of the law as stated in these provisions is to protect the broadcasters from interference from any government officials. In theory, an independent BBG is in a position to act as a firewall and to protect the civilian international broadcasters under the Board from

¹⁴⁷ Foreign Affairs Agencies Consolidation Act sec. 1322(a) §§ 304(a)(1)-(2), sec. 1323(i) § 305(d).

¹⁴⁸ *Id.* §§ 1322(B), 1323(i).

¹⁴⁹ *Id.* sec. 1322 § 304(a)(3)(B).

¹⁵⁰ *Id.* sec. 1323(i) § 305(d).

interference from government officials regarding the content of the programs they broadcast, as was the intention of Congress. Such independence for an entity with the responsibility of overseeing civilian international broadcasters was unheard of in the history of U.S. civilian international broadcasting. Indeed, Congress established boards structured in similar ways to the BBG—with bipartisan board members appointed by the President with the agreement of the Senate—when the legislature established the BIB to govern RFE/RL in 1973 and the Board for Radio Broadcasting to Cuba in 1983 to govern broadcasting to Cuba. The BBG is, nevertheless, significantly different from these previous boards.

Uniqueness of the BBG Firewall

Some lawmakers correctly alluded to Congress having given the BIB the responsibility of protecting the professional independence of RFE/RL and being a firewall.¹⁵¹ In fact, a provision in the Board for International Broadcasting Act that established the BIB did mandate that the BIB respect the professional integrity of the broadcasters under the Board.¹⁵² The legislation did not explicitly proscribe government officials from interfering in the broadcast activities of the broadcasters under the BIB, though. This was different from the way a provision in the Foreign Affairs Agencies Consolidation Act explicitly proscribed government officials from interfering in the broadcast activities of the broadcasters under the BBG.¹⁵³

¹⁵¹ See *The Radio Free China Act of 1992: Hearing on S. 2985, supra* note 129, at 6 (statement of Senator Biden, Member, S. Comm. on Foreign Relations); See Foreign Relations Authorization Act of 1977 § 206; See Board for International Broadcasting Act § 4(9)(b).

¹⁵² Foreign Relations Authorization Act of 1977 § 206; Board for International Broadcasting Act § 9(b).

¹⁵³ Compare Board for International Broadcasting Act § 4(a)(2) (stating simply that the BIB had to evaluate the professional integrity of RFE/RL, but not explicitly barring government officials from interfering with the professional integrity of the broadcasters), and Radio Broadcasting to Cuba Act (stating the various functions of the Board for Radio Broadcasting to Cuba, but not stating that the Board had to protect the professional integrity of the journalists broadcasting to Cuba), with Foreign Affairs Agencies Consolidation Act sec. 1322 § 304(a)(3)(B), sec. 1323(i) § 305(d) (declaring that the inspector general has to respect the journalistic integrity of all the broadcasters and not to evaluate the philosophical or political perspectives reflected in the content of their programs, and that the secretary of state and the members of the BBG, in carrying out their duties, have to respect the professional independence of the broadcasters).

The duties of the secretary of state toward the BIB under the Board for International Broadcasting Act were similar to those of the secretary of state toward the BBG under the Foreign Affairs Agencies Consolidation Act, which were to provide advice on foreign policy matters. The duties of the secretary of state under the Radio Broadcasting to Cuba Act are not quite clear. Based on previously passed laws, such as the Board for International Broadcasting Act, a reasonable assumption would be that the secretary of state had to play a similar role toward the Board for Radio Broadcasting to Cuba that he or she played to the BIB and would later play to the BBG.¹⁵⁴ Another difference between the BIB and the BBG was in the funding of the two entities.

RFE and RL had long operated as semi-private international broadcasters before Congress combined them to create RFE/RL.¹⁵⁵ The government had funded them through the CIA, but they had also accepted funds from private sources since their establishment.¹⁵⁶ When Congress passed the Board for International Broadcasting Act that established the BIB and combined the two broadcasters into RFE/RL, the legislature also included provisions that authorized the BIB to accept funding from private sources for RFE/RL.¹⁵⁷ Congress made no provision authorizing the acceptance of donations from private sources under the law that authorized the existence of the BBG firewall or the one that restricted government officials from exercising editorial control.¹⁵⁸ Thus, although the government through Congress directly funds

¹⁵⁴ Compare Board for International Broadcasting Act § 6 (stating that the secretary of state had to offer foreign policy guidance to the BIB), with Foreign Affairs Agencies Consolidation Act § 1313 (stating that the under secretary of public diplomacy has the responsibility of assisting the secretary of state and the deputy secretary of state in the formation and implementation of U.S. public diplomacy through the BBG); See Radio Broadcasting to Cuba Act §§ 5(a)-(h) (failing to define the role of the secretary of state with respect to the Board).

¹⁵⁵ See, e.g., Radio Free Europe/Radio Liberty, *supra* note 73.

¹⁵⁶ See *id.*

¹⁵⁷ Board for International Broadcasting Act § 7.

¹⁵⁸ Compare Board for International Broadcasting Act § 7 (stating that the BIB had to receive funding from private sources), with United States International Broadcasting Act § 305(a)(6) (stating only that the broadcasters under the BBG have to receive funds appropriated to them by the government).

the broadcast activities of the civilian international broadcasters under the BBG or sponsors them through grants, Congress also expects these broadcasters to operate independent of government editorial control.¹⁵⁹

In comparison with the USIA, the BIB, or the Board for Broadcasting to Cuba, the BBG has oversight over more broadcasters than any agency or board previously authorized to govern the operations of civilian international broadcasters.¹⁶⁰ The BIB had governing authority over only two merged broadcasters—RFE/RL—and the Board for Radio Broadcasting to Cuba, unlike both the BBG and the BIB, had to oversee only radio broadcasting to Cuba.¹⁶¹

The BBG has a vastly wider mandate in that the Board has authority over many more broadcasters besides those that existed during the Cold War.

The events of September 11, 2001, have had a profound effect on U.S. foreign policy, including the conduct of public diplomacy. Through civilian international broadcasting, the U.S. government has attempted to counter extremist Islamic ideology in the Middle East and in the broader Arab and Muslim world.¹⁶² Radio Sawa started to broadcast programs to the Middle East on March 23, 2002. The broadcaster reaches an audience in the Middle East with programs broadcast from Washington, D.C., Dubai in the United Arab Emirates, and other places in the

¹⁵⁹ Foreign Affairs Agencies Consolidation Act §§ sec. 1322 § 304(a)(1)-(3), sec. 1323(i) § 305(d).

¹⁶⁰ *Compare* Board for International Broadcasting Act, *and* Radio Broadcasting to Cuba Act, *with* United States International Broadcasting Act (presenting the authorizations for the establishment of the BIB, the Board for Radio Broadcasting to Cuba, and the BBG, respectively, and the various broadcasters that would be under the Boards).

¹⁶¹ *Compare* Board for International Broadcasting Act §§ 3(a)-4(b) (establishing the BIB as an agency with authority over RFE/RL with duties and responsibilities toward these broadcasters), *and* Radio Broadcasting to Cuba Act §§ 5(a)-(h) (establishing the Board for Radio Broadcasting to Cuba and discussing the composition of the Board), *with* United States International Broadcasting Act §§ 304, 305(a)(1)-(14), 307(a) (consolidating all U.S. civilian international broadcasters; establishing Radio Free Asia; defining the authorities of the BBG to include the following: overseeing the operations of Radio/TV Marti, allocating funds to RFE/RL as described under sections 308 and 309, and overseeing the IBB that itself would oversee all government nonmilitary broadcasting not covered under sections 308 and 309—VOA and Radio/TV Marti are not covered under sections 308 and 309).

¹⁶² *See, e.g.*, Stephen C. Johnson, *Improving U.S. Public Diplomacy Toward the Middle East*, 833 HERITAGE LECTURES 6 (2004).

Middle East.¹⁶³ Alhurra, which is Arabic for “The Free One,” began broadcasting in 2002, as well.¹⁶⁴ Both broadcasters are part of the Middle East Broadcasting Networks, Inc., (MBN), which is also under the BBG.¹⁶⁵

RFE/RL, RFA, Alhurra, and Radio Sawa are by law surrogate services broadcasters. Smaller entities that specialize in broadcasting to a particular region or country, such as Radio Free Afghanistan, also operate under the BBG.¹⁶⁶ Altogether, the programs of BBG broadcasters reach their audiences across the world via shortwave (SW), and the broadcasters relay their programs via frequency modulation (FM) through stations on the continents on which the target audiences for these programs live. Radio/TV Marti broadcasts to Cuba on both SW and amplitude modulation (AM) from Florida, United States.¹⁶⁷ The broadcasters governed by the BBG also disseminate programs via television, and they make use of the Internet and the World Wide Web to disseminate their programs.¹⁶⁸ Altogether, the BBG broadcasters, according to the most recent research estimates, reach an audience of 175 million in over sixty languages on four continents—Africa, Europe, Asia (the Middle East and the Far East), South America.¹⁶⁹ Apparently, the continent of Australia is not a target of these radio or television programs, though Australians could, if they so wished, access the programs on the Web via the Internet.

¹⁶³ Radio Sawa, *About US* (Mar. 12, 2009), <http://www.radiosawa.com/english.aspx>; Alhurra, *Alhurra TV* (Mar. 12, 2009), <http://www.alhurra.com/Sub.aspx?ID=266>.

¹⁶⁴ Alhurra, *supra* note 163.

¹⁶⁵ Broadcasting Board of Governors, *Middle East Broadcasting Networks, Inc.* (Mar. 12, 2009), <http://www.bbg.gov/broadcasters/index.html>; See EDWARD P. DJEREJIAN & WILLIAM MARTIN, DANGER AND OPPORTUNITY: AN AMERICAN AMBASSADOR’S JOURNEY THROUGH THE MIDDLE EAST 245 (2008). See also Susan B. Epstein, *Radio Free Iraq and Radio Free Iran*, in *IRAN: OUTLAW, OUTCAST OR NORMAL COUNTRY?* 49-57 (Albert V. Benliot ed., 2001) (discussing the rather controversial commencement of Radio Free Iraq and Radio Free Iran services through RFE/RL in 1998).

¹⁶⁶ See BROADCASTING BOARD OF GOVERNORS, BROADCASTING BOARD OF GOVERNORS 2002 ANNUAL REPORT 6 (2002), available at <http://www.bbg.gov/reports/annualReports/02anrprt.pdf>.

¹⁶⁷ 2 WOOD, *supra* note 6, at 70-85, 120-129 130-136.

¹⁶⁸ See Broadcasting Board of Governors, *Our Broadcasters* (Dec. 14 2009), <http://www.bbg.gov/broadcasters/index.html>.

¹⁶⁹ See *id.*

As broadcasters under the BBG, all the civilian international broadcasters are subject to the same governing authority. To the extent that the BBG governs them all, they often find themselves operating in a similar fashion. Generalist broadcasters and surrogate broadcasters serve more or less the same function where U.S. public diplomacy through civilian international broadcasting is concerned. As mentioned above, the broadcasters also get technical assistance from the same IBB, which is under the BBG and has immediate legal governing authority over VOA and Radio/TV Marti.¹⁷⁰ Such overlap in the functions of the IBB must only serve to blur further the distinction in the broadcast activities of the generalist broadcasters and those of the surrogate broadcasters.

¹⁷⁰ United States International Broadcasting Act § 307 (stating that the IBB has authority over all broadcasters except those covered under sections 308-309; the broadcasters covered under these sections are all the broadcasters under the BBG except VOA and Radio/TV Marti); *See* BROADCASTING BOARD OF GOVERNORS, *supra* note 166, at 11.

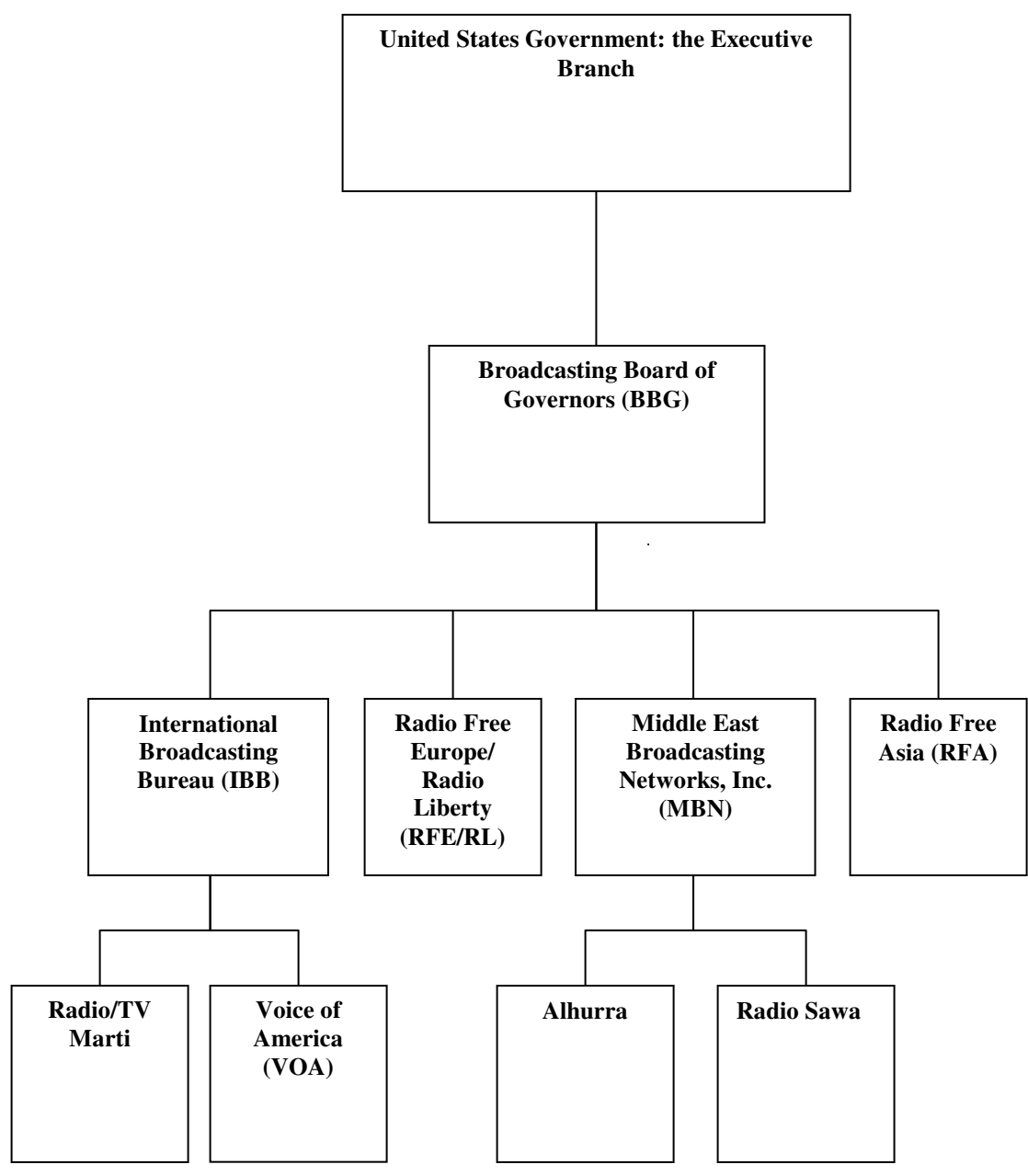


Figure 2.1: Structure of U.S. Civilian International Broadcasters under the BBG

Civilian International Broadcasting and Public Broadcasting

The BBG firewall over civilian international broadcasters is in some ways analogous to the CPB firewall over public broadcasters. During the deliberations on the reorganization of the structure of civilian international broadcasters that led to the establishment of the BBG, lawmakers and policymakers considered the structure of the CPB that oversees public broadcasting and considered placing U.S. civilian international broadcasters under the CPB.¹⁷¹ Although this did not happen, Congress created an entity in the BBG that was very much like the CPB in some ways, but also very different from the CPB in others. This section compares the BBG with the CPB and presents the uniqueness of the BBG in comparison with the CPB. In order to do this, the section starts by presenting a brief history of educational public broadcasting.

A History of Educational Public Broadcasting

Educational public broadcasting started as a private enterprise supported by educational institutions that began experimenting with broadcasting in the early years of the twentieth century.¹⁷² According to one scholar, Radio Station 9XM was the first station to start to broadcast from the University of Wisconsin in 1919. This was also around the time that private international broadcasters began experimenting with international broadcasting. The government did not at the time support educational public broadcasting or private international broadcasting.¹⁷³

¹⁷¹ See *Hearings and Markup on H.R. 2333*, *supra* note 75, 325-348. See also AMY GOODMAN & DAVID GOODMAN, *STATIC: GOVERNMENT LIARS, MEDIA CHEERLEADERS, AND THE PEOPLE WHO FIGHT BACK* 100-101 (2006). The authors showed that Kenneth Tomlison, a former director of the BBG, went on to work for the CPB during the Bush administration and suggested that he ran the CPB like a political and propaganda entity.

¹⁷² See generally S. E. FROST, JR., *EDUCATION'S OWN STATIONS: THE HISTORY OF BROADCAST LICENSES ISSUED TO EDUCATIONAL INSTITUTIONS* (1971). See also John Edward Burke, *An Historical-Analytical Study of the Legislative and Political Origins of the Public Broadcasting Act of 1967* (1979) (unpublished Ph.D dissertation, Ohio State University) (on file with Ohio State University).

¹⁷³ FROST, *supra* note 172, at 117; See generally Redding, *supra* note 44.

Even the Radio Act of 1927 that Congress passed did not include specific provisions for frequencies for educational public broadcasters, nor did the Radio Act of 1934 that Congress passed seven years later.¹⁷⁴ Congress allocated frequencies for educational public radio in 1939 and the FCC reserved 20 frequencies on FM for educational use.¹⁷⁵ In 1952, the FCC reserved channels for educational public television.¹⁷⁶ This allocation of frequencies and channels precipitated the rapid development of noncommercial stations that local governments, private sources, and foundations funded.¹⁷⁷ The first television station began broadcasting in 1953.¹⁷⁸ Funding for these radio and television stations came from private sources and state and local governments, but not necessarily the federal government.¹⁷⁹

Around 1962, the federal government started providing funds to these noncommercial educational stations when Congress passed the Educational Television Broadcasting Facilities Act of 1962 that authorized the secretary of the Department of Health, Education and Welfare (HEW) to distribute funds amounting to \$ 32 million for the construction of noncommercial television facilities over five years. The states had to match the funds the federal government had distributed to them.¹⁸⁰ An inquiry into the state of public television the Carnegie Commission carried out with funding from the Carnegie Corporation from 1964 to 1967 found that public broadcasting was not thriving under the funding system that existed.¹⁸¹

The Carnegie Commission found that the development of educational television depended upon educational broadcasters, but these broadcasters were not getting the funding

¹⁷⁴ See, e.g., *FCC v. League of Women Voters*, 468 U.S. 366 (1984) (discussing the lack of allocation of frequencies for public broadcasters by Congress).

¹⁷⁵ 47 C.F.R. §§ 4.131-133 (1939).

¹⁷⁶ 17 FED. REG. 4054-4059 (1952).

¹⁷⁷ *League of Women Voters*, 468 U.S. at 366.

¹⁷⁸ CARNEGIE COMMISSION REPORT ON EDUCATIONAL TELEVISION, PUBLIC TELEVISION: A PROGRAM FOR ACTION 21 (1967) [hereinafter CARNEGIE COMMISSION REPORT 1967].

¹⁷⁹ See generally FROST, *supra* note 172.

¹⁸⁰ Act of May 1, 1962, Pub. L. No. 87-447, 76 Stat. 64 (codified as amended at 47 U.S.C. §§ 390-395 (1970)).

¹⁸¹ CARNEGIE COMMISSION REPORT 1967, *supra* note 178, at 21.

they needed to live up to their full broadcast potential. Based on the review, the Commission came up with a number of recommendations on how to improve educational television service, and the recommendations of the Commission eventually applied to radio broadcasting, as well. At the time, schools, local governments, and states were still the main funders of educational broadcasting.¹⁸² According to the Commission, critical to improving the state of educational broadcasting was the need for the federal government to become more materially involved. The Commission urged the federal government to offer supplementary funds to these broadcasters beyond the funds they were getting from the private sources and beyond the funds the federal government was giving them for facilities and to create a non-profit corporation to disburse these federal funds.¹⁸³

The Public Broadcasting Act of 1967 allowed Congress to extend grants to noncommercial broadcasters that various states had established and to make funds available for the construction of broadcast facilities and for programming, just as the Commission had recommended.¹⁸⁴ Under the Act, Congress conceived a non-profit, independent body to oversee noncommercial educational broadcasters, also known as public broadcasters. This was the CPB.¹⁸⁵ As originally constituted, the President in consultation with the Senate had authority to appoint the 15 board of directors of the CPB. Only eight of these directors could be from one

¹⁸² *Id.* at 27-29.

¹⁸³ *Id.* at 33-35.

¹⁸⁴ Public Broadcasting Act of 1967, Pub. L. No. 90-129, §§ 101-106, 81 Stat. 365 (1967).

¹⁸⁵ See CARNEGIE COMMISSION REPORT 1967, *supra* note 178, at 3-4 (differentiating between public television, targeting the tens of thousands or millions, and instructional television, targeting students in classrooms). *But see* Public Broadcasting Act § 396(6)(b); *Cnty. Serv. Broad. v. FCC*, 593 F.2d 1102, 1105 n. 1 (D.C. Cir. 1978) (showing that the terms instructional programming, educational broadcasting, and public broadcasting are used interchangeably).

party.¹⁸⁶ In 1981, Congress amended the structure of the CPB to provide for the appointment of ten directors of the Board.¹⁸⁷

Congress gave the Corporation the legal mandate to develop educational broadcasting.¹⁸⁸ The legislature authorized the Corporation to develop a system to distribute television programs and radio programs.¹⁸⁹ This provision in the Act was the legal mandate by which the CPB later organized the Public Broadcasting System (PBS) in 1969. PBS is a private, nonprofit corporation that connects noncommercial educational television stations. A board of directors that the member stations elect runs the PBS.

National Public Radio (NPR) is, similar to PBS, a nonprofit corporation that connects noncommercial educational radio stations. The CPB organized the NPR in 1970 using authority under this provision.¹⁹⁰ Besides NPR, Public Radio International (PRI) is another non-profit corporation that produces and distributes programs for public consumption. PRI came into being in 1983, initially as American Public Radio. The network has headquarters in Minneapolis, Minnesota and works with the BBC, local stations, and independent producers. As with the NPR, PRI receives funds from station fees, corporate sources, individuals, and foundations. Stations can affiliate themselves with PRI and be members of the NPR. NPR and PRI are the major public radio networks.¹⁹¹

The Public Broadcasting Act of 1967 also allowed the CPB to obtain funds from private, state, and federal sources, and to receive some funds from Congress, as well.¹⁹² The Corporation

¹⁸⁶ *Id.* §§ 396(g)(2)(A)-(C).

¹⁸⁷ Public Broadcasting Amendments Act of 1981, Pub. L. No. 97-35, § 1225(a), 95 Stat. 725 (codified as amended at 47 U.S.C § 396(c) (2006)).

¹⁸⁸ Public Broadcasting Act § 396(g)(1)(A).

¹⁸⁹ Public Broadcasting Act §§ 396(g)(1)(B)-(C).

¹⁹⁰ *League of Women Voters*, 468 U.S. at 370 n. 5.

¹⁹¹ See PRI Public Radio International, *About PRI* (Dec. 24, 2009), <http://www.pri.org/about-pri.html>.

¹⁹² Public Broadcasting Act § 396(2)(A); See John Siemietkowski, *To Infinity and Beyond: Expansion of the Army's Commercial Sponsorship Program*, ARMY J. 24, 38 (2000) (showing that the CPB holds telethons to raise funds).

could disburse funds as administrative and interconnection operating costs or as money in the form of grants and could disburse funds as grants to producers to produce independent programming for radio and television programming. The Corporation could also distribute funds in the form of grants to certain noncommercial educational broadcast stations for them to use to produce and to purchase educational radio and television programs.¹⁹³ In the 1967 Act that established the CPB, Congress also took steps to ensure that the broadcasters that would receive funds from the CPB did not come under editorial control from the federal government over the content of their programs.

The BBG Firewall and the CPB Firewall

The CPB was itself prohibited by Congress from owning any television or radio stations and had to ensure the freedom of the local stations.¹⁹⁴ The CPB could not support candidates for political office.¹⁹⁵ Broadcasters under the CPB operate under licenses provided by the FCC.¹⁹⁶ Congress gave only the licensee stations responsibility under the Act for making decisions on content.¹⁹⁷ Lawmakers were unequivocal in saying that the fact that the government was going to be partly responsible for funding public broadcasters did not mean the government had to influence the programming content of the broadcasters under the CPB, nor could the CPB itself exercise editorial control over the local stations.¹⁹⁸ In an amendment to the Public Broadcasting Act in 1978, Congress explicitly stated that federal agencies, federal officers, and employees should not supervise the CPB or the stations under the CPB.¹⁹⁹

¹⁹³ Public Broadcasting Act § 396(2)(B).

¹⁹⁴ *Id.* § 396(g)(3).

¹⁹⁵ *Id.* § 396(f)(3).

¹⁹⁶ *Id.* § 103(3).

¹⁹⁷ *Id.* § 396(g)(1)(D).

¹⁹⁸ S. REP. 90-222, at 4 (1967); H. R. REP. 90-572, at 15 (1967).

¹⁹⁹ Public Telecommunications Financing Act of 1978, Pub. L. No. 95-567, Title II, § 309, 92 Stat. 2420 (codified as amended at 47 U.S.C 398 (2006)).

Thus, from the very beginning when Congress established public broadcasting, the legislature was forthright and unequivocal about the need to keep the public broadcasters professionally independent from the government and to forestall government officials from making decisions on the content of the programs of public broadcasters. Congress has only recently given civilian international broadcasters professional independence through the BBG.²⁰⁰ This is a significant difference between the two entities. The CPB and public broadcasters have a longer history of independence—since 1967—than the BBG and civilian international broadcasters have.

Although Congress established both the CPB and the BBG to govern domestic and international broadcasters respectively and to protect the broadcasters under the two respective Boards from editorial interference, the CPB is also different from the BBG in that the CPB receives funds from both private sources and from the government whereas the BBG receives only government funds.²⁰¹ (The funding of the CPB is akin to the funding the BIB that governed the RFE/RL received before the government disbanded the Board—from both public and private sources.)²⁰²

During the Nixon Presidency, the CPB came under considerable political duress during the annual process of getting CPB programs authorized in Congress.²⁰³ To prevent this from happening again, Congress in 1975 established a system that authorized CPB programs for three

²⁰⁰ See *League of Women Voters*, 468 U.S. at 364; United States International Broadcasting Act § 304; See Foreign Agencies Consolidation Act sec. 1322 § 304(a)(3)(B), sec.1323(i) § 305(d) (showing that Congress gave civilian international broadcasters complete professional independence only in 1998).

²⁰¹ Public Broadcasting Act § 396(2)(A); Public Broadcasting Financing Act of 1975, Pub. L. No. 94-192, § 5, 89 Stat. 1100 (codified as amended at 47 U.S.C. §§ 397(9)(A)(i)(ii)-(B) (2006)) (discussing non-federal/private financial support for the CPB).

²⁰² See, e.g., Board for International Broadcasting Act § 7.

²⁰³ See *League of Women Voters*, 468 U.S. at 392 n. 21 (describing the political pressure during the authorization process that public broadcasters came under during the Nixon administration); See Steven D. Zansberg, “*Objectivity and Balance*” in *Public Broadcasting*, 12 YALE L. & POL’Y REV. 184, 196-197 (1994).

years two years in advance.²⁰⁴ Attempts by the government to use the provision of funds for the CPB as a way to control local stations affiliated with the Board have come under successful challenge in the courts. Specifically, local stations challenged the constitutionality of section 399 of the Public Broadcasting Act of 1967 that barred them from editorializing if they wanted to continue receiving government funds and compelled them to make recordings of politically significant programs.²⁰⁵

The Supreme Court and the U.S. Court of Appeals for the District of Columbia Circuit ruled in two separate cases that section 399 was unconstitutional and argued that the government was not the only source of funding for the local stations and had no authority to compel the stations not to editorialize or to record politically significant programs. More specifically, the Court showed that most funding for the stations came from private sources and not from the government through the CPB.²⁰⁶ Congress can only appropriate to the CPB in any given year forty percent of all the funds private sources gave to public broadcasting two years before.²⁰⁷ Surprisingly, even though the BBG and the broadcasters under the BBG, unlike those under the CPB, have the legal authority to receive funds exclusively from the government, Congress passed a law that prohibits government officials from exercising editorial control over the broadcasters under the BBG.²⁰⁸ These cases are examined in detail in the following chapter.

²⁰⁴ See Zansberg, *supra* note 203, at 196-197.

²⁰⁵ Public Broadcasting Act §§ 399(a)-(b).

²⁰⁶ *League of Women Voters*, 468 U.S. at 400; *Cnty. Serv. Broad.*, 593 F.2d at 1119-1120.

²⁰⁷ 47 U.S.C. § 396(k)(B)(3) (2006).

²⁰⁸ Compare Public Broadcasting Financing Act § 5 (describing the federal and non-federal/private financial support for public broadcasting), with Foreign Affairs Agencies Consolidation Act §§ 305(b)1-2 (describing the procedure by which federal funds should be allocated to the BBG and its broadcasters and making no mention of any non-federal/private financial support that should go to the broadcasters). *But see* Palmer & Carter, *supra* note 25, at 24 n. 42 (showing that the CPB receives revenue from only Congress and that the CPB grants to public broadcasters amount to only fourteen percent of the funds that go to the broadcasters, but the broadcasters receive donations from private sources.).

Here is the uniqueness of the independence that Congress has given the broadcasters under the BBG: Congress has legalized the funding of a communicative program—civilian international broadcasting—but the legislature has legally mandated that no government officials should exercise editorial control over the communicative program. This independence is even more remarkable when considered in light of the fact that the broadcasters under the BBG, unlike those under the CPB, have the responsibility of broadcasting to audiences outside the United States as a way of advancing the foreign policy objectives of the United States. One can understand the need Congress has to ensure that the domestic US audience is not subjected to government propaganda through public broadcasters supported by the CPB, given the historic distaste for propaganda among Americans.²⁰⁹

Conversely, the expectation would be that the government would insist on exercising significant editorial control over the broadcasters under the BBG—allowing lawmakers or at least policy makers to be more intimately involved in deciding the programs disseminated abroad in the name of U.S. public diplomacy. The firewall function of the BBG is contrary to this expectation. Indeed, the establishment of the BBG firewall to protect the professional independence of civilian international broadcasters is perhaps more than what is required legally in that the broadcasters under the BBG disseminate government speech. Legal scholars of government speech showed that the Supreme Court has recognized the absolute right of the government to control its own speech.²¹⁰ The following chapter examines whether the government has a legal right to control the content of the programs of civilian international broadcasters.

²⁰⁹ See EDWARDS III, WATTENBERG & LINEBERRY, *supra* note 28, at 26-63.

²¹⁰ See generally Palmer & Carter, *supra* note 25.

CHAPTER FOUR

IS GOVERNMENT PROPAGANDA GOVERNMENT SPEECH?

Was the government under a legal obligation to protect the professional independence of civilian international broadcasters by establishing the BBG firewall? Answering yes or no to this question largely depends on whether the programs of civilian international broadcasters are government speech. If the programs are government speech, then the government had no legal obligation to establish the BBG firewall to protect the professional independence of the broadcasters because the First Amendment does not apply to government speech.²¹¹ In other words, whereas other media that broadcast internationally, for instance the Cable News Network (CNN), can claim a First Amendment right not to broadcast whatever content the government wants them to broadcast, if civilian international broadcasters disseminate government speech, they cannot claim a similar First Amendment right. They have to broadcast whatever programs the government tells them to broadcast, which makes the BBG firewall over the broadcasters unnecessary. This chapter considers the legal status of the programs broadcast by the broadcasters under the BBG.

Legal scholars have not concerned themselves with examining how much editorial control the government may exercise over propaganda materials going outside the United States, including the programs broadcast by civilian international broadcasters. There is not much of a basis in the literature upon which to draw conclusions about the legal status of the programs broadcast by civilian international broadcasters. To determine the legal status of these programs, the chapter examines the way the Supreme Court and lower courts have ruled in cases involving government –funded speech and the way the Supreme Court has articulated the government-speech doctrine. Although the cases in which the Court applied the government-speech doctrine

²¹¹ See, e.g., *Rust v. Sullivan*, 500 U.S. 173 (1991).

do not involve civilian international broadcasting, the rulings of the Court in these cases offer some insight into the legal status of the programs. The chapter concludes by showing how the government-speech doctrine applies to these programs. Before doing this, the chapter very briefly examines the work of legal scholars on government speech.

Free Speech and the Dangers of Government Speech in a Free Society

The philosophical ideals that were the foundation for the freedom of speech guaranteed to Americans by the First Amendment derive from the writings of English philosophers—from the same country from which pilgrims and puritans emigrated to avoid government persecution for their religious beliefs. These philosophers argued that freedom of speech is paramount to the exercising of various other freedoms and is essential to the proper functioning of society.²¹² After all, even the voice of one individual is worth listening to if that individual is right and the majority of society is wrong.²¹³

Thomas Emerson showed that free speech was important for individual self-fulfillment: Individuals needed to express themselves, artistically, politically, spiritually and in many other ways in any society.²¹⁴ Only by the expression of various opinions could any society come to understand what is true.²¹⁵ John Milton argued that the truth always triumphs over falsehood. In contrast, John Mill argued that the truth was not infallible but was dependent on people speaking freely and often so that when a receptive audience came around the audience accepts the truth.²¹⁶ Free speech allows individuals to express dissent to their government through peaceable means

²¹² See generally JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* (C. B. Macpherson ed., Hackett Publishing Co. 1980) (1644); See generally JOHN MILTON, *AREOPAGITICA: AND OTHER TRACTS* (1900).

²¹³ See generally JOHN MILL, *ON LIBERTY* (1905).

²¹⁴ See, e.g., THOMAS EMERSON, *TOWARD a GENERAL THEORY OF THE FIRST AMENDMENT* 4-7 (1963).

²¹⁵ See, e.g., EMERSON, *supra* note 214, at 7-8; See generally MILTON, *supra* note 212.

²¹⁶ See generally MILTON, *supra* note 212. But see MILL, *supra* note 213, at 36-37.

and allows changes in government through the same peaceable means not through revolutions.²¹⁷ On occasion, the government itself may have reason to speak in the marketplace of ideas.

Scholars recognized that the maintenance of freedom of speech not to mention the well functioning of society was dependent on the ability of the government to speak in the marketplace of ideas.²¹⁸ The government could speak in the marketplace by enacting various laws and regulating the marketplace. Unfortunately, the danger was that the government could also indoctrinate the public. The dangers of government speech arose from the advantages that the government speaking in the marketplace of ideas had over other speakers: The government had unlimited public funds with which to speak in the marketplace, and the government had the ability to make laws that affected the structure of the marketplace itself.²¹⁹

One danger was that the government could speak so loudly as to drown out other voices in the marketplace. Ideally, the marketplace of ideas should operate as a place where various ideas are proposed and accepted or rejected depending on their validity. Unfortunately, in the event that the government was speaking loudly in the marketplace using the resources available to the government, other less able speakers would go unheard. The danger of the government indoctrinating the public rose exponentially when the audience was captive. In speaking to such a captive audience, the government could violate the right of an audience not to subject itself to government speech, more so if the speech was speech with which the audience did not agree.²²⁰ In this way, the government could potentially injure people by speaking in the marketplace of

²¹⁷ See, e.g., EMERSON, *supra* note 214, at 8-15; See generally ALEXANDER MEIKLEJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT (1948); See also Alexander Micklejohn, *The First Amendment is an Absolute* 1961 SUP. CT. REV. 245, 245-266.

²¹⁸ See, e.g., YUDOF, *supra* note 20, at 3-19.

²¹⁹ See, e.g., YUDOF, *supra* note 20, at 52-56.

²²⁰ See Steven Shiffrin, *Government Speech* 27 UCLA. REV. 565, 606 (1980).

ideas. Another related potential danger was that the government could indoctrinate the masses and create false majorities and false support for government policies.²²¹

History has shown that the government has attempted to do this before. Government dissemination of propaganda through the CPI during World War I and the OWI during World War II were attempts to do exactly this—to build support for a policy of government involvement in the Wars. This was symptomatic of the government speaking louder than other voices in the marketplace and dominating everyone else from speaking and in this way violating the free speech rights of citizens and effectively affecting the marketplace of ideas itself.

One of the more seminal studies on government speech is the book by Mark Yudof entitled *When Government Speaks: Politics, Law, and Government Expression in America* in which the scholar examined the ability of the government to speak, the legal issues surrounding the ability of the government to speak, and the possible effects of government speech on society.²²² One small theme explored by Mark Yudof was the legitimacy of the propaganda activities of the CPI. In focusing, on the dangers of government speech inside the US, such as the legitimacy of the dissemination of government propaganda through the CPI and the OWI, scholars like Mark Yudof have examined government speech inside the United States with a keen awareness that Americans have a general fear of all forms of government propaganda.

Mark Yudof asserted that the government propaganda disseminated through the CPI during World War I was in his words quite “atypical barring the exigencies of war.”²²³ He seemed to suggest that such government propaganda would be completely unacceptable during

²²¹ See YUDOF, *supra* note 20, at 52-56; See Richard Delgado, *The Article of the Arms Race: Should the People Limit Government Speech* 64 B.U.L REV. 961, 990-992 (1985).

²²² See generally YUDOF, *supra* note 20.

²²³ *Id.* at 65.

peacetime, but the government had no choice but to disseminate propaganda during wartime.²²⁴ He also seemed to leave open the question of the legitimacy of such propaganda by suggesting that one could argue that the propaganda was in fact “illegitimate.”²²⁵ With respect to the effect of CPI propaganda during World War I on the American public, the scholar said the propaganda had a drastic effect on the public discourse during World War I because while the government disseminated propaganda extensively the government also passed the espionage acts that prohibited the public from criticizing the government.²²⁶ Another important study in the literature on government speech is Stephen Shiffrin’s article entitled, quite simply, *Government Speech*.²²⁷

Stephen Shiffrin showed that the government had a vast array of ways through which to speak, including for example, teachers in public education, publication of legislative documents, and subsidizing art and other forms of communication.²²⁸ On account of the fact that the government could speak in so many ways and in so many different circumstances, the scholar contended that one theory for the way in which the government should speak was not enough. Rather, the scholar proposed an “eclectic model” for assessing the legal issues pertaining to the various ways in which the government could speak.²²⁹

Another scholar, Robert D. Kamenshine also contributed significantly to the literature on government speech. He argued that the First Amendment has an implied political establishment clause that restricts the government from speaking on political issues because such speech could

²²⁴ *Id.*

²²⁵ *Id.* at 66.

²²⁶ *Id.* at 62-63.

²²⁷ See Shiffrin, *supra* note 220, at 565-655.

²²⁸ See *id.* at 568-569.

²²⁹ See *id.* at 606-617.

pose a threat to public debate.²³⁰ Government speaking in the marketplace of ideas was contrary to the Constitution as the founding fathers originally framed the document.²³¹ Overwhelmingly, these legal scholars, luminaries in their field, have acknowledged the necessity of government speech but also recognized the dangers of such speech. They have recognized that by controlling the content of speech the government can communicate its own message to the public even when the message misinforms or indoctrinates the public, as Yudof contends was the case with the CPI or the OWI.²³²

Absent from these studies is any meaningful examination of the way the government may speak outside the United States. Perhaps because of the great interest in limiting government restrictions on free speech and the reflexive fear of government propaganda that is prevalent in American society, the legal scholars who conducted these studies have obsessed over government speech inside the United States and not government speech directed outside the United States. Even Timothy A. Gallimore's study on U.S. international broadcasting and government speech focused on the ban on the domestic dissemination of USIA materials and not the broadcasts of civilian international broadcasters abroad.²³³ This study focuses on the legal status of the programs of civilian international broadcasters going outside the United States. The study applies the government-speech doctrine to analyze the legal status of these programs.

²³⁰ E.g., Robert D. Kamenshine, *The First Amendment's Implied Political Establishment Clause*, 67 CALIF. L. REV. 1104, 1104-1153 (1979).

²³¹ *See id.*

²³² YUDOF, *supra* note 20, at 62-63.

²³³ *See generally* Timothy A. Gallimore, *Radio Marti: A Study of US International Broadcasting Policy and Government Speech in the Marketplace of Ideas* (1992) (unpublished Ph.D Dissertation, Indiana University) (on file with Indiana University).

The Government-Speech Doctrine

Generally, the Supreme Court has ruled that the government can fund and control the content of speech that communicates a government message without violating the First Amendment—this, in the most basic sense, is the government-speech doctrine. The Supreme Court has articulated and has restated this doctrine, in so many words, in a number of cases on government speech. In these cases, the Court has addressed a number of legal questions. These include the following: Whether the government can adopt private speech as government speech, whether the government can use taxpayer money to fund government speech, and whether the government can control the content of speech the government funds. This last legal question in particular has implications on the extent to which the government can control the programs of civilian international broadcasters because the government funds civilian international broadcasters.

This section also examines court rulings in cases involving government restrictions on government-subsidized speech, government restrictions on public broadcasters, and public restrictions on public broadcasters and considers how the courts applied the unconstitutional doctrines in some of these cases. With respect to private speech, the unconstitutional conditions doctrine essentially asserts that the government may not apply conditions that are unconstitutional to the funding of private speech. The purpose of examining these cases is to show when the courts have said the government-speech doctrine does not apply and have instead applied the unconstitutional conditions doctrine. In doing this, the goal is to consider even more conclusively whether the programs of civilian international broadcasters are government speech.

The Supreme Court applied the government-speech doctrine recently in *Pleasant Grove City v. Summum* when the Court ruled that the placement of a monument in a public park was a

form of government speech. The petitioner, Pleasant Grove City of Utah, asked the Court to rule on whether the petitioner's refusal to erect a religious monument for Summum, the respondent in the case, violated the First Amendment right of Summum in light of the fact that the City had previously erected another religious monument—a Ten Commandments monument—at the park.²³⁴ Pleasant Grove City had previously accepted to host a number of monuments at Pioneer Park, a 2.5-acre public park in the city, and one of these monuments was a Ten Commandments monument donated by the Fraternal Order of Eagles in 1971. In 2003, Summum, a religious organization based in Salt Lake City, Utah, twice wrote a letter to the City asking to erect a monument that would present the “Seven Aphorisms of Summum” and “would be similar in size and nature to the Ten Commandments monument.” The City denied the request to display the monument at the park, citing the fact that the City preferred to host those monuments that had historical connections to the City or were from associations that had a history of involvement with the City. In 2004, the City put the resolution on the books.²³⁵

Summum tried and failed once again in 2005 to get the City to allow the erection of the monument. The religious organization sought judicial remedy in the district court claiming that the City violated the First Amendment by allowing the erection of the Ten Commandments monument but refusing to allow the erection of the Summum monument. The district court initially denied a request for an injunction, but a panel of the U.S. Court of Appeals for the Tenth Circuit later reversed the decision and cited a previous ruling in which the court found the Ten Commandment monument to be private speech and not government speech. In ruling, the Tenth Circuit pointed out that public parks traditionally were public forums in which the government could not deny Summum the right to erect the Seven Aphorisms Monument unless the

²³⁴ Pleasant Grove City v. Summum, 129 S. Ct. 1125, 1125 (2009).

²³⁵ *Id.* at 1129-1130.

government had a compelling reason for doing this that could not be served by a restriction that was narrowly tailored. Later, the court refused the City a rehearing, but the Supreme Court granted certiorari and ruled in favor of the City.²³⁶

The Supreme Court asserted that the government-speech doctrine applied in the case because when any city allowed the erection of monuments on public parks using private funds such monuments became government speech. Traditionally, the Court asserted, monuments financed with government money on public parks were considered government speech, and the Court said the same applied to monuments financed with private funds, which also became government speech by virtue of the fact that they were on public parks because the government allowed them. The Court contended that the cities had discretion in deciding monuments to accept or to deny for erection on these parks and effectively engaged in government speech by deciding to accept or to refuse the erection of a monument. The Court said that though the government assumed the role of speaking through the monuments displayed on public parks the acceptance of a monument by a City did not mean the acceptance by the City of the message the donor had on the monument. Specifically, the Court was unequivocal in saying that government speech had to take into account the Establishment Clause that bars the government from establishing a place of religion.²³⁷

A few years earlier, the Court had ruled in *Johanns v. Livestock Marketing Ass'n* on whether the government could use public funds for government speech. *Johanns* was a case that involved a challenge to a federal program carried out under the Beef Promotion and Research Act of 1985. The secretary of Agriculture had authority to impose a \$1-per-head assessment (checkoff) on all sales or imports of cattle and imported beef products. The money from this

²³⁶ *Id.* at 1128-1135.

²³⁷ *Id.* at 1129-1131.

assessment was used to fund beef related programs and the promotion of beef-related projects. In the case of promotion of beef-related projects, the secretary of Agriculture was responsible for the content of the communication. The respondents in the case before the Supreme Court were two associations whose members collected and paid the checkoff and several individuals who raised and sold cattle subject to the checkoff and had earlier challenged, in the federal district court, the use of money raised from the checkoff to send communications supportive of the beef program to beef producers. The petitioners were a state beef producers association and two individual producers who supported the beef program.²³⁸

The federal district court had earlier granted the respondents a temporary injunction against the use of money raised from the checkoff to support the beef program. While the case was still pending in the district court, the Supreme Court ruled in a different case, *United States v. United Foods, Inc.*, that the use of money raised from a checkoff for generic mushroom advertising violated the First Amendment.²³⁹ The respondents in *Johanns* before the district court, judging that their case was similar to *United Foods*, amended their case to claim that the use of a checkoff to support the beef program violated the First Amendment. The federal district court ruled for the respondents and said that the beef checkoff compelled them to support speech they opposed.

The court barred any further collection of the checkoff, even from those beef producers who supported the beef program, and the court made permanent its earlier temporary injunction against “producer communications” praising the beef program or seeking to influence governmental policy. Later, the U.S. Court of Appeals for the Eighth Circuit reversed the ruling of the district court by acknowledging, unlike the district court, that the challenged advertising

²³⁸ *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 550 (2005).

²³⁹ *United States v. United Foods, Inc.*, 533 U.S. 405, 419 (2001).

was government speech. However, the Eighth Circuit also held that government speech status was relevant only to First Amendment challenges to its compelled funding. “Compelled funding, it held, may violate the First Amendment even if the speech in question is the government’s.”²⁴⁰ Thus, the question before the Supreme Court in the case from the Eighth Circuit was whether the government-compelled subsidy of the government’s own speech violated the First Amendment.

First, the Court affirmed an earlier precedent, set in *West Virginia Board of Education v. Barnette* that outright compulsion of speech, such as a requirement to recite the pledge of allegiance while saluting the flag was illegal because it compelled speech from private speakers. According to the Court in *Barnette*, the First Amendment does not permit authorities to compel anyone to utter speech with which he or she does not agree for to do so “invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”²⁴¹ Indeed, the reasoning of the Court in *Barnette* extended to cases in which an individual is compelled not to utter but to support speech with which the individual does not agree. This too, the Court found disagreeable under the First Amendment to the Constitution in at least two cases—*Keller v. State Bar of California* and *Abood v. Detroit Board of Education*.²⁴²

In *Johanns*, the Court also said that the ruling in *United Foods* that the government compelling individuals to support private speech in the form of mushroom advertising violated the First Amendment had a basis in the precedents set in *Barnette* and *Keller*. The Court in *United Foods*, *Keller*, *Abood*, and *Barnette* ruled that the government could not compel the

²⁴⁰ *Johanns*, 544 U.S. at 557.

²⁴¹ *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

²⁴² *See generally* *Keller v. State Bar of Cal.*, 496 U.S. 1, 1-17 (1990) (holding that the California State Bar violated the First Amendment when the Bar used compulsory fees to finance political and ideological activities with which petitioners disagreed); *See generally* *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 209-264 (1977) (holding that the state violated the First Amendment by compelling teachers to contribute to ideological activities with which they did not agree as a condition for their employment).

subsidization of speech that was private speech and not that of the government.²⁴³ On the other hand, the Court in *Johanns* reaffirmed its precedent that government compelling private citizens to subsidize its own speech “is of course perfectly constitutional, as every taxpayer must attest.”²⁴⁴ The Court cited its earlier opinion in *Board of Regents of Univ. of Wis. System v. Southworth*:

The government, as a general rule, may support valid programs and policies by taxes or other exactions binding on protesting parties. Within this broader principle it seems inevitable that funds raised by the government will be spent for speech and other expression to advocate and defend its own policies.²⁴⁵

The Court in *Johanns* supported the contention that the said speech in the beef program was government speech by showing that the secretary of Agriculture and the federal government were actively involved in the creation of the communication in the program. The Court remarked that the government controlled the content of the materials used to promote the beef products. Congress directed the way to carry out a promotional campaign that was government speech. In *Johanns*, the Supreme Court ruled that citizens could not claim a First Amendment right not to fund government speech and compelled private funding of government speech did not violate the First Amendment.

Concerning this study on the BBG, the reasoning of the Court in *Johanns* has applicable implications on the First Amendment legality of using taxpayer money to fund these programs. One could reasonably conclude that based on the reasoning of the Court in *Johanns*, using public funds to support the public diplomacy programs of the BBG broadcasters is, as Justice Scalia

²⁴³ *United Foods*, 533 U.S. at 405; *Keller*, 496 U.S. at 1-4; *Abood*, 431 U.S. at 209-211; *Barnette*, 319 U.S. at 624.

²⁴⁴ *Johanns*, 544 U.S. at 559.

²⁴⁵ *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229, 230 (2000).

remarked in *Johanns*, “perfectly constitutional.”²⁴⁶ The Court recognized that the government had broad latitude to control the content of the communicative programs that it funds—as in *Rust v. Sullivan*.

According to section 1008 of the Public Health Services Act of 1944, no part of the funds under Title X of the Act were to be used to support programs that promoted abortion as a method of family planning.²⁴⁷ Based on this section, the secretary of Health and Human Services in 1988 issued regulations prohibiting Title X projects from using funds under the Title to counsel patients about abortion as a means for family planning. The secretary required such projects to be objective by ensuring that they were independent from prohibited abortion activities by maintaining separate establishments, using different personnel, and keeping separate accounting records.

Doctors and grantees of Title X funds sought judicial remedy before the enactment of the new regulations, claiming that the regulations were a violation of their First and Fifth Amendment rights. The Supreme Court ruled in favor of the respondent in *Rust*, saying the government could set the parameters of government-funded programs and that the setting of such parameters and restrictions did not violate the First Amendment as the government could define the way those speaking on behalf of the government spoke government speech. In doing this, the Court said that the wording of section 1008 was ambiguous enough, meaning that the secretary of Health and Human Resources had significant authority to interpret the section. The Court said that since the legislative history of the law under which Congress enacted section 1008 was

²⁴⁶ *Johanns*, 544 U.S. at 559.

²⁴⁷ *Rust*, 500 U.S. at 173.

ambiguous, the Court had to defer to the expertise of the secretary to determine how to interpret the statute.²⁴⁸

In this way, the Court affirmed that when the government funded a communicative program and speech that was a government message the government had a right to control the content of such speech. Restrictions the government imposed on the doctors were constitutionally defensible and did not violate the First Amendment to the extent that the doctors were talking to patients on behalf of the government: The government funded their speech as part of a government communicative program whose scope and applicable restrictions the government had every legal right to decide. Indeed the Court went so far as to say the government could make a value judgment not to support abortion. The government set the broad parameters of the program under which the doctors operated, and the secretary of Health had sufficient latitude in interpreting the specifics of the program within these broad parameters.

As in the ruling of the Court in *Johanns*, the ruling of the Court in *Rust* was based on an examination of the legislative intent of Congress in passing the law that authorized the communicative program. The Court asserted that Congress was clearly intent on keeping “Title X funds separate and distinct from abortion-related activities.”²⁴⁹ By looking at the legislative history, the Court concluded that the intent of the legislature was to have a communicative program that did not include information about abortion. The restriction on doctors not to talk about abortion with patients did not violate the First Amendment because the restriction was clearly in accordance with the parameters of the law as Congress had intended.²⁵⁰

Certainly, the Supreme Court ruled in *Johanns* that the federal government could compel public funding for its own speech and programs without being in violation of the First

²⁴⁸ *Id.* at 187.

²⁴⁹ *Id.* at 190.

²⁵⁰ *See id.* at 173-225.

Amendment and may control the content of such speech.²⁵¹ With equal certainty, the Court in *Rust* granted the government sufficient latitude to determine the content of the speech in programs that the government funds.²⁵² What emerges from the Court rulings in *Johanns* and *Rust* is a government-speech doctrine that effectively leaves the government unbound in what the government can say. The government can use taxpayer funds to create a communicative program whose content the government can control, and the government can restrict those who speak in the name of the government to speak in accordance with prescribed parameters—all this the government can do without violating the First Amendment. Indeed, the government can even incorporate privately funded speech as government speech, as in *Summum*, or use private funds to speak, as in *Johanns*.²⁵³

Allen W. Palmer and Edward L. Carter agreed that the Supreme Court had given the government almost uninhibited room to speak under the government-speech doctrine.²⁵⁴ They examined cases in which the Court articulated the government-speech doctrine—including *Rust v. Sullivan*, *Legal Services Corp. v. Velasquez*, and *Johanns v. Livestock Marketing Ass'n*. In their examination, they identified three problems with the government-speech doctrine as defined by the Supreme Court.

For one thing, they contended that Court rulings in these cases were *dicta* and not binding precedent. This presented legal practitioners with the problem of trying to decipher Court precedent from *dicta*, but, as the scholars noted, the Court did indicate the possibility of setting precedent in the future.²⁵⁵ According to the scholars, a second problem with the government-speech doctrine was that the Court failed to define government speech. For instance, the Court

²⁵¹ *Johanns*, 544 U.S. at 559.

²⁵² *Rust*, 500 U.S. at 187.

²⁵³ *Id.*

²⁵⁴ See Palmer & Carter, *supra* note 25, at 22-26.

²⁵⁵ *Id.* at 23.

used different definitional standards in ruling in *Rust* and later in *Velasquez*. In *Rust*, Congress provided funds for doctors to provide advice to patients but prohibited them from talking about abortion to patients; the Court upheld this prohibition because the doctors were engaging in what the Court designated as government speech whose content the government could control.²⁵⁶ In *Velasquez*, Congress provided lawyers funds to represent indigent defendants but proscribed them from using the funds to challenge existing welfare law; the Court in *Velasquez* held that the lawyers' speech was not government speech and the prohibition against challenging existing welfare law was unconstitutional.²⁵⁷

The scholars argued that the third problem with the government-speech doctrine was that the Court did not draw limits on the application of the doctrine. They said that in some cases the Court suggested that no constitutional or statutory limit existed on the right of the government to speak, with the only possible limit being a change in government speech brought about by electing new government officials if the previous officials spoke in a way that annoyed the electorate.²⁵⁸ In *Johanns*, the Court articulated perhaps in the clearest possible way yet that government speech is not susceptible to a First Amendment challenge because the speech is that of the government.

They showed that the problem was determining how the government could speak and leave room for non-governmental speakers in the marketplace of ideas. The argument the scholars made was that the problem with such a broad declaration was that no limits existed on the extent to which the government could speak, and this was very consequential for the extent to which the government could disseminate propaganda.²⁵⁹ They showed that the Supreme Court

²⁵⁶ *Id.* at 23.

²⁵⁷ *Id.* at 24.

²⁵⁸ *Id.* at 25.

²⁵⁹ *Id.* at 25.

government-speech doctrine essentially gave the government unlimited legal authority to disseminate propaganda and to control the content of such propaganda, as well. Here too, these scholars seemed more concerned with the government propaganda inside the United States and not government propaganda disseminated abroad. Although the Supreme Court has recognized that the government can fund and control the content of its own speech, the courts have distinguished between government funding of speech that communicates a government message and government funding of private speech. They have ruled against the government attaching unconstitutional conditions to the funding of private speech.

The Unconstitutional Conditions Doctrine

Applying the unconditional conditions doctrine in *Brooklyn Institute of Arts and Sciences v. City of New York*, the federal court for the eighth district said that the withholding of a subsidy that the City had provided to an institution for 100 years because the institution refused to cancel an exhibit whose content New York City officials disliked was a violation of the First Amendment.²⁶⁰ Conversely, the Supreme Court in *NEA v. Finley* acknowledged that in cases where the government had to subsidize private speech the only way to decide which speech to subsidize may be to use content-based criteria and that in such cases the government did not violate the First Amendment of those speakers the government did not subsidize. The government could set these criteria based on a standard of its choosing—“wide latitude.”²⁶¹ The NEA, the CPB, and the National Endowment for the Humanities (NEH) all receive funds from the government, and they in turn support the creative endeavors of artists and creators. This is in addition to the fact that gifts the public makes toward the arts are, in most cases, tax-deductible, meaning the government is further subsidizing the arts in an amount equivalent to all the lost tax

²⁶⁰ *Brooklyn Ins. of Arts & Sci. v. City of New York*, 64 F. Supp. 2d 184, 186-192, 196-205. (D.N.Y. 1999).

²⁶¹ *NEA v. Finley*, 524 U.S. 569, 585-587 (1998).

revenue.²⁶² Thus the government contributes a considerable amount of money directly or indirectly to support the arts and public broadcasting.

The government could decide the kind of art to fund, even if the government made such a decision based on the content of the art, but the government could not legally threaten to withdraw such funding to compel artists not to exhibit material the government finds offensive. First Amendment problems arose where the government attempted to impose restrictions on private speech just because the government funded the speech.

For example, the Supreme Court ruled in *Wooley v. Maynard* that the state of Hampshire could not compel the Maynards, who were Jehovah's Witnesses, to carry the state motto "Live Free or Die" on their license plate, even if the state had an interest in seeing such a motto displayed on the license plates and funded such speech.²⁶³ The Court in *Wooley* cited the ruling in *Barnette* and said that compelling a private citizen to display a message that amounted to ideology on a license plate invaded the sphere of "intellect and spirit" and violated the citizen's First Amendment right.²⁶⁴ The courts have dealt with First Amendment challenges to government restrictions imposed upon public broadcasters in a similar way to the way they have dealt with First Amendment challenges to government restrictions on government-funded art and museums and government-subsidized speech, such as was the case in *Wooley*.

The courts recognized in cases in which the government attempted to control the content of the programs broadcast by public broadcasters that the broadcasters have a First Amendment right not to have such restrictions imposed upon them. In order to operate, public broadcasters need to receive funds from alternative sources to make up for the funds they cannot receive from

²⁶² See, e.g., Mark S. Nadel, *How Current Copyright Law Discourages Copyright Output: The Overlooked Impact of Marketing* 19 BERKLEY TECH. L. J. 785, 845 (2004).

²⁶³ *Wooley v. Maynard*, 430 U.S. 705, 713 (1977).

²⁶⁴ *Id.* at 715.

profits derived from advertising, in which they do not engage. Justin Brown presented a breakdown of the funds that go toward public broadcasting, including funds that go to the CPB, PBS, and directly to public broadcasters. Specifically, he showed that less than one-third of the sources for public broadcasting were governmental, a category which included local governments, state governments, and the federal government. The rest came from private sources like members of the CPB, the business sector, and foundations. Even though the government only partly funds public broadcasting, the government has endeavored to exert editorial control over public broadcasters. Public broadcasters have in turn challenged these attempts by the government to violate what they consider to be their First Amendment right to broadcast without government interference.

These cases are worth some examination here if only to show how the courts reasoned in these cases and, for the purpose of this study, to infer how these public broadcasters are different from civilian international broadcasters. The Supreme Court recognized the same rights for public broadcasters as for commercial broadcasters.²⁶⁵ The Supreme Court recognized that the government had the right to regulate broadcasting under the Commerce Clause.²⁶⁶ Similarly, the Court recognized that the government may have to impose greater restrictions on broadcasters than on other media because broadcasters operated in a finite frequency spectrum and had to serve the First Amendment interest of the public as public trustees.²⁶⁷ Furthermore, the Court reaffirmed that the fairness doctrine that requires broadcasters to allow the broadcast of opposing sides on an issue was constitutional in that the government had a substantial interest to ensure that the public hears both sides of an issue and has extended this reasoning to both commercial

²⁶⁵ *League of Women Voters*, 468 U.S. at 398.

²⁶⁶ *Id.* at 364.

²⁶⁷ *Id.* at 380.

and public broadcasters.²⁶⁸ The Court more or less equated commercial broadcasters with public broadcasters when considering government restrictions upon public broadcasters because public broadcasters like commercial broadcasters have similar licensing provisions.

On the other hand, the Court recognized that the government had restricted public broadcasters from carrying advertising, even though commercial broadcasters could carry advertising.²⁶⁹ The Court recognized, too, that the government had restricted public broadcasters from editorializing under section 399 of the Public Broadcasting Act of 1967.²⁷⁰ Originally, as enacted in 1967, section 399 prohibited noncommercial educational broadcasters from editorializing or supporting candidates for political office.²⁷¹ Congress amended this section as section 399(a) when the legislature added section 399(b) requiring noncommercial educational broadcasters receiving funds from Congress to record any broadcast involving the discussion of an issue of public importance.²⁷² In 1981, Congress amended sections 399(a) and (b) by combining them and changing the language slightly, banning editorializing by only those stations receiving CPB grants and prohibiting all stations from endorsing political candidates: “No noncommercial educational broadcasting station which receives a grant from the Corporation under subpart C of this part may engage in editorializing. No noncommercial educational broadcasting station may support or oppose any candidate for public office.”²⁷³

In *FCC v. League of Women Voters*, the Supreme Court ruled that the ban on editorializing in section 399 of the Public Broadcasting Act was unconstitutional. The government had stated that the reason for enacting section 399 was to protect noncommercial

²⁶⁸ *Id.* at 398.

²⁶⁹ 47 C.F.R. § 73.621 (1976) (providing qualifications standards for noncommercial broadcasters and regulations governing advertising); *League of Women Voters*, 468 U.S. at 1109.

²⁷⁰ Public Broadcasting Act § 399; *League of Women Voters*, 468 U.S. at 1109.

²⁷¹ Public Broadcasting Act § 399.

²⁷² Act of August 6, 1973, Pub. L. No. 93-84, § 2, 87 Stat. 219.

²⁷³ Public Broadcasting Amendments § 1229.

educational broadcasting stations that receive funds from the government from becoming instruments of government propaganda and to keep them from private interest groups who might want to hijack them and use them for advocacy.²⁷⁴ In considering the restriction, the Court applied strict scrutiny because the restriction was not content-neutral but targeted editorials. The Court, like the district court and the court of appeals before, affirmed that the section was unconstitutional because the section was not narrowly tailored enough to advance the interest the government claimed the section advanced nor did it serve a sufficient government interest to justify the ban on speech that was at the core of First Amendment protection.²⁷⁵

League of Women Voters involved Pacifica Foundation, a corporation with ownership of noncommercial educational stations funded through grants from the CPB, the League of Women Voters, and a private person, Henry Waxman, who contended that the restriction on editorializing imposed by section 399(b) and enforced by the FCC violated the First Amendment. In ruling in *League of Women Voters*, the Court recognized that the government does have the right under the Commerce Clause in the Constitution to regulate broadcasting, but the Court also concluded that the ban on editorializing restricted too much speech—speech that was at the core of First Amendment protection. This fact, the Court argued, undermined any claim by the government that the restriction was necessary to prevent private groups from airing their personal views by editorializing via public broadcasting.²⁷⁶

The Court affirmed in *League of Women Voters* that section 399 banning noncommercial educational broadcasters from editorializing was unconstitutional because the section violated the First Amendment in keeping broadcasters that the government barely funds from exercising their right to editorialize, which the First Amendment protects. The government had contended,

²⁷⁴ *League of Women Voters*, 468 U.S. at 387.

²⁷⁵ *Id.* at 398-401.

²⁷⁶ *Id.* at 364-366, 371.

citing the decision of the Court in a previously decided case, *Regan v. Taxation Without Representation of Washington*, that the government was simply exercising its constitutional right not to subsidize public broadcasters by enacting section 399. In *Taxation Without Representation*, the Court ruled that the government could refuse to subsidize the lobbying activities of a charitable organization—Taxation Without Representation (TWR).

The Court in *League of Women Voters* said that the government could not use the ruling of the Court in *Taxation Without Representation* to justify the refusal to fund the editorials of noncommercial educational broadcasters, certainly not as section 399 was written.²⁷⁷ In *Taxation Without Representation*, the Court had held that charitable organizations could create a tax-deductible affiliate under section 501 of the IRS code to source private funds to conduct their lobbying activities, and the charitable organizations could create another affiliate to accept government funds to conduct non-lobbying activities.²⁷⁸ In this way, the charitable organizations had an alternative source of funds in the form of private sector donations to carry out their lobbying activities.

In contrast, the Court observed that the money noncommercial educational broadcasters received in the form of grants from the CPB was so little to the point of making the broadcasters incapable of restricting federal funds to noneditorial activities. The broadcasters were barred under the section even from editorializing using funds from private sources. The Court said:

²⁷⁷ *Id.* at 399-401.

²⁷⁸ *Id.* at 400.

Since a noncommercial educational station that receives only 1% of its income from CPB grants is barred absolutely from editorializing, such a station has no way of limiting the use of its federal funds to noneditorial activities, and, more importantly, it is barred from using even private funds to finance its editorial activity.²⁷⁹

The Court opined that section 399 could become constitutional if the government restricted noncommercial broadcasters from editorializing using government funds but allowed them to use private funds to editorialize. To the Court, the fact that the government did not fully fund the broadcasters but sought to restrict them from editorializing and did not allow them to source private funds to use for editorializing meant section 399 was in violation of the First Amendment.²⁸⁰ Some scholars have also examined the rulings of the courts in cases involving government restrictions on public broadcasters and government restrictions on the arts

Charles W. Logan examined the differences in the Courts respective rulings in *League of Women Voters* and *Rust*. He showed that the Court in the two cases drew a distinction between the government refusing to give a benefit and the government insisting on spending money in a particular way. According to the scholar, the Court made a distinction between the government placing an unconstitutional condition on the recipient of a subsidy and the government insisting that the recipient of a subsidy speak in accordance with the parameters of a program subsidized by the government.²⁸¹

Nicole B. Casarez noted that the Court in *League of Women Voters* said that the Supreme Court has recognized that the media, like public broadcasters, are private speakers even though the government provides them with a subsidy and even though they are instruments of the

²⁷⁹ *Id.* at 400.

²⁸⁰ *Id.* at 400-401.

²⁸¹ Charles W. Logan Jr., *Getting Beyond Scarcity: A New Paradigm for Assessing the Constitutionality of Broadcast Regulation*, 85 CALIF. L. REV. 1687, 1734-1738 (1997).

state.²⁸² She pointed out that the Court ruled differently in *Rust* and *Finley* from the way the Court ruled in *League of Women Voters*. According to her, the Court ruled in these cases that the government could choose to subsidize certain speech and not subsidize other speech. She contended that the Court did not allow the government to control the content of speech that the government subsidized when such speech came from the media, which includes public broadcasters. She contrasted this with the way the Court allowed the government to control the content of other forms of government-subsidized speech, such as the artistic materials displayed by artists funded by the NEA.²⁸³

In another case, *Community Service Broadcasting v. FCC* the D.C. Court of Appeals asserted that noncommercial licensees should not be vulnerable to government interference and the abridgement of their First Amendment and Fifth Amendment rights because they received government funding. The case came before the court for argument in January 1978, and the court decided the case in August of the same year, two years before the amendment of section 399(a) and (b) into one section 399.²⁸⁴ Consequently, the petitioners in *Community Service Broadcasting* challenged the constitutionality of what was section 399(b), before 1981 when section 399(a) and (b) were combined, that required all noncommercial television and radio stations that received federal funds to make audio recordings of all broadcasts involving the discussion of an issue of public importance.²⁸⁵ According to the FCC, one of the reasons for implementing the section was to “give taxpayers who finance the bulk of financial support of these stations, a means for reviewing the station’s performance.” The D.C. Court of Appeals

²⁸² See Nicole B. Casarez, *Public Forums, Selective Subsidies, and Shifting Standards of Viewpoint Discrimination*, 64 ALB. L. REV. 501, 550 (2000).

²⁸³ *Id.* at 547-558.

²⁸⁴ *League of Women Voters*, 468 U.S. at 371 nn. 6-7.

²⁸⁵ *Cnty. Serv. Broad.*, 593 F.2d at 1102, 1104-06.

disagreed with the FCC, stating, “tax dollars do not provide the bulk of support to noncommercial licensees.”²⁸⁶

Under the *O’Brien* test the D.C. Court of Appeals applied in *Community Service Broadcasting*, for a government restriction to be constitutional, the government restriction had to further a government interest that was important or substantial. Second, the government interest had to have no connection with the suppression of speech. Third, if the statute was valid, consideration had to be given to other regulations that would not be as suppressive.²⁸⁷

The court pointed out that the government was not the only source of funding for the broadcasters and the government gave the broadcasters funds that were little in comparison to the funds other sources gave. Specifically, the court noted that in fiscal year 1976, twenty-seven percent of funds to the broadcasters had come from federal sources, with 19.8 % of funds coming from federally subsidized sources like the NEA, among others.²⁸⁸ The court said that section 399(b) as enacted even applied to stations that had received funds in the form of grants for the construction of facilities or under the Public Broadcasting Act after August 1973 and was thus broadly restrictive.

Based on this fact, the court said that the prohibition under the section meant that a noncommercial educational broadcaster that purchased equipment with a federal grant in 1973 but had otherwise not received any other federal subsidies was obligated to adhere to the section and record programs on public issues. By doing this, the section put an overwhelming restriction on those stations that most broadcast public affairs programs but not those that received federal aid the most. The commercial and noncommercial broadcasters that the government subsidized apart from sections 390 to 399 of the Communications Act did not have to adhere to the

²⁸⁶ *Id.* at 1119.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

restriction in section 399.²⁸⁹ The court further said, “not all publicly funded programs deal with public affairs, nor are all public affairs programs publicly funded.” Most programs broadcast by the public broadcasters did not have to be subject to section 399, and the section was over inclusive in restricting speech that the government did not fund.²⁹⁰ Much of the funds came from private sources, and the court noted that section 399(b) ought not to apply to funds from private sources. In this way, the court showed that section 399(b) included all stations that received any funding at all from federal sources, even those that had actually received some private funds.

The other two interests the government said section 399 was supposed to serve were to preserve significant programs and to enforce objectivity and balance. On the preservation of significant programs, the court said both commercial and noncommercial broadcasters produced and broadcast significant programs, but commercial broadcasters were not subject to section 399(b). At the same time, the court showed that not all public affairs programs were significant and not all significant programs were public affairs programs. Besides, the court argued that the government did not fund all significant programs. As was the case, only when a noncommercial public broadcaster broadcast a public affairs program that by sheer coincidence was significant using federal funds would section 399(b) serve the preservation purpose the government wanted the section to serve.²⁹¹

On enforcing objectivity and balance, the court said that section 399(b) targeted the programs broadcast by local stations that did not use CPB funds and was not like the proscription on carrying editorials in section 399(a) that specifically targeted stations that used funds the CPB had provided. The FCC had said that the recording of programs would allow lawmakers to assess the way local public stations dealt with controversial issues. On this, the court contended that

²⁸⁹ *Id.* at 1120, 1129.

²⁹⁰ *Id.* at 1120.

²⁹¹ *Id.* at 1122.

commercial stations also covered controversial issues, but the FCC had shown they were not subject to section 399(b). Section 399(b) targeted the programs broadcast by local stations irrespective of whether the stations produced the programs and broadcast the programs using funds from the CPB and irrespective as well of whether the programs were controversial.²⁹² In this way, the court concluded that section 399(b) was a broad and unduly prohibitive regulation that was restrictive of local licensees that did not receive funds through the CPB and that did not deal with controversial issues.²⁹³

The D.C. Court of Appeals thus agreed with the petitioners who claimed that the section was a violation of their First and Fifth Amendment rights, saying that the section “presents the risk of direct government interference in programming content in violation of the First Amendment.”²⁹⁴ Accordingly, the court vacated the rules that required the broadcasters to record programs in which an issue of public importance was under discussion and affirmed the professional independence of public broadcasters. The court said the government had no legal right to control the content or selection of programs broadcast by noncommercial television broadcasters or commercial television broadcasters²⁹⁵ Whereas the government was not required to fund these licensees, the government, the court said, “cannot condition receipt of those funds on acceptance of conditions which could not otherwise be constitutionally imposed.”²⁹⁶

The courts have ruled in other cases where members of the public sought to exercise editorial control over public broadcasters. Although members of the public contribute funds to public broadcasters through donations and taxes, the courts have not recognized them as having a right to exercise editorial control over the broadcasters. The examination of these cases here is to

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.* at 448, 471.

²⁹⁵ *Id.* at 457.

²⁹⁶ *Id.* at 457.

show the full extent to which the courts have said public broadcasters have a First Amendment right to have professional independence and to enable comparisons between the First Amendment right of public broadcasters and the right of the government to exercise editorial control over civilian international broadcasters.

In *Muir v. Alabama*, the U.S Court of Appeals for the Fifth Circuit ruled that the viewers of a noncommercial educational public television station could not compel the television station to broadcast a program. The plaintiffs brought the case after the Alabama Educational Television Station (AETC), a PBS station, refused to air a program entitled *Death of a Princess*—a film dramatizing the events in 1977 leading up to the execution of a Saudi Arabian princess and her “commoner lover.”²⁹⁷ Funds for the AETC came from the state of Alabama through appropriations from a Special Educational Fund, and the CPB matched those funds. The plaintiffs asked the court to compel AETC to broadcast the program and to grant an injunction against AETC making decisions that were political on programming.

The plaintiffs asserted that the First Amendment did not protect government speech, implying that the content broadcast by AETC was government speech. Indeed the court agreed that the CPB broadcasters are state instrumentalities.²⁹⁸ Their being state instrumentalities notwithstanding, the court affirmed that even these broadcasters had the right to be true to their legal mandate and comply with their responsibilities as mandated by their licenses.²⁹⁹ As in *Community Service Broadcasting*, the court in *Muir* again reaffirmed that even though the government did not have First Amendment protection, the government had a right to speak and that private individuals did not have the right to limit or to control the expression of the

²⁹⁷ *Muir v. Alabama*, 688 F.2d 1033, 1036 (5th Cir. 1982).

²⁹⁸ *Id.* at 1042.

²⁹⁹ *Id.* at 1049.

government.³⁰⁰ The court ruled in *Muir* not on whether the First Amendment protected the AETC from the public attempts to force the broadcaster to show the movie *Death of a Princess*. Rather, the issue was whether if the broadcaster, a state instrumentality, made a decision not to broadcast the movie such a decision violated the First Amendment right of the public.³⁰¹ The court said the government did not violate the First Amendment right of the public as public broadcasters, like any other broadcasters, had the right to make their own editorial decisions. This, the court showed, was clear from the legislative history of the Public Broadcasting Act of 1967 and the way Congress had endeavored to ensure the professional independence of public broadcasters: The Court thereby did not agree that the broadcaster disseminated government speech. The issue in another case was whether a public broadcaster could restrict a political candidate from participating in a political debate.

The Supreme Court ruled in *Arkansas Education Television Commission v. Forbes* that a marginal political candidate could not compel the publicly funded Arkansas Education Television to include the candidate in a political debate. Ralph Forbes, an independent, relatively unknown candidate, said the television station violated his First Amendment right when the station refused to let him participate in a political debate. In ruling, the Court said that the television station did not violate Mr. Forbes First Amendment right because the television station was a non-public forum from which the government could reasonably use content-neutral discretion to exclude a candidate not because of his political views, but because he was a marginal candidate.³⁰² In this way, the Court acknowledged that the public broadcaster was responsible for making all editorial decisions even though the broadcaster received funding from the public.

³⁰⁰ *Id.* at 1038.

³⁰¹ *Id.*

³⁰² *See generally* Arkansas Ed. Television Comm'n v. Forbes, 523 U.S. 666, 666-695 (1998).

The Legal Status of Civilian International Broadcasters

What then is the legal status of the programs broadcast by civilian international broadcasters? The legal status of the programs broadcast by civilian international broadcasters is inferable from the way the Supreme Court and the lower courts ruled in the various cases examined in this chapter. The key for the courts was the way the speech in question was funded and the purpose of the speech. Where the speech in question was a government message, the government could use public funds to disseminate the speech and could control the content of the speech. On the other hand, where the speech in question was not a government message, even the fact that the government provided some funds toward the dissemination of the speech was not enough to allow the government to impose any kind of restrictions on the speech. The courts defined speech as government speech or not based on the purpose of the speech.

The message of public broadcasters was clearly not government speech even though the government had an interest in seeing the message disseminated for purpose of educating the public. Advertisements to beef producers in support of government policies, on the other hand, were clearly government speech. The government wanted to support its own policies by speaking in the marketplace of ideas. This was similar to government disseminating propaganda in the marketplace of ideas. From time to time, the government must speak to support its own policies. In some cases, the government may need to speak to support its foreign policy. This is where civilian international broadcasters under the BBG fit into the structure of U.S. foreign policy.

Although the government does not currently maintain day-to-day editorial control over the broadcasters under the BBG and they are free to choose what programming to broadcast, their overall allegiance is toward the U.S. government, and serving the interest of the government their calling. The government-speech doctrine is a reasonable legal basis by which

the government could limitlessly control the content of programs of civilian international broadcasters under the governing authority of the BBG. Even Allen W. Palmer and Edward L. Carter who argued that the Supreme Court has not defined government speech sufficiently also pointed out correctly that the Court has recognized that the government has authority under the government-speech doctrine to say whatever the government wants, even when it comes to government propaganda.³⁰³

Unlike public broadcasters that receive some of their funds from private sources, civilian international broadcasters get funds exclusively from the government and are part of an effort by the government to speak on its own behalf, and the government has the right to determine what such speech is. Even surrogate broadcasters that ostensibly do not inform their audiences about the United States but serve only to inform their audiences about news in their own countries are part of a government effort to speak on its own behalf according to parameters set by the government itself.³⁰⁴ They disseminate government speech: This is clear based on the government-speech doctrine. In this sense, they are akin to the communicative programs that were at the center of the legal issue in *Johanns*, and *Rust*.³⁰⁵

The government under the government-speech doctrine is legally not restricted in how to control civilian international broadcasters, including controlling the content of the programs that they disseminate because they receive funds exclusively from the U.S. government to speak for the U.S. government.³⁰⁶ This government-speech doctrine can apply only when the government funds the content of speech that communicates the government's own message. Where the government funds or merely subsidizes speech that is not the government's own message, the

³⁰³ *Id.*

³⁰⁴ *See Johanns*, 544 U.S. at 559.

³⁰⁵ *Johanns*, 544 U.S. at 559; *Rust*, 500 U.S. at 173.

³⁰⁶ *See Palmer & Carter*, *supra* note 25.

government-speech doctrine does not apply and any attempt by the government to control such a message is unconstitutional.

Civilian international broadcasters do not have a history of being professionally independent, as do the broadcasters under the CPB. The government started establishing them in 1942, when VOA started operating during World War II, to disseminate propaganda and has continued to establish more broadcasters as the need has arisen over the years—RFE/RL during the Cold War, RFA to counter the Castro government in Cuba, and Alhurra and Radio Sawa to counter terrorism.³⁰⁷ These broadcasters came about as a government effort to confront and address a situation or crises that had arisen in geopolitics. Even the establishment of the CPI and the OWI during World War I and World War II was in response to crises. In this sense, then, these propaganda entities were government instrumentalities whose sole purpose was to serve the government by advancing the foreign policy interests of the government, just as civilian international broadcasters serve the foreign policy interests of the government in crises today.

Civilian international broadcasters do not have First Amendment protection, and the government could do whatever it wants with them under the government-speech doctrine. Indeed, if the government needed to exercise day-to-day editorial control, the government could legally exercise such control by overriding the BBG. After all, the government does fund the BBG and the broadcasters. The fact that the government funds the broadcasters completely and, in turn, the broadcasters speak in the name of the United States makes the programs broadcast by the broadcasters government speech.³⁰⁸

They do not serve the same function of informing the American public that public broadcasters serve nor does the FCC regulate them. Public broadcasters are dedicated to serving

³⁰⁷ See generally BROADCASTING BOARD OF GOVERNORS, FISCAL YEAR 2009 PERFORMANCE AND ACCOUNTABILITY REPORT 3 (2009), available at <http://www.bbg.gov/reports/documents/BBGFY2009PARFINAL.pdf>.

³⁰⁸ See Palmer & Carter, *supra* note 25, at 22-36; See, e.g., generally *Johanns*, 544 U.S. at 550.

their communities. That the government partly funds them does not give the government the right to tell the broadcasters not to editorialize nor does it give the government the right to keep records of all their programs on controversial issues.³⁰⁹ In accordance with the stated intent of Congress in the Public Broadcasting Act, the government should not interfere with the programming decisions of public broadcasters.³¹⁰ Not even the public should exercise editorial control over public broadcasters.³¹¹ Public broadcasters are state instrumentalities just like civilian international broadcasters, but they have a First Amendment right to control their own programming because they disseminate private speech.³¹²

Collectively, the broadcasters under the BBG are a tool of government foreign policy.³¹³ The government has an interest to see that these broadcasters—albeit under the BBG—operate according to the general communicative parameters instituted under the law that authorized their operations and are accountable to Congress and the executive branch.³¹⁴ In light of this, then, the BBG may actually be a way for the government to ensure that these broadcasters do serve the government, and the much-touted firewall function of the BBG may just be a smokescreen Congress established to further advance U.S. foreign policy. Congress could very well have established the BBG firewall knowing that the BBG was going to be a firewall only in name.

Nothing in the history of U.S. civilian international broadcasting—indeed even the legalization of the VOA Charter—indicated that Congress would in future establish an entity like the BBG to act as a firewall or that Congress would proscribe government officials from

³⁰⁹ See, e.g., *Brooklyn Ins. of Arts & Sci.*, 64 F. Supp. 2d at 184.

³¹⁰ See Public Telecommunications Financing Act § 309.

³¹¹ *Id.*

³¹² *Muir*, 688 F.2d at 1033, 1036.

³¹³ See generally Broadcasting Board of Governors, *supra* note 5.

³¹⁴ See Foreign Affairs Agencies Consolidation Act sec.1322(a) §§ 304(a)(1)-(2) (stating that the BBG has to remain within the executive branch). See United States International Broadcasting Act § 305(a)(9), (13) (stating that the BBG has to submit annual reports to Congress and the executive branch accounting for its activities and those of civilian international broadcasters and their use of funds).

interfering editorially in the broadcast activities of civilian international broadcasters. The sincerity of lawmakers in establishing the BBG as a firewall to protect the professional independence of the broadcasters under the BBG from government interference should be treated with a fair amount of skepticism. The government had controlled them throughout their history, and the establishment of the BBG could have been the perfect disguise that allowed the government to appear to give the broadcasters professional independence while effectively maintaining overall editorial control.

The conclusion in this chapter is that the government did not have to establish the BBG firewall; therefore, the rest of this study continues to consider why Congress established the BBG firewall even though it did not legally have to do this. Surely, lawmakers could not have been motivated by any legal requirement that obligated them to protect the professional independence of civilian international broadcasters. They must have had other motivations for doing this. The process of establishing the BBG firewall was not straightforward.

CHAPTER FIVE

THE REVIEW BEFORE THE REORGANIZATION

The end of the Cold War was a cataclysmic event in recent world history. For the United States, it meant a need for a reconfiguration of the conduct of its foreign policy, including its conduct of public diplomacy. As part of the U.S. public diplomacy apparatus, U.S. civilian international broadcasters found themselves in the thick of this reconfiguration. The geopolitical situation had changed in the countries and regions to which they broadcast their programs and the government had to consider this changed geopolitical situation and change the structure and functions of the civilian international broadcasters that had been instrumental in helping to bring about the change.

There were those who wanted to see the end of some of the broadcasting services altogether, which they felt would save the government money. Then there those who merely wanted to see only some changes in the conduct of the broadcasting services, changes that would allow them to function better and more effectively in the new geopolitical order. Communism was far from dead in places like Cuba and in some countries in Asia. The government needed to continue to counter communism in Cuba through civilian international broadcasting and needed to start broadcasting to China and Asia. Reorganizing and not abolishing or minimizing civilian international broadcasters was one way to achieve all these objectives.

As with any major decision that the government has made, the reorganization of civilian international broadcasters required that Democratic lawmakers and Republican lawmakers work together and agree on the changes that needed to be made. Policy makers also had a stake in the process of reorganization and needed to cooperate with the lawmakers. Not surprisingly, such

agreement was as elusive as the many entities that reviewed and made recommendations on the reorganization.

The many entities that reviewed the structure of civilian international broadcasting in the period prior to the reorganization were perhaps a testament to the thoroughness of the process of reorganization or, as the case may have been, the diversity of opinion on how to go about reorganizing. The NSC and the Policy Coordinating Commission (PCC) on International Broadcasting, the General Accounting Office (GAO), a USIA Study Group, the United States Advisory Commission on Public Diplomacy, and the President's Task Force on International Broadcasting all separately reviewed the structure of civilian international broadcasting and offered their recommendations.³¹⁵ The following sections in this chapter discuss some of these recommendations, and the chapter eventually shows how the implementation of some of these recommendations eventually led to the establishment of an independent entity to govern all civilian international broadcasters, such as is the BBG.

The Future of Surrogate Services Broadcasting to Europe and Cuba

Countries in Eastern and Central Europe had lost their entanglements to the Soviet Union: The Iron Curtain that Winston Churchill had said was descending over Europe in 1946 was finally shattered.³¹⁶ RFE/RL had played a commendable, indispensable role as surrogate broadcasters to Eastern and Central Europe and the Soviet bloc. They had been successful in undermining the stranglehold of communism on countries in these regions by disseminating

³¹⁵ See H. R. REP. 102-238 (1991); See United States Advisory Commission on Public Diplomacy: *The New World of U.S. International Broadcasting—Radio 1* (1992), *microformed on* Sup. Docs. No.Y3.AD9/12.2 T23 (U.S. Gov't Printing Office); See ARCH PUDDINGTON, *BROADCASTING FREEDOM: THE COLD WAR TRIUMPH OF RADIO FREE EUROPE AND RADIO LIBERTY* 285-306 (2000); See also HOUSE COMM. ON FOREIGN AFFAIRS, 103D CONG., *CONGRESS AND FOREIGN POLICY 1992* (Comm. Print 1993).

³¹⁶ See United States Advisory Commission on Public Diplomacy 1989 Report, *supra* note 38, at 16.

information about news from around the world and news from inside their own countries.³¹⁷ The Cold War being over, some in the U.S. government were arguing for the cessation of surrogate broadcasting through RFE/RL to these regions.

Under the law, the Task Force was obligated to submit a report on U.S. government broadcasting to various lawmakers, including the Chairman of the Committee on Foreign Relations of the Senate and the Chairman of the Committee on Foreign Affairs of the House of Representatives. This had to be the same report that the Task Force had submitted to the President of the United States.³¹⁸ The Task Force compiled the findings of the review and the recommendations on the future of U.S. civilian international broadcasting in a report published in December 1991. Congress held a hearing with members of the Task Force and other stakeholders to talk about the findings and recommendations of the Task Force.

Before talking about the proposed consolidation of all U.S. civilian international broadcasting under one agency, the Task Force first talked about recommendations on the continuation of surrogate broadcasting to the Soviet Union and Eastern and Central Europe and the proposal to establish a surrogate broadcaster for Asia and China.³¹⁹ The Task Force acknowledged that the Soviet Union was slowly becoming less of a threat for the countries of Eastern and Central Europe. A number of the countries had seen out their communist leaders and replaced them with democratic ones. VOA, RFE, and RL had all changed somewhat the content of their programs because of the changes that had taken place in the region.³²⁰

³¹⁷ See generally The Commission on Broadcasting to the People's Republic of China 18 (1992), *microformed on* Sup. Docs. No. S 1.2:C73/11 (U.S. Gov't Printing Office).

³¹⁸ Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Pub. L. No. 102-138, § 235(b), 105 Stat. 704.

³¹⁹ See *Report of the President's Task Force on U.S. Government International Broadcasting: Hearing Before the House Subcomm. on International Operations of the H. Comm. on Foreign Affairs*, 102d Cong. 1 (1991) [hereinafter *Report of the President's Task Force*] (statement of Rep. Howard L. Berman, Member, H. Comm. on Foreign Affairs).

³²⁰ *Id.* at 3 (statement of John Hughes, Chairman, President's Task Force on U.S. Government International Broadcasting).

The members of the Task Force expressed to lawmakers their being impressed at the role that civilian international broadcasters had played in the political changes that had taken place in Europe and the Soviet Union. VOA and the two surrogate broadcasters, RFE/RL, had been indispensable in catalyzing and sustaining the changes that had taken place in the region. The Task Force was of the opinion that over time and based on certain criteria the Task Force had laid out in the report, surrogate broadcasting, such as carried out by RFE/RL, would disappear. In the meantime, the Task Force recommended increasing operating efficiency by encouraging cooperation on technical matters between VOA and RFE and RL.³²¹ The Task Force reiterated that witnesses in countries in Europe were unequivocal in their claims that surrogate broadcasting to the region needed to continue.³²²

In particular, on RL, which was broadcasting to the Soviet Union, the Task Force recommended continued broadcasts there. For the RFE, which was broadcasting to Eastern and Central Europe, the Task Force recommended continued broadcasts to Czechoslovakia, Poland, and Hungary despite the advent of democracy to these countries and despite the fact that the Office of Management and Budgets (OMB) had recommended that broadcasting to these countries stop soon. The Task Force recommended a change in the orientation of programs broadcast, from an emphasis on spurring democratic change to explaining democracy and all that came with this democratic system of government, including free enterprise, banking, and a free press.³²³ To continue broadcasting through these surrogate broadcasters, the government had to construct new transmitters to replace aging transmitters, which did not sit well with those who saw no point in constructing transmitters to broadcast to the Soviet Union and Eastern Europe

³²¹ *Id.* at 2-3.

³²² *Id.* at 3.

³²³ *Id.*

even after the end of the Cold War.³²⁴ Regardless of the budgetary constraints that existed at the time, the Task Force declared the need for the continued existence of both RFE and RL and most likely saved the broadcasters from elimination as some in Congress had been calling for around this time.³²⁵

John Hughes pointed out that the government had invested in the name Radio Free Europe, which was a well-known and well-regarded name. Perhaps, the government could later transfer the RFE name to local stations in the countries to which RFE broadcast to give those local stations credibility, which would then allow for the phasing out of actual RFE broadcasting. In a separate report, the Advisory Commission on Public Diplomacy had also said that phasing out RFE/RL had to occur slowly and not overnight.³²⁶ The consensus was that surrogate broadcasting to Eastern and Central Europe had to continue even though communism in the regions had ended, though the Task Force seemed more eager for the continuation of the services than the Advisory Commission. Both the Task Force and the Advisory Commission also made recommendations on the future of surrogate broadcasting to Cuba.

Members of the Task Force had a less than complementary view of the effectiveness of TV Marti broadcasting from 3:30 AM to 6:30 AM. They argued that the United States needed to take steps to increase the effectiveness of this television service, failing which the government had to discontinue the service.³²⁷ Similarly, the Advisory Commission asserted that the government could meet the cost of broadcasting to China by discontinuing the operations of TV Marti, which were ineffective; the Advisory Commission thought the government needed to keep

³²⁴ *Id.* at 4.

³²⁵ *Id.* at 1-4.

³²⁶ *Report of the President's Task Force, supra* note 319, at 2-3.

³²⁷ *Id.* at 4.

the more effective Radio Marti.³²⁸ In fact, the Commission asserted the view that surrogate broadcasting to Cuba that was under the VOA had not pleased many people, and this service had to move to the BIB.³²⁹

This view was similar to the view expressed by members of the Task Force who said, “Radio/TV Marti, in our view, is a surrogate broadcasting operation and its rightful home is under the Board for International Broadcasting.”³³⁰ They noted the ineffectiveness of TV Marti to reach effectively an audience in Cuba because of broadcasting between 3:30 AM and 6:30 AM and argued that the effectiveness of this service needed to be increased. The United States had to ensure the service was broadcasting at a more appropriate time to ensure a bigger audience. In the event that this was not done, they said the service had to be discontinued.³³¹

Separately, the GAO said that two of three consultants hired to review the quality of broadcasts to Cuba and their compliance with standards said that the broadcasts did not meet VOA standards, but the remaining consultant believed that the programs met the standards, though there was room for improvement. With respect to interference, the GAO also reported that the International Frequency Registration Board had found that broadcasts to Cuba interfered with Cuban broadcasts and violated regulation 2666 that required that countries broadcast only inside their borders in AM and FM radio and television frequencies. This was in contrast to State Department claims that the broadcasts did not violate International Telecommunications Convention regulations.³³²

³²⁸ The Commission on Broadcasting to the People’s Republic of China, *supra* note 317, at 2.

³²⁹ *Id.* at 19.

³³⁰ *Report of the President’s Task Force*, *supra* note 319, at 3.

³³¹ *Id.* at 4.

³³² *See generally* UNITED STATES GOVERNMENT ACCOUNTING OFFICE, REPORT TO THE HONORABLE BILL ALEXANDER, HOUSE OF REPRESENTATIVES: TV MARTI COSTS AND COMPLIANCE WITH BROADCAST STANDARDS AND INTERNATIONAL AGREEMENTS (1992).

The views expressed on the conduct of broadcasting to Cuba reflected the frustrations of the members of the various entities that carried out the review at what they saw as a failure of a broadcasting strategy. In fact, the shortcomings in broadcasting to Cuba perhaps reflected the shortcomings of U.S. foreign policy to Cuba. For years, the government had tried various tactics to eliminate the communist Castro government and had failed. The ineffectiveness of broadcasting to Cuba was just one more failed tactic in the counter Castro strategy. The suggestion that the government should place broadcasting to Cuba under the BIB was a way to improve the effectiveness of this service. Certainly, the success of RFE/RL against communism in Europe suggested that surrogate broadcasting to Cuba could be just as successful. It certainly could not hurt U.S. efforts to counter communism there. After all, the government had controlled this service when it operated as a generalist broadcaster under the USIA and still failed to achieve any lasting success. Perhaps a surrogate broadcaster would be more successful.

To summarize then, the recommendations were to continue surrogate broadcasting to Eastern and Central Europe, to improve the effectiveness of broadcasting to Cuba, and to move this service to the BIB and make it operate in a surrogate capacity. As an independent government entity that had effectively governed RFE/RL throughout the Cold War, the BIB was held in high regard in government policy circles. In fact, as it turned out, the structure and functions of the BIB later became the template for the structure and functions of the BBG. The ability of the BIB to protect the professional independence of civilian international broadcasters featured prominently in the recommendations on establishing a surrogate broadcaster to China.

Whereas communism was no longer a threat to countries in Eastern and Central Europe, countries in Asia were still feeling the full brunt of this ideology. The most dominant of the communist governments in Asia was China. Some suggested establishing a surrogate broadcaster

to China and possibly to the other countries of Asia to broadcast prodemocracy programs. Communist ideology was still in effect in six countries in Asia. A Radio Free Asia could presumably play the same role that RFE/RL played to end communism in the Soviet Union and to end to its influence in the countries of Eastern and Central Europe.

Recommendations on Establishing a Surrogate Services Broadcaster to China

To consider broadcasting to China, the legislature had authorized the President and the congressional leadership of both parties to establish a Commission on Broadcasting to the People's Republic of China.³³³ Party leaders in Congress established the Commission to study the feasibility of radio broadcasting to China under the Foreign Relations Authorization Act for fiscal years 1992-1993.³³⁴ Similarly, Congress had also urged the Task Force on International Broadcasting to consider the viability of establishing targeted surrogate broadcasting to countries in Asia that were under autocratic governments. The broadcasting service would also counter the erosion of many basic freedoms in these countries, including the freedom to receive information.

Senator Joseph Biden was very instrumental in initiating the process that reviewed the possibility of establishing a broadcaster to China. As chairman of the Subcommittee on European Affairs and East Asian and Pacific Affairs of the Foreign Relations Committee of the U.S. Senate, he chaired a hearing at which various individuals were called upon to discuss modeling the service on RFE/RL. This was at the very nascent stage of considering establishing the broadcaster, no lawmaker had introduced a bill yet in Congress, but Senator Biden had introduced the legislation that had established the Commission.

³³³ H. R. REP. 102-53 (1991) (accompanying the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993).

³³⁴ Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 §§ 243(a)-(d) (authorizing the President and members of Congress to establish an eleven member commission to examine the feasibility of establishing a radio broadcasting service to China and describing the functions and the compensation for the members of such a commission).

For the future, the policy of the U.S. government had to be to persuade communist China to become democratic and to uphold human rights. A democratic China could work with the global community on issues to do with security, economics, and the environment. One way to promote democracy in China was to establish a radio broadcaster to target the country.³³⁵ Senator Biden acknowledged that there was a need to be patient in promoting democracy to China.³³⁶ History had shown that change does not come swiftly: The Cold war had gone on for more than forty years. In fact, the end of the Cold War had perhaps scared the communist Chinese government into imposing even stricter controls on society.

Evidence showed that the government had redoubled efforts to oppress dissent by strictly controlling the flow of information, including news. An example of the autocracy in the region was the overwhelming force with which the Chinese government reacted to demonstrations the Chinese public held in Tiananmen Square in Beijing, China.³³⁷ A journalist from China, Mr. Liu Binyan, testified on the need for broadcasting to China and acknowledged the restrictions that the communist government had placed on the media in China, including restrictions on imported publications.³³⁸ Such restrictions were a violation of Article 19 of the Universal Declaration of Human Rights that says that individuals have a right “to seek, receive, and impart information regardless of frontiers.”³³⁹ Broadcasting to China would inform the Chinese people in ways that the domestic media could not inform them.³⁴⁰ The goal was to reach the people who were outside

³³⁵ *Broadcasting to China: Applying the Lessons from European Freedom Radios: Hearing Before the Subcomm. on European Affairs and East Asian and Pacific Affairs of the S. Comm. on Foreign Relations*, 102d Cong. 1-2 (1991) [hereinafter *Broadcasting to China: Applying the Lessons from European Freedom Radios*] (statement of Sen. Joseph Biden, Chairman, Subcomm. on European Affairs).

³³⁶ *Id.*

³³⁷ *Id.* at 4-5.

³³⁸ *Id.* at 20 (statement of Mr. Liu Binyan, Fellow, Princeton University).

³³⁹ *Id.* at 3 (statement of Sen. Cranston, Member, Subcomm. on European Affairs of the S. Comm. on Foreign Relations).

³⁴⁰ *Id.* at 20 (statement of Mr. Liu Binyan, Fellow, Princeton University).

of the elite within the Chinese government.³⁴¹ The technology for reaching these people was readily available in the country. Electricity and shortwave radios were available even in rural areas of China, and the radio service would have a sufficient audience.

The end of communism in Europe had shown that technology could be used effectively to liberate people. Mass communication had proved to be a way to surmount the restrictions of dictators and despots. Ambassador Lord testified to the way RFE/RL had played a role in the disintegration of communist ideology propagated by the Soviet Union in Eastern and Central Europe. By one account, the hold of the communist Chinese government on the media was greater than ever in the history of communism since World War II.³⁴² The need to spur revolution in China was just as great.

Upon review, the eleven members of the Task Force voted seven to four in favor of the establishment of a radio to broadcast to Asia. China was to be a special target for these broadcasts, which would also target Vietnam, Laos, North Korea, and maybe Cambodia.³⁴³ Just as the Task Force had done, the Commission on Broadcasting to the Peoples Republic of China also recommended the commencement of surrogate broadcasting to China and to other countries in Asia. Specifically, the Commission recommended the service target the same countries.³⁴⁴ The Commission had recommended the commencement of surrogate broadcasting to Burma even though that country was not a communist country. The dictatorial behavior of the Burmese government had convinced the Commission that surrogate broadcasting there was necessary.³⁴⁵

Another argument for surrogate broadcasting to China was that China with a billion people was just as important as Eastern Europe and deserved a surrogate broadcaster. China was

³⁴¹ *Id.* at 4 (statement of Sen. Cranston, Member, Subcomm. on European Affairs).

³⁴² *Id.* at 6.

³⁴³ *Id.*

³⁴⁴ The Commission on Broadcasting to the People's Republic of China, *supra* note 317, at 2.

³⁴⁵ *Id.* at 2, 5.

in 1991 somewhat akin to—though a bit less insular than—Eastern European countries in the late 1950s and early 1960s. If these countries of Eastern Europe had deserved and indeed got a surrogate services broadcaster to target their populations and inform them about what was happening inside their countries, a role that VOA could not serve since VOA was involved in informing foreign audiences about the United States, China also deserved a surrogate broadcaster.

Some people had misgivings about establishing a broadcasting service to China and actively argued against such a service. The first argument was that a surrogate broadcaster to China was not a good thing because the broadcaster would annoy the governing communist elite. They advocated not establishing a broadcasting service to China but instead they said a more feasible approach was to increase the programs that VOA was broadcasting to China in Cantonese. Those who were for establishing the service countered that this could not be a reason not to establish the service but was indeed even more reason to establish it. They contented that the argument that a broadcasting service to China would antagonize the ruling Chinese elite was pointless because increased VOA broadcasting could just as easily antagonize the same elite. In fact, only individuals seeking to protect their own turfs within the overarching U.S. civilian international broadcasting establishment and particularly at VOA were the major propagators of this argument.

A second and related argument against establishing the service was that a surrogate broadcaster to China would have a negative impact on VOA, which was also broadcasting to the region. Even then, the U.S had no guarantee that the programs broadcast to China would reach the intended audience given the fact that, at the time, 18 countries were broadcasting to China, let alone the many hours of broadcasting in the vernacular language from inside China and from

the island of Taiwan. In the midst of all this programming, the programs broadcast to China by a U.S. surrogate broadcaster or even VOA broadcasts to China would be just one of so many, which would most likely diminish the fidelity of the programs and their effectiveness.³⁴⁶ Those who were for the service did not think this had to be a concern. They noted that RFE/RL and VOA had operated at the same time for many years, and listeners were able to distinguish between them.

Another argument that a member of the Task Force made was that the establishment of a broadcaster that would target China was a process that could take as long as two years from the time these deliberations were taking place in Congress. After the commencement of surrogate broadcasting to China, the Task Force suggested that the service could in future use whatever facilities were available, including “piggybacking” on the transmitters of VOA and, if possible, the facilities of religious broadcasters with access to shortwave transmitters to carry out this service.³⁴⁷ Others felt that the notion that this service could use the transmitters of VOA was rather unfeasible because at the time VOA transmitters were already loaded to capacity.

The fourth argument was that establishing such a service was costly and redundant. The Advisory Commission was against the establishment of “a costly new Radio Free China.”³⁴⁸ Rather, the Advisory Commission recommended that VOA had to carry more news and information about Asian countries. Savings from not carrying out surrogate broadcasting to China could be used for other public diplomacy endeavors.³⁴⁹ Abbot Washburn argued that a less costly but equally effective way to reach China would be to increase significantly VOA programs to China with \$ 2.14 million and make other modest increases thereafter that would

³⁴⁶ *Id.* at 7-9 (statement of Abbot Washburn, Member, President’s Task Force).

³⁴⁷ *Report of the President’s Task Force, supra* note 319, at 9 (statement of Stuart Eizenstat, Member, President’s Task Force).

³⁴⁸ United States Advisory Commission on Public Diplomacy 1989 Report, *supra* note 38, at 4.

³⁴⁹ *Id.*

still amount to savings in money in comparison with building new facilities from scratch.³⁵⁰

Others like Ambassador Lord believed that the cost of a surrogate broadcaster to China was not insurmountable. At a cost of about \$100 million over a three to four year period, the service was doable and could do more for the United States “than one-seventh of a bomber.”

Technologically, broadcasting to China was just as doable.³⁵¹

Abbot Washburn even suggested that perhaps the service could use former Soviet Union jammers that were located in the eastern part of Russia, which the Russians used to jam broadcasts coming from China. Conceivably, the U.S. government could pay the Russians to lease these facilities from them. Hon Washburn believed that they would accept such an offer because they were in need of hard currency, and he pointed out that the Germans had leased transmitters from the Russians to broadcast Deutsche Welle (the German international broadcaster) programs.

The fifth and final argument against the service was that any surrogate broadcasting service to China could not count on reliable information from inside China. Ambassador Lord countered this argument as well by saying that he believed that security was lacks enough even inside China to enable the flow of information in the country. This coupled with the links between people in mainland China and others overseas meant that information about events in China would be available for the service. Such a service would have to include other countries in Asia. At very little additional cost, the broadcasting service to China could be extended to other countries in Asia, which could have the same effect that RFE/RL had on communism in Eastern and Central Europe.³⁵²

³⁵⁰ *Id.* at 8 (statement of Abbott Washburn, Member, President’s Task Force).

³⁵¹ *Id.* at 5 (statement of Stuart Eizenstat, Member, President’s Task Force).

³⁵² *Id.* at 7-8.

The multiplicity of arguments for and against broadcasting to China reflected the diversity of opinions of the various members of the entities that carried out the review of the structure of civilian international broadcasting. A number of factors may have influenced such diversity of opinion. For one thing, the members of the various review entities had themselves been involved in civilian international broadcasting at one time or another. Obviously, aside from the evidence derived from their review, they had their opinions about how such a service had to be operated.

Another thing that obviously influenced their opinions was how much they thought a surrogate broadcaster to China was worth. Some of them probably did not think China was the threat that the Soviet Union had been during the Cold War and felt it did not deserve a surrogate broadcaster. Why spend so much money building transmitters for a broadcaster the government did not need? For these doubters, any excuse for not establishing the surrogate broadcaster to China would do. The one thing that everyone seemed to agree about was for the need for the broadcaster to China, if it were ever established, to be independent.

The Benefits of an Independent Surrogate Services Broadcaster to China

How could the government reap the full benefits of broadcasting to China? Senator Biden like many others believed that the only way to make this service successful was to make it independent. He asserted that he wanted an entity like the BIB to govern radio broadcasting to China. Such an entity would be outside the State Department but had to conform to U.S. foreign policy. Together with other lawmakers, he questioned various witnesses at a hearing of the Senate Foreign Relations Committee on the issue of independence for the broadcaster to China. The Senator wanted to know from Ambassador Lord whether he had ever had a problem as

ambassador with a broadcast that did not conform to U.S. foreign policy. Ambassador Lord affirmed:

Well I think that is an argument for setting up these separate radios. An ambassador can then say, hey, this is not the U.S. Government; this is a private group. Presumably it would be overseen by something along the lines of the BIB for the radios in Europe. And I think it is a strong argument for having a separate approach, particularly given the current administrations policy on China, which is not to antagonize the Chinese regime.³⁵³

Gene Mater also testified to the fact that RFE was effective as a broadcaster because the broadcaster was a non-governmental broadcaster funded by the government. A broadcaster for China had to be free from government interference and could not be the voice of the government. Such a broadcaster had to be truly professional, even more professional than RFE, which had developed a professional broadcasting standard later than the broadcaster should have, in Mr. Mater's opinion. Mr. Mater believed that Radio Free Asia had to start where RFE was at the time and not where RFE had been.³⁵⁴ Just as the Task Force had suggested moving Radio Marti, which the Task Force contended was a surrogate broadcaster that had to be under the BIB, the Commission also recommended placing any would be surrogate broadcaster to China under the BIB.³⁵⁵ Seven out of the eleven members of the Commission asserted that this new service had to "be insulated from the Voice of America and operate under the auspices of the Board for International Broadcasting."³⁵⁶

³⁵³ *Broadcasting to China: Applying the Lessons from European Freedom Radios*, *supra* note 335, at 11 (statement of Sen. Joseph Biden, Chairman, Subcomm. on European Affairs).

³⁵⁴ *Id.* at 30-31 (statement of Gene Mater, Vice President of Broadcasting, International Media Fund; Former News Director, Radio Free Europe).

³⁵⁵ *Report of the President's Task Force*, *supra* note 319, at 3.

³⁵⁶ The Commission on Broadcasting to the People's Republic of China, *supra* note 317, at 2, 5.

The Commission had asked both the VOA and the BIB to present their proposals on how they would integrate the surrogate broadcaster to China within their respective organizations, including the various personnel that would be required to carry out this service and where the service would have headquarters. A majority of the members of the Commission were persuaded that BIB would be the better option to carry out such a service because the Board had experience with home broadcasting (another term for surrogate broadcasting) and had a viable research arm that was two times the size of VOA.³⁵⁷ Three other members of the Commission contended that VOA was suited to operating the new service. One member of the Commission did not participate in the concluding deliberations and did not vote because of a potential conflict of interest.

The prevailing sense was that broadcasting to China had to be independent from the State Department and had to be professional. The hope was that an independent surrogate broadcaster to China would have professional independence and, thus, credibility. Such credibility would enable the government to deny plausibly ever knowing about the content of programs broadcast to the country and thereby shield government officials from the wrath of officials in the communist Chinese government if indeed the content of programs offended the Chinese officials. There also seemed to be a sense among the people who were involved in the deliberations at the time that all civilian international broadcasters had to operate independently under an entity like the BIB. To do this, they would have to be consolidated under the independent governing entity.³⁵⁸ Generalist broadcasters and surrogate broadcasters would have to operate under the same entity.

³⁵⁷ *Id.* at 20.

³⁵⁸ See *Report of the President's Task Force*, *supra* note 319, at 26.

Recommendations on Consolidating VOA with RFE/RL

The Task Force was under a Presidential mandate to review and to recommend whether to consolidate all civilian international broadcasting under one entity. Representative Berman stated, “When the President appointed the Task Force, he defined as its principal purpose, and I quote, [. . .] ‘the most appropriate organization of structure under which all U.S. Government International Broadcasting assets would be controlled under a single U.S. Government broadcasting entity.’”³⁵⁹ As it turned out, Representative Berman assumed that the Task Force had said, “Not” to the consolidation of U.S. civilian international broadcasting under a single entity—recommending that VOA remain separate from surrogate broadcasters. He thought the Task Force had said VOA and RFE/RL had to remain separate indefinitely.³⁶⁰

The chairman of the Task Force, John Hughes, asserted that the Task Force had not recommended the continued separation of generalist broadcasters and surrogate broadcasters in perpetuity. Instead, he said the Task Force had actually recommended a gradual approach toward consolidating civilian international broadcasting. He said, “We don’t think—we said—‘not.’ We said, ‘not now,’ hold of a little, there is more good work to be done. We need to help these countries move to fuller realization of what a free press is.”³⁶¹

The basis for this tentative recommendation on the consolidation of civilian international broadcasting was the sense among the members of the Task Force pursuant to conducting the review of civilian international broadcasting that the former communist countries of Eastern Europe did not have what amounted to a free press to be able to sustain their nascent democracies. These countries still needed surrogate broadcasters. Members of the Task Force

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ See *Report of the President’s Task Force*, *supra* note 319, at 27 (statement of John Hughes, Chairman of the President’s Task Force).

surmised that these surrogate broadcasters would not perform well if consolidated together with generalist broadcasters under a single government entity.³⁶²

They acknowledged that in the past the government had successfully combined a generalist broadcaster, VOA, and a surrogate broadcaster, Radio/TV Marti, when the government placed both broadcasters under the BoB, which was under the USIA. Radio/TV Marti was independent from VOA and vice-versa even though both broadcasters were under the same agency.³⁶³ This aspect of the consolidation of civilian international broadcasters had some historical precedent upon which to draw. Nevertheless, they thought this consolidation had been an anomaly. They had earlier recommended the removal of Radio/TV Marti from under the USIA because they thought the broadcaster was a surrogate broadcaster and did not need to be under a government agency like the USIA.³⁶⁴

The rationale behind the consolidation of the generalist broadcasters with the surrogate broadcasters was to increase the perceived credibility of U.S. civilian international broadcasting as a whole. Surrogate broadcasters were perceived by audiences as being more independent from U.S. government control and, therefore, more credible than the generalist broadcasters because of having fewer ties to the government and not being required by law to inform their audiences about the United States and U.S. government policies. Unfortunately, the members of the Task Force seemed to question whether surrogate broadcasters could provide credibility to generalist broadcasters. In fact, they seemed to feel that the opposite would in fact happen: Generalist broadcasters would diminish the credibility of surrogate broadcasters.

They foresaw that the consolidation of surrogate broadcasters and generalist broadcasters would be a complicated, enormous undertaking that they did not think would serve either the

³⁶² *Id.* at 27, 32.

³⁶³ See HENNES, *supra* note 3, at 7.

³⁶⁴ *Report of the President's Task Force*, *supra* note 319, at 3.

interests of listeners or those of the American taxpayers while failing to boost credibility for the broadcasters. One issue was how to merge VOA employees, who were government employees, with RFE/RL employees, who were technically not government employees. Some of these employees lived in Germany, a country with complicated laws on such matters. The process of negotiating these complicated employment issues was going to be expensive and would not lead to additional expenditure savings, as was one of the intended purposes of the consolidation in the first place.³⁶⁵ All things considered, the members of the Task Force proposed a phased out approach to the consolidation of civilian international broadcasting as opposed to a rapid approach.³⁶⁶

The recommendations made by the entities that reviewed the structure of civilian international broadcasters would be deliberated seemingly to no end during the legislative process of actually reorganizing civilian international broadcasters that later ensued in Congress. In some cases, the various people involved in these deliberations questioned the validity and practicality of the recommendations. The following chapter examines the scope of this tedious deliberative process and shows how it eventually led to the establishment of the BBG.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

CHAPTER SIX

REORGANIZATION AND PROFESSIONAL INDEPENDENCE

The reorganization of U.S. civilian international broadcasting began in earnest after the process of review. Going forward, the goals for Congress were to establish a credible, independent broadcaster to China and Asia; to continue broadcasting through surrogate broadcasters in a way that maintained their effectiveness after the Cold War; and to consolidate all the broadcasters under one independent entity. Particularly, the issue of creating an independent entity to govern all the broadcasters would dominate the deliberations, but it all started with considering independence for the broadcaster to China.

One option was to consolidate Radio Free Europe/Radio Liberty and all the various broadcasting operations within USIA. Yet another option was not to disestablish the BIB but to place all civilian international broadcasters under the BIB. Another plan was to establish an independent entity to govern all civilian international broadcasting operations. A fourth option was to put all civilian international broadcasters under the CPB. Surprisingly, one option was to keep the structure that existed, which of course would mean there would be no independence for the broadcasters. Thus, this status quo option was not really considered.

Lawmakers and policy makers instead concentrated on the options that would ensure the independence of the broadcasters. They had to decide based on the option they thought would best protect the professional independence of the broadcasters. The fact that there were too many options and too little cooperation between all the stakeholders involved slowed the process of reorganization considerably. Beginning in 1991, bill after bill was introduced in the both the House and the Senate, each of which included provisions that were in some way meant to protect the professional independence of the broadcasters. Unfortunately, these bills went nowhere in

Congress and by 1993 the search for professional independence continued. The introduction of bills and the deliberations in Congress was long-winded and convoluted, complete with posturing along political ideological lines and turf battles between various policy makers.

Finally sometime in 1993 and 1994, lawmakers adopted the provisions that guaranteed the independence of the broadcasters into the House bill and the Senate bill that became the United States International Broadcasting Act. The following sections examine this process with the goal of understanding why lawmakers and policy makers thought professional independence and credibility for civilian international broadcasters and not government editorial control over them was the best policy to adopt after the end of the Cold War. This chapter also examines how they thought the BBG firewall had to function to ensure the professional independence of the broadcasters and their credibility.

Bills to Establish an Independent Surrogate Services Broadcaster to China

Representative Bentley introduced a bill that sought to establish radio broadcasting to various countries in Asia in the House of Representatives on February 21, 1991. The bill garnered the support of forty-three cosponsors, eight of whom were Democratic and thirty-five of whom were Republicans, reflecting divisions on the issue along political lines.³⁶⁷ Under the bill, which amended the Board for International Broadcasting Act, funds Congress provided to RFE/RL incorporated would be used for radio broadcasting to Laos, Vietnam and Cambodia, which the bill designated Radio Free Asia.³⁶⁸ Notably, the bill said nothing about broadcasting to China. The bill also addressed the membership of the BIB and various other technical aspects of broadcasting to Asia, including the way the Board had to report to Congress.³⁶⁹ Legislatively, the

³⁶⁷ Radio Free Asia Act of 1991, H.R. 1049 102d Cong. (1991), 1990 CONG US HR 1049 (LEXIS).

³⁶⁸ *Id.* sec. 2 § 15.

³⁶⁹ *Id.* §§ 3-5.

bill went nowhere. It was just lawmakers in the House of Representatives grappling with the issue of how to insulate the new broadcasting service to Asia.

This grappling continued when Representative John Edward Porter introduced a bill a week later that sought to establish broadcasting to China. The co-sponsorship on this one involved forty-seven other representatives divided more evenly between the parties with twenty-four Democrats and twenty-three Republicans.³⁷⁰ This could have reflected the sense among lawmakers that broadcasting to China was more of a priority than broadcasting to the other Asian countries. Again, the bill proposed to amend the Board for International Broadcasting Act to state that funds Congress provided the RFE/RL incorporated had to be used for broadcasting to the Peoples Republic of China. The bill designated broadcasts to China carried out under the bill as “Radio Free China.”³⁷¹ The grappling for how to ensure independence for the new broadcaster continued.

More than a year later, on July 2, 1992, Senator Biden introduced a similar bill in the Senate to authorize the BIB to support a Radio Free China. The Senate bill had seventeen cosponsors, but had less bipartisan support with twelve Democrats and five Republicans.³⁷² Outlined in the bill were the various reasons why the United States had to broadcast to China.³⁷³ Unlike the House version, the Senate bill authorized the BIB to designate an organization modeled on RFE/RL to carry out broadcasts to China.³⁷⁴ In doing this, the BIB had to consider the recommendations of the Commission on Broadcasting to the People’s Republic of China.³⁷⁵ The deliberations that the Committee on Foreign Relations in the U.S. Senate held on the bill

³⁷⁰ Radio Free China Act of 1991, H.R. 1156 102d Cong. (1991), 1991 CONG US HR 1156 (LEXIS).

³⁷¹ *Id.* sec. 2 § 15.

³⁷² Radio Free China Act of 1992, S. 2985, 102d Cong. (1992), 1992 CONG US S 2985 (LEXIS).

³⁷³ *Id.* § 2.

³⁷⁴ *Id.* sec. 3 § 15(a).

³⁷⁵ *Id.* sec. 3 § 15(b).

Senator Biden had introduced reflected the unsettled nature of the debate on independence for the broadcaster. During the hearings, the members of the Committee met with the Commission and other stakeholders, including the director of VOA.

VOA or the BIB

The opinions that lawmakers had on where to place the broadcaster reflected their thoughts about where they thought the broadcaster would have the most professional independence, though scoring political points may have also been a factor. Those of policy makers were in some cases influenced by their inclinations to protect their own turfs. They had been involved in civilian international broadcasting at one time or another and were not immune to holding opinions based on favoritism rather than an objective consideration of the best way to ensure the independence of the broadcaster to China.

Senator Claiborne Pell, the chairman of the Committee, contended that the real question at that point was not whether to establish a broadcasting service to China—this was a settled issue. Rather the issue was whether to place such a broadcasting service under VOA or the BIB. He noted that this question had considerable significance because of the possibility that Congress would disestablish the BIB in future.³⁷⁶ Putting the new broadcasting service to China under the RFE/RL or under VOA had implications on the ability of the service to operate independently well into the future.

Senator Helms, the ranking minority member of the Committee, questioned whether VOA could protect the independence of a broadcaster to China. He cited the example of when the State Department had to apologize to President Saddam Hussein of Iraq five months before Iraq invaded Kuwait in 1991 because VOA had carried an editorial that said Iraq was among

³⁷⁶ *The Radio Free China Act of 1992: Hearing on S. 2985, supra* note 129, at 1-2 (statement of Sen. Clairborne Pell, Chairman, S. Comm on Foreign Relations).

countries that had secret police. The fallout from this statement was that the State Department started to preview all VOA editorials. He asserted that because of State Department censorship of VOA editorials, even of the statements of administration officials, some important statements had not been made in the run up to the Iraq war on Kuwait, which inadvertently led to the death of 100 Americans.³⁷⁷

For him the ability of VOA to guarantee the independence of any broadcasting service to China was not a matter of achieving some abstract form of professional independence for the broadcaster. It could have real life or death consequences for Americans. He also seemed to imply that the bureaucrats at the State Department were clueless as to the relationship between the conduct of public diplomacy through civilian international broadcasting and real world events. They just did not get what the implications of their actions were when they exerted editorial control over the broadcasters.

John Hughes expressed the view of the majority of the Commission that a private nonprofit corporation under the BIB, like the one that administered RFE and RL, was the best way to administer the broadcasting service to China. The members of the Commission were well aware of the strings Congress could attach to funds it gave the broadcaster. Some of them may have been aware of the problems that public broadcasters had faced in getting funds from Congress in the past and wanted to spare civilian international broadcasters a similar experience.³⁷⁸ They believed that RFE/RL would offer the best guarantee of independence for a broadcasting service to China because Congress funded the broadcasters through a corporation that channeled money to them. John Hughes asserted:

³⁷⁷ *Id.* at 3 (statement of Senator Helms, Ranking Minority Member, S. Comm. on Foreign Relations).

³⁷⁸ *See League of Women Voters*, 468 U.S. at 392 n. 21.

There is also the question of independence, which, Senator Helms touched on. Certainly, Congress votes the money which goes to a private corporation, and then funnels to RFE and RL. But there is a firewall between RFE and RL and the U.S. Government in the shape of the BIB, a citizen's oversight board. And I do not think that there is a question that when things get hot, that does provide somewhat more independence to RFE and RL.³⁷⁹

As a generalist broadcaster, VOA under the USIA had experienced more editorial control historically than RFE/RL under the BIB. Perhaps the broadcaster was incapable of operating any surrogate broadcaster. For clarification, Mr. Hughes alluded to the fact that VOA was restricted in covering Taiwan, the republic that the People's Republic of China has continued to claim over the years. VOA could not use the term Republic of China to describe Taiwan nor could the broadcaster refer to the President of Taiwan as the President of the Republic of China. On top of all this, VOA could not even open a bureau in Taiwan as per an agreement between the United States and Beijing, China.³⁸⁰ Thus, most of the Commissioners and Senator Helms felt that VOA could not ensure the independence of the broadcaster to China. A few of the members of the Commission could not have cared less for the establishment of the service, though.

Gene Mater expressed the view of the minority that establishing a broadcasting service to China at that time was unnecessary because China was already changing.³⁸¹ Establishing a broadcaster to China at such a time would be rather redundant. He further pointed out that RFE/RL had started out as private broadcasters run by the CIA, which enabled future

³⁷⁹ *The Radio Free China Act of 1992: Hearing on S. 2985, supra* note 129, at 6 (statement of John Hughes, Chairman, Commission on Broadcasting to the Peoples Republic of China).

³⁸⁰ *Id.* at 7.

³⁸¹ *Id.* at 9 (statement of Gene Mater, Member, Commission on Broadcasting to the People's Republic of China).

administrations to deny any hand in their existence, even though the government funded them.³⁸² Such would not be the case with a radio broadcasting service to China started by the government in 1992. Rather than waste time building an audience for the new service, a better approach would be to expand VOA service to China. Of course establishing such a service was inconsistent with the cost-cutting spirit that was prevalent in Congress at the time. On top of this, Mr. Hughes and a majority of the Commission were of the opinion that making VOA become a surrogate broadcaster to China would have a drastic effect on the ability of the broadcaster to fulfill the mission to be the voice of the United States. VOA was at the time broadcasting to China, but the broadcaster was not broadcasting as a surrogate broadcaster.

Mr. Mater countered the assertion that a broadcasting service to China would be independent under RFE/RL and not VOA by arguing that the BIB had been given directions from time to time in congressional oversight hearings. In one specific instance, Congress directed the secretary of state to have an office in the U.S. consulate in Munich to liaise with RFE/RL on foreign policy matters.³⁸³ The second assertion that expanding VOA service to include surrogate services broadcasting to China would somehow harm the ability of VOA to tell the world about the United States did not hold water for him either because the broadcaster was already broadcasting a variety of programs and nothing was going to change in the VOA format. Mr. Mater further rebutted the assertion that the BIB could start broadcasting to China early and at a similar cost to broadcasting through VOA and seemed to suggest that VOA could start sooner and do a better job of broadcasting to China and at a lower cost.³⁸⁴

Senator Biden did not seem convinced with the argument that broadcasting through VOA to China was the way to go but believed rather that broadcasting through RFE/RL was the way to

³⁸² *Id.*

³⁸³ *Id.* at 8-9.

³⁸⁴ *Id.* at 9-10.

go because RFE/RL had a history of broadcasting in a surrogate capacity. For him, the fact that elite communist leaders would probably view Radio Free China as a means of subversion was the very reason to have the broadcaster in operation. He remained doubtful of the ability of VOA to broadcast independently and believed instead that a radio broadcasting service to China based on the independent RFE/RL model would be more effective.³⁸⁵

Lawmakers and a majority of the Commission were leaning toward placing the broadcaster to China under the BIB while a minority of the Commission did not want the service established in the first place and, in the event that it was established, did not see any difference whether the broadcaster was placed under the BIB or the VOA. For policy makers, the best place to put the broadcaster was under the entity that would mean they remained relevant.

Mr. Chase G. Untermeyer, who worked at VOA, took some time to articulate the ways in which VOA was qualified to carry out broadcasting to China, including the fact that VOA was ready to begin broadcasting on short notice because the broadcaster already had all the necessities. He questioned the implication made by the Commission on Broadcasting to the People's Republic of China that VOA was incapable of operating without the acquiescence of the State Department, which the members of the Commission said had serious implications on the ability of the broadcaster to be objective.

His robust defense of the ability of VOA to be professional and objective was not borne out by the historic evidence. Examples of the inability of VOA to be objective were numerous, and this lack of objectivity stemmed from government officials telling the broadcaster what it could and could not say. Perhaps he defended the broadcaster so robustly because he worked there. He acknowledged that VOA withdrew the editorial comment about Saddam Hussein after the State Department objected to the editorial but tempered this acknowledgement by saying that

³⁸⁵ *Id.* at 11-12 (statement of Sen. Joseph Biden, Member, S. Comm on Foreign Relations).

VOA was obligated under the law to broadcast on behalf of the United States under the VOA Charter.

To clarify his point, he distinguished between the programs that VOA disseminated, which he seemed to suggest were objective, and the editorial comment that VOA disseminated, which he seemed to suggest were less objective but were required under the VOA Charter. His argument was that lawmakers and the other policymakers gathered should not blame VOA for not being objective because the law required VOA not to be objective. In fact, he seemed to go so far as to blame lawmakers for being hypocritical in their concerns about the objectivity of VOA. Mr. Untermeyer noted that Senators Pell, Biden, and Hems supported the VOA Charter when Congress enacted the Charter in 1976. He also seemed to attack the integrity of the Commission, especially the chairman of the Commission:

We do respond to our sponsor when it comes to our editorials but not on our news. And here I most vigorously object to any statement—especially by the Chairman of the Commission, who served as Director of the Voice of America, to any suggestion that the highly professional, dedicated, and proud journalists for the Voice of America, be they abroad or here in Washington, are subjected to the blandishment of the State Department in anything they say. The Commission report does a great disservice to the Congress, which asked for it, by totally unsubstantiating its allegation that we are subject to pressure by the State Department when it comes to our news.³⁸⁶

In this way, Mr. Untermeyer objected to the assertion that VOA broadcasting news to China would somehow come under the influence of the State Department though he seemed to acknowledge that editorials broadcast to China might. His statement did not negate the fact that VOA was inherently less objective than the BIB.

³⁸⁶ *Id.* at 29 (statement of Chase G. Untermeyer, Associate Director for Broadcasting, Director, VOA, USIA).

For lawmakers, conceding that only VOA editorials and not VOA programs lacked objectivity was not what they wanted to hear. Their concern was to ensure the appearance if not so much the reality of objectivity. Placing a broadcaster to China under VOA could indeed have meant that the programs of this broadcaster would have been objective and its editorials would have reflected the policy views of the government. This was not the arrangement they wanted, though: They wanted to establish a broadcaster to China that would appear professionally independent and credible. A broadcaster to China under the BIB fit that bill, as far as they were concerned.

On his part, Mr. Malcolm S. Forbes from the BIB said in his testimony that an effective broadcasting service to China had to be under an independent entity similar to the BIB for the long term, though it did not necessarily have to be the BIB. Granting his giving allowance that the independent entity did not have to be the BIB, his testimony no doubt reflected his personal preference that the entity be the BIB. An entity like the BIB was, according to Mr. Forbes the agency to oversee broadcasting to China because the BIB had provided a firewall in the past when officials of a communist government like the one in Poland had gone to the U.S. embassy and complained about RFE or RL broadcasts to the country. He noted that embassy officials went to the BIB and not to the broadcaster directly:

Well, instead of going to the broadcaster directly, instead of going down through a chain of command, they had to go through the BIB. We provided the firewall. We checked into the complaints to see if they had any kind of validity. Our people, our broadcasters know that, one, we do not interfere in their own broadcasts. We do provide extensive oversight but we do not write the scripts for them.

He seemed to take a swipe at VOA when he asserted that other broadcasters did not have a firewall. The BIB firewall function also consisted of setting policy, but the BIB did not manage at the micro level but reviewed programs of various services and scrutinized budgets. In his opinion, such a firewall was necessary for any home service.³⁸⁷

How to Consolidate U.S. Civilian International Broadcasters

Senator Feingold introduced a bill in the Senate to consolidate several broadcasters and eliminate a number of broadcasting projects on January 26, 1993.³⁸⁸ The bill authorized the director of the USIA to consult with the appropriate committees in Congress and to inform the committees on the way to proceed with the consolidation of RFE/RL under the BIB with VOA and Radio/TV Marti under the BoB of the USIA. With respect to Radio/TV Marti, the bill included provisions terminating Television Marti programs.³⁸⁹ The choice of the director of the USIA to lead the process of consolidation in consultation with the other governing entities was interesting given that the USIA was also the governing entity under which VOA was and some had advocated placing the broadcaster to China under VOA and not under the BIB. Perhaps Congress believed that the process would move along smoothly and that the turf battles that had been exposed earlier would not hinder the process of consolidation. The process of consolidating and granting civilian international broadcasters independence had also caught the attention of the media.

About a week later, Senator Feingold asked in the Senate that a number of editorials and articles published in newspapers around the country on the reorganization and consolidation of civilian international broadcasters be published in the Congressional Record, to which no other

³⁸⁷ *Id.* at 35.

³⁸⁸ Overseas Broadcasting Consolidation and Deficit Reduction Act of 1993, S. 51 103d Cong. (1993), 1993 CONG US S 51 (LEXIS).

³⁸⁹ *Id.* § 102.

senators objected, and the pieces were published in the Record. These pieces were from the *Chicago Tribune*, *New York Times*, and *Washington Post*, and they essentially agreed on the need to reorganize and consolidate civilian international broadcasting after the end of the Cold War. A gradual, cautious process of reorganization was the recommended approach in some of these pieces.³⁹⁰ Senator Feingold's request to place the editorials in the Record was perhaps a strategic way to influence those lawmakers who may have been having doubts about the need for the consolidation of the broadcasters that even the media were for the reorganization of civilian international broadcasters. Maybe she just wanted lawmakers to feel encouraged about the job they were doing.

On March 17, 1993, Representative Berman introduced a bill to consolidate civilian international broadcasters. This bill was unlike all the previous bills in that its main focus was not just on the consolidation of the broadcasters but also on outlining in rather explicit terms the legal provisions that guaranteed the professional independence of the broadcasters.³⁹¹ The bill declared that the United States had an interest in encouraging freedom and disseminating information in a manner consistent with Article 19 of the Universal Declaration of Human Rights. Ensuring that various people around the world could communicate freely was in the interest of the United States, as was broadcasting to other nations.³⁹²

The bill Representative Berman introduced provided that broadcasters had to operate in accordance with U.S. foreign policy and in accordance with international telecommunications policies.³⁹³ Functionally, the broadcasters had to observe the VOA Charter, disseminate programs that met the needs of people in countries where the media did not meet such needs,

³⁹⁰ 139 CONG. REC. S655 (daily ed. Jan. 26, 1993) (statement of Sen. Feingold), 139 Cong Rec S 655, at *S655 (LEXIS).

³⁹¹ International Broadcasting Act of 1993, H.R. 1379 103d Cong. (1993), 1993 CONG US HR 1379 (LEXIS).

³⁹² *Id.* §§ 2(1)-(3).

³⁹³ *Id.* §§ 3(1)-(7).

present information on events in various regions of the world, and serve as a place where people in oppressive regimes could be free to discuss various issues, including the countries of Asia.

Adequate research and transmitter capacity was necessary to fulfill these obligations.³⁹⁴

The role that RFE/RL had played in informing the people behind the Iron Curtain during the Cold War had shown how much power international broadcasting had to revolutionize people. Now that the Cold War was over, the government focused on informing people in countries whose governments were still repressive. This time the motivation for the government was not as much a need to counter communist propaganda, as it had been during the Cold War, nor was the civilian international broadcasting enterprise part of a foreign policy that included the military language of mutually assured destruction (MAD) between the United States and the Soviet Union. The need government officials had felt during the Cold War to exercise editorial control over the programs of civilian international broadcasters was no longer there because the new strategic goal for the broadcasters was promoting democracy as a human right and not so much waging an anti-communist propaganda war.

This then would explain why the government was willing, even eager to give the broadcasters independence: The stakes were lower. The eagerness to give the broadcasters independence may have been an attempt to promote the image of the U.S. government as one that practices what it preaches. For instance, the new surrogate broadcaster to China would be filling the gap that the state-run Chinese media failed to fill because of government censorship. What good would the surrogate broadcaster be if the Chinese audience got the sense that it was just as controlled and censored by the American government as their own domestic media were? Giving the broadcaster to China professional independence or at least the appearance of professional independence would go a long way toward boosting the credibility of the

³⁹⁴ *Id.* §§ 3(1)-(7), 4(1)-(10).

broadcaster. The same applied to all the other broadcasters. Having said this, professional independence was not political independence.

The bill also gave the President the power to delegate the conduct of U.S. civilian international broadcasting to any government agency. Furthermore, the bill gave the President the power to delegate surrogate broadcasting to a public or private entity as the President saw fit. The bill also stated that the government could make grants to any public or private entity that was carrying out surrogate broadcasting but had to ensure the professional independence of the entity in providing such grants.³⁹⁵ Juxtaposing the provisions in the bill that granted the broadcasters independence with those that gave the President power over the broadcasters, one gets the sense that they reflected the struggle lawmakers and even policy makers faced in trying to strike the perfect balance between giving the broadcasters professional independence and still remaining their political master.

On July 20 1993, Senator Clairborne Pell introduced a bill to reorganize civilian international broadcasters and to establish broadcasting to China and Asia.³⁹⁶ The bill acknowledged the importance that RFE/RL and Radio/TV Marti had for millions in oppressive countries and that VOA had developed a big audience. Among other things, the bill urged the continuation of RFE/RL and Radio/TV Marti and urged the commencement of similar radio broadcasts to Asia. Similar to the House bill introduced by Representative Berman, the Senate bill noted that the United States had an interest in ensuring the free flow of information in accordance with Article 19 of the Universal Declaration of Human Rights, and an interest in ensuring free communication among the people of the world. Broadcasting through radio and television also served the interest of the United States over time, and all previous broadcasting

³⁹⁵ *Id.* §§ 5(a)-(b).

³⁹⁶ United States International Broadcasting Act of 1993, S. 1262 103d Cong. (1993), 1992 CONG US S 1262 (LEXIS).

through the broadcasters under the USIA had to continue.³⁹⁷ The bill had a provision that mandated continued reorganization and consolidation of the broadcasters in a way that would make them better able to enhance democratic governments around the world but also in way that was efficient and did not waste public funds.³⁹⁸ By far the most remarkable aspect of this bill was that it named the BBG as the entity that would govern civilian international broadcasting, which the previous bills had not.

Under a provision in the bill, the BBG would have eight members that the President would appoint with the advice and consent of the Senate who had to serve for three years and had to receive compensation from the government.³⁹⁹ The Board had to study and to evaluate the conduct of international broadcasting through the IBB and the effectiveness of the operations of IBB in light of U.S. foreign policy, to purchase resources when necessary, to appoint personnel and staff, to provide annual reports to the President, and to channel funding to RFE/RL.⁴⁰⁰

Most notably for the independence of civilian international broadcasters, the bill stated, “the Board shall protect the Bureau against political interference with broadcasting. The United States Information Agency will respect the professional independence and integrity of the broadcasting services.”⁴⁰¹ Thus, the issue of independence that was much discussed in considering bills to establish a radio broadcasting service to China and Asia continued to endure as the process of reorganization moved along in Congress. Congress was thinking of ways to protect the professional independence of all civilian international broadcasters. The Bureau in

³⁹⁷ *Id.* §§ 2(a)-(i).

³⁹⁸ *Id.* § 2(j).

³⁹⁹ *Id.* §§ 3(a)-(e).

⁴⁰⁰ *Id.* §§ 4(a)-(h).

⁴⁰¹ S. 1262 § 5.

question whose independence the Board had to protect was the IBB; the bill discussed the establishment of the IBB.⁴⁰²

Section 6 of the bill called for the establishment of the IBB within the USIA. Within the Bureau would be other entities: Voice of America, Office of Surrogate Broadcasting, and WorldNet Television and Film Services, Engineering and Technical Operations, and any other entities the director of the IBB decided to establish. The Office of Surrogate Broadcasting had to administer VOA, RFE/RL, Radio/TV Marti, RFA, and any other surrogate broadcasters that Congress established.⁴⁰³ Interestingly, this meant that VOA would have to operate as a surrogate broadcaster.

Congress had to fund the BBG and the IBB through separate accounts. The IBB had to forward a funding request to the BBG, which would then forward both the IBB funding request and the BBG funding request to the USIA. The USIA then had to forward all three entities budget requests to the OMB.⁴⁰⁴ The director of the USIA had to operate a surrogate broadcasting service to Asia within the Office of Surrogate Broadcasting. This service had to provide news materials and commentate on things happening in the countries of Asia. Included in the mandate of the service was the requirement to promote democratic government and freedom in the countries of Asia where the media was underdeveloped or repressed. In doing this, the service had to disseminate information about events in Asia and be a forum for the discussion of opinions of people in Asian countries with oppressive regimes.⁴⁰⁵ The bill also made various requirements regarding transfers of personnel, appointments of personnel, and the legal issues

⁴⁰² *Id.* § 6(A).

⁴⁰³ *Id.* §§ 6(a)-(d).

⁴⁰⁴ *Id.* § 6(e).

⁴⁰⁵ *Id.* §§ 7(a)-(b).

surrounding all the bureaucratic maneuvering.⁴⁰⁶ Outlined in the bill was the most comprehensive articulation yet of the provisions that an independent entity to govern the broadcasters would have to follow. To some extent, it integrated the provisions in earlier bills, if not verbatim then in spirit.

Eventually, the introduction of bills to reorganize and consolidate civilian international broadcasters in Congress culminated in the introduction of two companion bills in the House and Senate respectively. Representative Hamilton introduced House Bill 2333 on June 10, 1993 in the House of Representatives. The bill was actually an appropriations bill that sought to allocate money to the Department of State, the USIA, other agencies for fiscal years 1994-1995.⁴⁰⁷ Apparently, even after Senator Pell had introduced a bill earlier that provided for the establishment of the BBG, some legislators in Congress and some policymakers still felt that some entity that already existed could well protect the professional independence of civilian international broadcasters. This was a matter of much discussion during a hearing on House Bill 2333.⁴⁰⁸

The USIA, the BIB, or the CPB

Representative Berman opened the hearing by reiterating the need to ensure that U.S. civilian international broadcasting continued to appeal to listeners in parts of the world where many political and technological changes were taking place. Since this hearing was on financial matters, he noted that U.S. civilian international broadcasting would only be worth the effort if the whole enterprise did not adversely affect the finances of the U.S. government. He also said that the administration of President Clinton had broadly discussed how consolidation would save

⁴⁰⁶ *Id.* §§ 8(a)-(h).

⁴⁰⁷ Foreign Relations Authorization Act Fiscal Years 1994 and 1995, H.R. 2333 103d Cong. (1993), 1993 CONG US HR 2333 (LEXIS).

⁴⁰⁸ *See, e.g., generally* Hearings and Markup on H.R. 2333, *supra* note 75, at 325-348.

the government money.⁴⁰⁹ In this way, he cast the consolidation of civilian international broadcasters as one that would mean more funds going to one entity than less funds going to a number of defragmented entities.⁴¹⁰

In apparent contradiction to what Representative Berman said, Mr. Carlson from the CPB seemed to believe that engaging in public diplomacy was worth the cost, whatever that cost may be. He said that both VOA and RFE were supported during the Cold War by duplicative bureaucracies in Washington and Munich that were, nevertheless, essential to bringing democracy to the countries of Eastern and Central Europe and bringing an end to the influence of the communist Soviet Union. To illustrate just what these broadcasters had meant to people living in these countries, he vividly recounted how he met the President of Czechoslovakia, Vaclav Havel, and the President of Poland, Lech Walesa, both of whom assured him of the indispensable role that RFE/RL had played in the revolutions that destroyed communism in their respective countries. He did not think consolidating all broadcasting under the USIA and disestablishing the BIB over 2 years would benefit the United States but thought this would in fact harm the United States⁴¹¹

Placing the broadcasting service to Asia under the USIA could also raise questions about the credibility of the service, or so Representative Porter argued. Representative Porter said that VOA was not the right broadcaster to carry out broadcasting to China and Asia because the broadcaster was not necessarily credible. He contended that officials in every administration that had come into the White House had exercised editorial control over VOA. VOA reported what the administration wanted reported. He cited the example of when Secretary Baker told VOA not to call Saddam Hussein a dictator, which the broadcasters stopped doing. When President Ronald

⁴⁰⁹ *Id.* at 325-326 (statement of Rep. Berman, Chairman, Subcomm. on International Operations).

⁴¹⁰ *Id.* (statement of Rep. Snow, Ranking Minority Member, Subcomm. on International Operations).

⁴¹¹ *Id.* at 327-328 (statement of Richard W. Carlson, President and Chief Executive Officer, CPB).

Reagan did not want VOA to talk about Central America, the broadcaster did not talk about Central America.⁴¹²

These were other examples of officials in the executive branch exercising editorial control over the broadcasters at the behest of their political bosses. In fact, officials in the executive seemed to be the major culprits when it came to exercising editorial control over civilian international broadcasters. Earlier, Senator Gramm had talked about State Department involvement in the censorship of news about Iraq during the administration of President H.W. Bush. The fact that Representative Porter in his testimony referred to the administrations of both President of President Carter and Reagan at least showed that the exercise of editorial control over the broadcasters was not necessarily limited to one administration or one party for that matter.

The fact that these lawmakers believed that officials in the executive were the culprits when it came to exercising editorial control over the broadcasters perhaps explains why they were eager to grant the broadcasters professional independence. They did not view themselves as the ones who were going to lose editorial control over the broadcasters, but they saw the situation as one where they could impose some restrictions on the ability of the executive to continue harassing the broadcasters as it had over the course of so many administrations—Democratic or Republican.

Representative Porter said that he did not believe that the mission of surrogate broadcasters was to act as mouthpieces of the government. He believed that they had to go under the BIB because it would provide “a firewall of protection,” keeping out the influence of the government in the conduct of their broadcast operations.⁴¹³ His sense was that putting radio

⁴¹² *Id.* at 330 (statement of Rep. Porter, Member, Subcomm. on International Operations).

⁴¹³ *Id.*

broadcasting to Asia under the VOA or under any other agency of the U.S. government only harbored the end of surrogate broadcasters.⁴¹⁴

When all was said and done, the main concern for him seemed to be the appearance of professional independence and credibility. A surrogate broadcaster to China under an independent BIB would appear more professional and credible than one under VOA. As in the case of previous deliberations in Congress on the subject of civilian international broadcasters, the lawmakers seemed motivated by a genuine interest in making civilian international broadcasters to appear to be more credible. The policy makers, on the other hand, seemed to be motivated not only by the appearance of professionalism and credibility but also by a sense of self-preservation and promotion.

For instance, Mr. Carlson from the CPB wanted the government to put the broadcasters under one entity that was only responsible for broadcasting. Unlike the other witnesses, he believed that the VOA had been professional and credible even though the broadcaster was under the USIA, but he also thought the broadcasters needed to be placed under an entity only responsible for broadcasting. His reasoning was that the USIA that oversaw the broadcasting activities of VOA was also involved in other activities around the world besides broadcasting, which affected the way the USIA oversaw VOA. His preferred approach to reorganizing civilian international broadcasters was to place VOA and the other civilian international broadcasters under the CPB. He believed that “Making a home for them in close proximity to public broadcasting in America is eminently sensible. The timing to do this is just right.” He spoke to the virtues of the CPB as an entity:

⁴¹⁴ *Id.* at 331.

For 25 years now, the Corporation for Public Broadcasting has supported, it has shielded, it has nurtured and, when necessary, it has goated [sic] public broadcasting to its present position as a national resource. I think that we should look at the remarkable success of public radio and public television in America. PBS, National Public Radio, hundreds of local stations and independent producers at home. Imagine how constructive the intellectual payload that they deliver could be carried outside of the borders of the United States.⁴¹⁵

He felt that the CPB could change the disparate international broadcasters by being “an international electronic peace corps.” The CPB could also ensure their professional standards, such as “accuracy, balance, timeliness, and diversity” His recommendation was to place VOA, RFE/RL, Radio Marti and WorldNet under an entity responsible for international broadcasting that would be under the CPB.⁴¹⁶

In his effort to highlight even further the virtues of the CPB, Mr. Carlson went so far as to say that Mr. Forbes from the BIB had made a similar recommendation when the two men had spoken earlier. Mr. Forbes wanted to see the government set up “a new umbrella organization” The only disagreement the two men had was what the organization should be, with Mr. Carlson believing that CPB should do the job. Implicitly, then, he seemed to suggest that Mr. Forbes from the BIB believed that the BIB should do the job. The other thing they agreed about is that the government had to remove VOA from the USIA.⁴¹⁷

In an apparent contradiction of himself, Mr. Carlson did acknowledge that the only influence that the USIA had on the VOA was to vet editorials but not the news: “There are no policy meetings wherein it is decided what the administrating view will be this week or how it

⁴¹⁵ *Id.* at 333.

⁴¹⁶ *Id.* at 334 (statement of Mr. Richard W. Carlson, President and Chief Executive Officer, CPB).

⁴¹⁷ *Id.*

will be expressed in the broadcasts. There is no such thing.”⁴¹⁸ Representative Berman was incredulous as to why Mr. Carlson did not like VOA airing editorials when the American way was that “if you owned it you handled the editorials.” He wanted to know whether putting VOA under the CPB as Mr. Carlson had recommended would affect the legal requirement that VOA had “to push the American position” and whether such “pushing” occurred only to the extent of disseminating editorials.

Mr. Carlson responded that VOA had tried to be professional and to advance democracy as much as was humanely possible and continued to say that VOA did not take any policy directions from any government entity. He nevertheless said that when he was at VOA he received propositions from Foreign Service officers who were unhappy with the news or who did not want VOA to broadcast a certain program. To this, Representative Berman responded that he saw no purpose of having VOA inside or outside USIA if VOA was not going to be credible either way.⁴¹⁹

Mr. Carlson’s testimony about his tenure at VOA may have been a way to cast himself and his time there in the best possible light. He seemed to be saying that VOA was and always had been an objective, professional broadcaster while at the same time saying that VOA needed to be under the CPB to improve. Perhaps he just wanted VOA to be under his supervision as it had been in the past, a power grab as the case was.

Congress later fulfilled his recommendation that all civilian international broadcasters be under one entity that was only responsible for broadcasting when it placed the broadcasters under the BBG. VOA, RFE/RL, Radio/TV Marti did not end up under the CPB after all, as Mr. Carson

⁴¹⁸ *Id.* at 348.

⁴¹⁹ *Id.* at 348-349 (statements of Mr. Richard W. Carlson, President and Chief Executive Officer, CPB and Rep. Berman, Member, Subcomm. on International Operations).

had recommended. In fact, the mere presumption that VOA could legally function under the CPB was troubling for some.

During the hearing, Mary Bitterman from the VOA expressed doubts about the prudence of putting VOA under the CPB and mused that such a process would probably require a significant amount of legal maneuvering, including the repeal of the Smith-Mundt Act and a reorganization of the structure of public broadcasting. Like that of Mr. Carlson, her testimony probably reflected her own interest in preserving the significance of VOA in the pantheon of U.S. civilian international broadcasting, which was not surprising coming from someone who worked at the broadcaster. Another point she made was that VOA could, in her opinion, broadcast information about events in countries or regions and was not restricted by the VOA Charter to broadcasting to the world information about the United States. By saying this, she seemed to be touting the viability of VOA to operate as a surrogate broadcaster and not just a generalist broadcaster. Maybe she said this to show that VOA could just as well carry out the proposed surrogate broadcasting to China, as some had suggested. At the time, VOA was already broadcasting to China as a generalist broadcaster, and perhaps she feared that the proposed service would mean VOA would have to stop broadcasting to China, which could mean staff cuts or the loss of funding. She may also have just wanted to present VOA as a credible broadcaster.

On the issue of credibility, she asserted that the much-vaunted credibility of the BIB was not real because the BIB was required to broadcast consistent with U.S. foreign policy, just like VOA, and people around the world knew that the U.S. government funded RFE/RL. In her opinion, the U.S. government would always have an interest in what these surrogate broadcasters said, which would have consequences on how credible audiences perceived them to be.⁴²⁰ A few

⁴²⁰ *Hearing and Markup on H.R. 2333, supra* note 75, at 336-338 (statement of Dr. Mary G.F. Bitterman, Private Consultant on Communication and International Affairs and Former Director, VOA).

other witnesses spoke at the hearing about the merits of the reorganization process Congress had undertaken.

As a legal scholar of international communication law, Stuart N. Brotman commended the bill Senator Berman had proposed for reorganizing civilian international broadcasting. He said the bill recognized the need for broadcasting to Asia, the importance of training and supporting indigenous broadcasters in various regions, the impact of the broadcasting market place on U.S. civilian international broadcasting, and the need for changing the way the government made grants to broadcasters. He reiterated the need to reorganize civilian international broadcasters in a way that would boost the effectiveness of the broadcasters for the U.S. government.⁴²¹ Mr. Adrian Karantkycky from the American Federation of Labor and Congress of Industrial Organization (AFL-CIO) said that audiences in countries like Ukraine and Russia deemed RFE/RL to be more critical to enhancing democracy than VOA. Ceasing broadcasting through RFE/RL or putting the broadcasters under the government would adversely affect the broadcasters by making the broadcasters more susceptible to the influence of embassies wary of displeasing foreign government leaders. Broadcasting to China needed to be done by a home service and be insulated from the government.⁴²²

At this hearing, the policymakers attempted to steer Congress to put civilian international broadcasters under the respective organizations at which they worked. The testimonies of Mr. Carlson and Ms. Bitterman was evidently self-serving and only that. Regardless of how they tried to appear, the two policy makers were not concerned with the professional independence and credibility of the broadcasters. Lawmakers who questioned them were all resolved to putting the new broadcaster to Asia under the BIB and spoke glowingly about how well the BIB firewall

⁴²¹ *Id.* at 339-341.

⁴²² *Id.* at 341-342.

had protected RFE/RL during the Cold War. One wonders, though, how well the BIB firewall could really have functioned in protecting the broadcasters from the editorial control exerted by government officials when it was the same government officials who organized and provided funds to the BIB. Could any government-established and funded agency—even one that received some private funds like the BIB—be truly independent? Congress was certainly committed to establishing just such an agency, one that would be independent. After the review and the deliberations, the legislature still had not reached any sort of resolution on the matter. This issue of independence dominated a hearing before the Subcommittee on Terrorism, Narcotics, and International Operations of the Committee on Foreign Relations of the United States Senate.⁴²³ It was at this hearing that lawmakers and policy makers discussed the structure of the BBG.

The Proposed Structure and Functions of the BBG

Senator John Kerry opened the hearing in his capacity as chairman of the Subcommittee and remarked that the proposal in President Clinton's budget for 1994 to consolidate U.S. civilian international broadcasting by eliminating BIB and putting RFE/RL into USIA was rather controversial, but he hoped the hearing would serve to clarify matters.⁴²⁴ Dr. Joseph D. Duffey from the USIA specifically addressed the merits of the plan set out by the Clinton administration to reorganize civilian international broadcasters. First he acknowledged the savings the government would derive from the reorganization and how the reorganization would enhance VOA, RFE/RL, and broadcasting to Cuba. More importantly, he noted:

⁴²³ *Fiscal Year 1994 Foreign Relations Authorization Act: Budget Requests: Hearings Before the Subcomm. on Terrorism, Narcotics and International Operations of the S. Comm. on Foreign Relations*, 103d Cong. (1993) [hereinafter *Fiscal Year 1994 Foreign Relations Authorization Act: Budget Requests*].

⁴²⁴ *Id.* at 2.

The plan recognized the need to preserve the journalistic integrity of all international broadcasters and at the sametime [sic], the need for accountability to the American taxpayer. While all U.S. broadcasting elements will be organized under USIA, a single unique board of governors for the first time will be created, a board of governors for policy and administration of broadcasting, which will provide a safeguard for journalistic independence and provide oversight and policy guidance for all our broadcast services: Voice of America, Asian Democracy Radio, Radio Free Europe, Radio Liberty, and Office of Cuba Broadcasting. At the present, Worldnet TV is included in this plan.⁴²⁵

In this way, he described clearly and succinctly what the BBG would do when established. The remarkable thing was that under the plan, the USIA was going to continue to be involved with civilian international broadcasters but the BBG would somehow insulate them all. How the USIA could do this even though the agency was still under the government remained to be seen. Dr. Duffey said that Mr. Daniel Mica, who was the chairman of the BIB at the time, would address the specific composition of the Board. He himself touted the plan to reorganize civilian international broadcasters under the BBG as a way to give the government the ability to make the necessary plans for broadcasting to different parts of the world in future.⁴²⁶ Although he did not think anyone had subjected VOA to overwhelming pressure over the years, he believed that the reorganization would present “the appearance of credibility and also a restraint. Restraint upon the chairman. Restraint upon other government officials.”⁴²⁷

Like Dr. Duffey, Mr. Mica believed that the proposed restructuring would create “the appropriate firewalls for journalistic integrity and independence for all U.S. Government

⁴²⁵ *Id.* at 207-208 (statement of Joseph Duffey, Director, USIA).

⁴²⁶ *Id.* at 208.

⁴²⁷ *Id.* at 220.

broadcasting.”⁴²⁸ In fact, the reorganization plan would create many levels of firewalls. This was the first time they were unveiling the plan.⁴²⁹ Mr. Mica noted that the President would appoint the chairman of the Board and the members of the Board, and he said they would act as the first firewall. The chairman of the board together with the director of the USIA and with the acquiescence of the board members would appoint the director of broadcasting. Mr. Mica believed that this would form a second firewall. A third firewall would come in the form of a director of VOA, and RFE/RL, the Office of Cuba Broadcasting, and RFA would be surrogate broadcasters. A fourth firewall would be a line item budget that would be included in the USIA budget that would be presented to Congress. This would presumably prevent Congress from exercising pressure on the broadcasters by pulling their funding. For broadcast journalists, pressure from Congress to operate in a particular way in exchange for funds may not have been as bad as having officials from the executive telling them what to say in their programs, but it would be pressure nonetheless. Any provision to prevent the exertion of such pressure was welcome. Overall, the Board would also have the authority to evaluate the professional integrity of the broadcasters under the Board “within the context of the foreign policy objectives of the United States.”⁴³⁰ The four firewalls would act as a check on each other and insulate the broadcasters under four layers of bureaucratic and political protection. All this sounded good in theory.

Senator Kerry wanted Dr. Duffey to explain how the BBG would ensure from day to day the professional independence of the broadcasters and ensure that they did not broadcast inappropriate things. He noted, as others had, that this allegedly occurred in the case of VOA during the Reagan administration, which if true, violated the professional independence of the

⁴²⁸ *Id.* at 211 (statement of Daniel A. Mica, Chairman, BIB).

⁴²⁹ *Id.* at 212.

⁴³⁰ *Id.* at 212-213.

VOA. Dr. Duffey first began by saying that he knew of no instance when VOA had broadcast untruths, but he believed that the Board and the broadcasters under the Board would not be susceptible to government inappropriate functions. Senator Kerry wanted to know further if any circumstances could exist where VOA would be justified to disseminate “disinformation” or whether VOA had to be “sacrosanct.” Dr. Duffey responded that no circumstance justified broadcasting false information.

Mr. Mica noted that with a bipartisan board and the director of the USIA and the director of broadcasting, the Board would have a long list of individuals ensuring the independence of broadcasters. Still, Senator Kerry insisted and wanted to know if the Board could protect the broadcasters from directives given, for instance, by the CIA Director, the National Security Advisor, or the USIA Director. Mr. Mica said that he believed that the Board would be able to withstand such pressure.⁴³¹ Senator Kerry also wanted to know how the proposed reorganization plan would save the government money. Mr. Mica said that the cost savings would come in the form of letting go of some personnel, combining budgets for carrying out daily personnel and administrative functions, and combining technical facilities and capabilities. He even suggested combining broadcasting functions in some cases.⁴³²

In keeping with the same line of questioning, Senator Feingold wanted to know whether the proposed broadcasting budget would remain and not be adjusted upwards even in the event of some geopolitical upheaval. The issue she was getting at here was whether a geopolitical crisis would not so increase the need for civilian international broadcasters that the government would have to increase funding to the broadcasters. Such an increase in funding would not be

⁴³¹ *Id.* at 220-222 (statements of Senator Kerry, Member, Subcomm. on Terrorism, Narcotics and International Operations, Joseph Duffey, Director, USIA and Daniel A. Mica, Chairman, BIB).

⁴³² *Id.* at 217 (statements of Senator John Kerry, Member, Subcomm. on Terrorism, Narcotics and International Operations of the S. Comm. on Foreign Relations and Mr. Mica, Chairman, BIB).

unprecedented. All the civilian international broadcasters had been established because of a geopolitical crisis. Another crisis could conceivably necessitate the establishment of more broadcasters and an increase in the budget. Dr. Duffey replied that this would be up to Congress.⁴³³ A crisis did indeed occur on 9/11 that necessitated the establishment of more civilian international broadcasters. Dr. Duffey replied that this would be up to Congress.⁴³⁴

The proposed reorganization of civilian international broadcasters as articulated by Mr. Mica was as described in Figure 5.1. This reorganization plan reflected the intention of lawmakers to establish a broadcasting service to Asia that would be independent, to continue broadcasting to Europe through RFE/RL and to ensure the independence of RFE/RL, to continue broadcasting to Cuba, and to continue broadcasting through VOA without the influence of the USIA. This proposed structure of U.S. civilian international broadcasters included the USIA whereas the current structure of U.S. civilian international broadcasters (as described in Figure 2.1) does not include the USIA, which Congress disestablished in 1998.

⁴³³ *Id.*

⁴³⁴ *Id.*

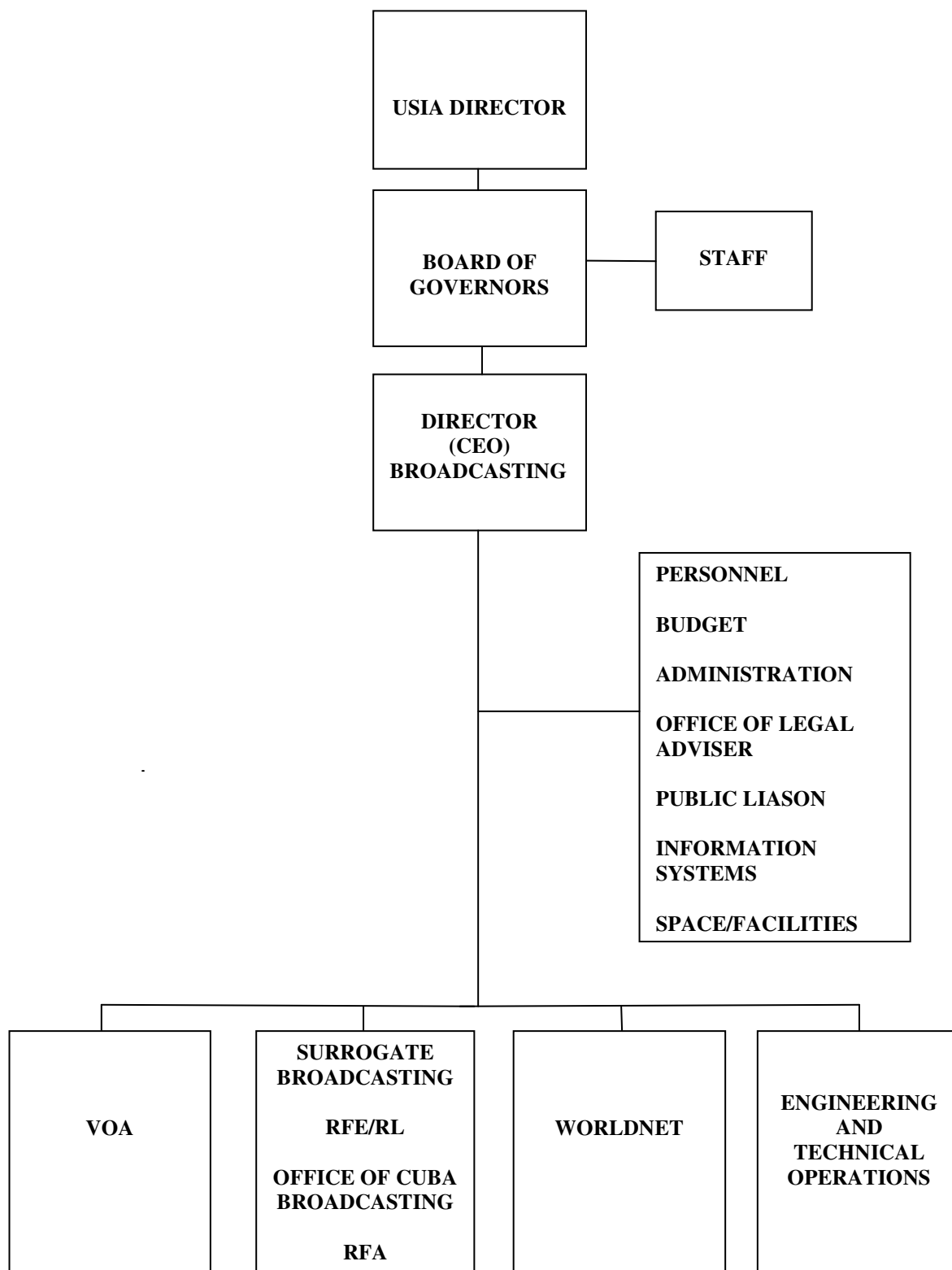


Figure 6.1: Proposed Structure of U.S. Civilian International Broadcasters from *Fiscal Year 1994 Foreign Relations Authorization Act: Budget Requests supra* note 423, at 215.

Passing the Bills to Consolidate U.S. Civilian International Broadcasters

Having considered the bill, the House passed House Bill 2333 by a vote of 273 and 144 nays sent the bill to the Senate on June 6, 1993.⁴³⁵ The House requested that the Senate concur on the bill.⁴³⁶ After which, the Senate Foreign Relations Committee took up the bill.⁴³⁷ In the meantime, Senator Clairborne Pell introduced Senate Bill 1281 on July 23, 1993 in the Senate. Senate Bill 1281 included provisions that reorganized civilian international broadcasters in a manner similar to the manner Mr. Mica had described during the hearing.

Among other things, the bill included provisions on the establishment of the BBG with six voting members appointed by the President with the advice and consent of the Senate, the various authorities of the BBG, the establishment of the IBB, and the establishment of the Office of Surrogate Broadcasting.⁴³⁸ Slightly differently, House Bill 2333 included provisions providing for the establishment of the BBG with eight voting members appointed by the President with the advice and consent of the Senate, the various authorities of the BBG and the establishment of the IBB, but did not mention the establishment of the Office of Surrogate Broadcasting.⁴³⁹ Both bills instructed the BBG and the director of the USIA to protect the professional integrity of the broadcasting services of the IBB and of the IBB grantees.⁴⁴⁰

House Bill 2333 that the House had sent to the Senate passed in the Senate by a vote of 92 to 8, but the Senate amended House Bill 2333 after the enacting clause to insert the text of Senate Bill 1281.⁴⁴¹ The House did not accept the Senate amendments to the bill and asked for a

⁴³⁵ 139 CONG. REC. H3878 (daily ed. June 22, 1993), 139 Cong Rec H 3878, at *H3878 (LEXIS).

⁴³⁶ 139 CONG. REC. S8225 (daily ed. June 29, 1993), 139 Cong Rec S 8225, at *S8225 (LEXIS).

⁴³⁷ 139 CONG. REC. S8226 (daily ed. June 29, 1993), 139 Cong Rec S 8226, at *S8226 (LEXIS).

⁴³⁸ S. 1281 § 306.

⁴³⁹ H.R. 2333 §§ 304(a)-309(I).

⁴⁴⁰ S. 1281 § 304(b); H.R. 2333 § 305(14)(c).

⁴⁴¹ 140 CONG. REC. S559 (daily ed. Feb. 2, 1994), 140 Cong Rec S 559, at *S559 (LEXIS); 140 CONG. REC. H413 (daily ed. Feb 10, 1994), 140 Cong Rec H 413, *H413 (LEXIS).

conference between the two chambers.⁴⁴² Eventually, the House accepted the conference report filed by the various appointed conferees in the House.⁴⁴³ The Senate too had actually agreed to agree to the conference report filed in the House by voice vote on April 26, 1994.⁴⁴⁴ President Clinton signed the bill into law as the United States International Broadcasting Act reorganizing all civilian international broadcasters under the BBG on April 30, 1994.⁴⁴⁵

The reorganization was not exactly the way Mr. Mica had described because the proposal Mr. Mica presented did not explicitly speak of the creation of the IBB, which was actually included in the United States International Broadcasting Act.⁴⁴⁶ On the other hand, and more importantly, the Act included the various firewalls that Mr. Mica had proposed. By placing the BBG between the USIA and the various broadcasters under the BBG, Congress essentially insulated the broadcasters from the USIA, the State Department and the U.S. government itself. The BBG would act as a buffer for the various broadcasters that the government had placed under the Board.

Under the International Broadcasting Act of 1994, the USIA continued to exist as part of the overall structure of U.S. civilian international broadcasting. Not only was the USIA expensive to keep, its very existence within the civilian international broadcasting structure seemed to challenge the independence of the broadcasters because the USIA was still very much a government agency, unlike the independent BBG. Congress moved to address the problem the USIA posed for the independence of the broadcasters when the legislature passed the Foreign Affairs Agencies Consolidation Act.

⁴⁴² 140 CONG. REC. H2380 (daily ed. Apr. 18, 1994), 140 Cong Rec H 2380, at *H2380 (LEXIS).

⁴⁴³ 140 CONG. REC. H2889 (daily ed. Apr. 28, 1994), 140 Cong Rec H 2889, at *H2889 (LEXIS).

⁴⁴⁴ 140 CONG. REC. S4919 (daily ed. Apr. 26, 1994), 140 Cong Rec S 4919, at *S4919 (LEXIS).

⁴⁴⁵ 140 CONG. REC. D468 (daily ed. May 2, 1994), 140 Cong Rec D 468, at *D468 (LEXIS).

⁴⁴⁶ United States International Broadcasting Act § 307.

Strengthening the BBG Firewall

As with the United States International Broadcasting Act, the passage in Congress of the Foreign Affairs Agencies Consolidation Act was the culmination of a long deliberative process in Congress. The goal of the Act was to consolidate further U.S. government public diplomacy programs and to save money in the process. Some of the Cold War public diplomacy programs were no longer necessary. There was a need to cease the unnecessary programs but to keep the ones that the government still used. Deliberations in Congress highlighted lawmakers' sensibilities about the best way to conduct U.S. foreign policy after the Cold War but also their concern for being frugal in conducting public diplomacy.

Lawmakers held a number of hearings in both the House and the Senate to discuss bills on the continued consolidation. Naturally, the subject of civilian international broadcasters and their role in U.S. foreign policy was part of their deliberations, in particular how to keep them professionally independent from the government. In opening one such hearing, Representative Smith summed up the need to ensure that all U.S. public diplomacy activities, but particularly surrogate service broadcasters remained free from interference from the State Department. He went on to say that though the BBG was created to insulate civilian international broadcasters from real government editorial interference and to remove the perception of government editorial interference, but some said that the BBG was itself creating an elaborate bureaucracy that could interfere with the broadcasters. Part of the problem was the unique, albeit somewhat cumbersome, relationship between the BBG and the USIA.⁴⁴⁷ When queried about this relationship by Senator Grams, Dr. Duffey from the USIA said:

⁴⁴⁷ *Foreign Relations Authorization for FY 1998-1999: U.S. Information Agency and National Endowment for Democracy: Hearing Before the Subcomm. on International Operations and Human Rights of the H. Comm. on International Relations 105th Cong. 31 (1997) [hereinafter Foreign Relations Authorization for FY 1998-1999] (statement of Representative Smith, Chairman, Subcomm. on International Operations).*

I think that the Congress did create in this instance—and I am sure Mr. Burke has occasionally the same puzzlement that I do about it—an instrument unlike anything that has been done before, in the sense that the members of the Board, the Broadcasting Board of Governors, of whom I am one, are also the directors of private corporations to which they award funds. And they are also the administrators of an institution, part of which is a government agency. That creates a difficult problem for them, because there are other responsibilities that fall to USIA, and other expectations.⁴⁴⁸

As much as the BBG was supposed to serve as a private corporation, the USIA was part of the government. This was a problem for the independence of the broadcasters.⁴⁴⁹ Dr. Duffey noted that under the reorganization plan presented by Mr. Mica in 1993, an independent director of Broadcasting was supposed to operate between the USIA and the BBG and report to both the director of the USIA and the BBG.

The problem at the time was that lawmakers had failed to realize that the continued presence of the USIA within the structure of civilian international broadcasting did not augur well for the professional independence of the broadcasters. Since 1953, the USIA had been the authority on the conduct of U.S. public diplomacy, including civilian international broadcasters. The Agency had stifled the professional independence of the broadcasters for many years by exercising editorial control over them. By keeping the USIA when it passed the International Broadcasting Act of 1994, the government had inadvertently ensured that this editorial control continued, regardless of the existence of the BBG. BBG members were not civil servants but USIA employees were. For years, they had exercised their will on civilian international

⁴⁴⁸ *Id.*

⁴⁴⁹ *See id.*

broadcasters. They were not going to take their diminished role vis-à-vis the BBG lying down: This only further complicated the relationship between the USIA and the BBG.

Dr. Duffey acknowledged some misgivings about the relationship between the BBG and the USIA because of the implications of this relationship on the ability of civilian international broadcasters to be professionally independent. For one thing, Dr. Duffey pointed out that the United States International Broadcasting Act required the BBG to supervise all broadcasting activities, but he also expressed doubt that nine members of the BBG could in fact supervise a government entity like the USIA. Altogether, Dr. Duffey showed that significant “ambiguity” existed in the relationship between the USIA and the BBG.⁴⁵⁰

Senator Gramm inquired about the airing of editorials by the VOA, editorials prepared by the Office of Policy in the IBB as editorials expressing the policies of the United States. These were similar to the editorials that had caused Saddam Hussein to protest and the USIA to apologize.⁴⁵¹ The Senator wanted to know from Dr. Duffey whether he thought VOA had to continue to air these editorials or cease airing them as some at USIA wanted.⁴⁵² Dr. Duffey believed that the editorials were an essential part of explaining the policies of the United States. Indeed, he even believed that the various entities involved in public diplomacy had to express the American point of view.⁴⁵³

Still on the subject of the independence of the broadcasters under the BBG, Mr. Kevin Klose, who was president of RFE/RL and had been designated to be the associate director of the

⁴⁵⁰ *Foreign Affairs Reform and Restructuring Act of 1997 and Fiscal Year 1998 International Affairs Budget Request: Hearings and Markup Before the Subcomm. on International Economic Policy, Export and Trade Promotion of the S. Comm. on Foreign Relations 105th Cong.* 118-119 (1997) [hereinafter *Foreign Affairs Reform and Restructuring Act of 1997 and Fiscal Year 1998 International Affairs Budget Request*] (statement of Dr. Joseph Duffey, Director, USIA).

⁴⁵¹ *The Radio Free China Act of 1992: Hearing on S. 2985, supra* note 129, at 3 (statement of Senator Helms, Member, S. Comm. on Foreign Relations).

⁴⁵² *Foreign Affairs Reform and Restructuring Act of 1997 and Fiscal Year 1998 International Affairs Budget Request, supra* note 450, at 126 (statement of Senator Gramm, Member, S. Comm. on Foreign Relations).

⁴⁵³ *Id.* at 126-127.

IBB, spoke to the importance of firewalls to provide real professional independence and a symbolic sense of professional independence for all broadcasters, surrogate and generalist.⁴⁵⁴ Dr. Duffey concurred with Mr. Klose in saying that the primary function of the BBG as initially proposed was to be a firewall and to protect the professional independence of broadcasters. He believed that the VOA Charter notwithstanding, the BBG still had to take the lead on the matter of protecting the professional independence of all broadcasters.⁴⁵⁵ Senator Biden expressed his strident support for the independence of the broadcasters:

I would oppose any restructuring that would diminish the powers of the Broadcasting Board of Governors or that fold the broadcasting Agencies into the State Department as well. If anything Joe [Joe Duffey], I have a solution for you. We will just make them independent, independent of you and independent of everybody, independent of the State Department as well.⁴⁵⁶

Another problem was that of duplication. Senator Gramm wanted to know from Dr. Duffey why certain offices could be found in both the USIA and the BBG or the VOA and the BBG. Dr. Duffey explained that the BBG had the right under the 1994 legislation to appoint staff as the Board saw fit. He also expressed the opinion that the entities involved in public diplomacy through international broadcasting had made efforts to stem duplication. More efforts were underway at the BBG and the USIA to further the process of consolidation that had began in 1994.⁴⁵⁷

In fact, though he expressed frustration at the nature of the relationship between the USIA and the BBG, Dr. Joseph Duffey from the USIA nevertheless argued that the continued

⁴⁵⁴ *Id.* at 121 (statement of Mr. Kevin Klose, President of RFE/RL, and Associate Director Designate, IBB).

⁴⁵⁵ *Id.* at 122.

⁴⁵⁶ *Id.* at 132.

⁴⁵⁷ *Id.* at 120-121.

consolidation of U.S. foreign affairs entities at the expense of the USIA was counterintuitive. He held that the USIA was important and remained relevant to the conduct of various aspects of U.S. public diplomacy, even though it was not relevant to the conduct of civilian international broadcasting. He also said the idea of eliminating the USIA and moving the functions of the USIA to the State Department would only add to bureaucracy and not aid in the efficiency of the conduct of U.S. public diplomacy. Such reorganization would also not accrue the savings the government intended to accrue and would in fact be disruptive to the State Department. Dr. Duffey felt that the USIA had made significant progress since the 1994 reorganization and that Congress had to allow the Agency to continue this process.⁴⁵⁸

The statements of lawmakers in the House and the Senate seemed to express the sense of Congress that the continued reorganization and consolidation of U.S. public diplomacy entities in future needed to resolve the ambiguous nature of the relationship between the USIA and the BBG that the United States International Broadcasting Act had created. At the same time, this reorganization also needed to enhance efficiency by reducing duplication. Most importantly, this reorganization needed to enhance and not diminish the firewall function of the BBG that the United States International Broadcasting Act had created.

Representative Gilman introduced House Bill 1486 in the House on May 1, 1997, a bill to consolidate U.S. foreign affairs entities, to change the funding procedure for foreign affairs programs, and provide money for international activities.⁴⁵⁹ On June 4, 1997, Representative Gilman introduced House Bill 1757, also a bill that sought to make some of the same changes

⁴⁵⁸ *Reorganization and Revitalization of America's Foreign Affairs Institutions: Hearing Before the S. Comm. on Foreign Relations* 103d Cong. 132-137 (1993) [hereinafter *Reorganization and Revitalization of America's Foreign Affairs Institutions*] (statement of Joseph Duffey, Director, USIA).

⁴⁵⁹ Foreign Policy Reform Act of 1997, H.R. 1486 105th Cong. (1997), 1997 CONG US HR 1486 (LEXIS).

that House Bill 1486 sought to make.⁴⁶⁰ Both House Bill 1486 and House Bill 1757 sought to reorganize various other elements of U.S. public diplomacy, including, for instance, the United States Agency for International Development (USAID), the United States Disarmament Agency (USDA) and the State Department itself, among others.⁴⁶¹ Representative Gilman noted that the Clinton administration had required certain elements in the bill like the consolidation of the USIA and the USDA into the State Department.⁴⁶²

Not all lawmakers were in favor of the Gilman bill, nor, for that matter, was the Clinton administration in favor of all elements of the bill. Representative Hamilton said the bill was overly restrictive of the ability of the executive to reorganize itself.⁴⁶³ The bill required the Clinton administration to formulate a reorganization plan by August 1997 and had some stipulations about what could be in the plan. Representative Hamilton went so far as to say that President Clinton had threatened to veto the bill because of the Gilman restrictions on the executive branch in the bill.⁴⁶⁴

Others had good things to say about the bill. Representative Smith said that the bill was important for a number of factors, one of which was that the bill preserved the independence of civilian international broadcasters. He said:

In particular, the provisions of the bill were designed to preserve the independence of our international freedom broadcasting services and other functions of public diplomacy that are performed by the U.S. Information Agency. We do not simply turn Radio Free Asia and Radio Marti over to the State Department so the country desks can do whatever they

⁴⁶⁰ H.R. 1486; Foreign Relations Authorization Act, Fiscal Years 1998 and 1999, H.R. 1757 105th Cong. (1997), 1997 CONG US HR 1757 (LEXIS).

⁴⁶¹ H.R. 1757.

⁴⁶² 143 CONG. REC. H3291-3292 (daily ed. Jun. 4, 1997), 143 Cong Rec H 3291, at *H3291-3292 (LEXIS).

⁴⁶³ *Id.* at *H3292.

⁴⁶⁴ *Id.* at *H3292-3293.

want on a short-term basis to promote what they think is important. By preserving the independence of these institutions within a new and distinct division of the State Department, we ensure that they will continue to reflect long-term American interests and values by supporting freedom and democracy around the world.⁴⁶⁵

Representative Gilman himself touted the ability of provisions in the bill he introduced to preserve the professional independence and integrity of civilian international broadcasters:

We do not want all the resources of the USIA to be redirected to bombard the American people with propaganda in support of the administration or any administration's foreign policy, and we do not want to spend U.S. taxpayer's money churning out propaganda to influence U.S. public opinion. My reorganization language contains protection for the integrity of public diplomacy. We preserve the broadcasting board of governors [sic] to make certain that the Voice of America and Radio Free Europe and Radio Marti are not turned into mouthpieces for whoever happens to be running U.S. foreign policy.⁴⁶⁶

When Congress created the BBG in 1994 to be a firewall for civilian international broadcasters, the goal was to enhance the credibility of the broadcasters to the audience to which they broadcast outside the United States.⁴⁶⁷ Interestingly, Representative Gilman believed that his bill protected the broadcasters under the BBG from possible abuse from any administration that could presumably seek to use the broadcasters for domestic propaganda purposes. In this way, he made another argument for the BBG firewall, an argument that must have hit closer to home for lawmakers who may have doubted the need for the BBG firewall. If the argument that the BBG firewall was necessary to preserve the credibility of BBG broadcasters for foreign

⁴⁶⁵ *Id.* at *H3923-3924.

⁴⁶⁶ *Id.* at *H3302-3304.

⁴⁶⁷ *See, e.g., Fiscal Year 1994 Foreign Relations Authorization Act: Budget Requests, supra* note 423, at 220 (statement of Joseph Duffey, Director, USIA).

audiences did not resonate with lawmakers, the argument that the BBG firewall was necessary to keep the BBG broadcasters from targeting Americans most likely would.

By saying that civilian international broadcasters had no business broadcasting to Americans, Representative Hamilton seemed to admit that the programs broadcast by the broadcasters were U.S. government propaganda and Americans could thus not receive such propaganda. Congress went through a number of versions of House Bill 1757. The bill abolished the USIA and transferred the functions of the USIA to the State Department; the bill also abolished the United States Advisory Commission on Public Diplomacy. House Bill 1757 maintained that the BBG could continue to exist.⁴⁶⁸ To ensure professional independence, the bill asserted that the inspector general, the secretary of state, and the Board itself had to respect the independence of civilian international broadcasters.⁴⁶⁹ Representative Gilman's bill prevailed in the House as the legislature rejected the amendments Representative Hamilton proposed to the bill that would have set up a different timetable for the consolidation of the various U.S. public diplomacy entities.⁴⁷⁰

The House requested the Senate to concur on the bill. After discharging the Senate Foreign Affairs Committee from considering House Bill 1757, the Senate passed the bill after striking all after the enacting clause and inserting the text of Senate Bill 903; this was done by a vote of ninety yeas and five nays. Senate Bill 903 was the Senate companion measure to House Bill 1757.⁴⁷¹ The Senate requested the House to concur on the bill, but the House rejected the

⁴⁶⁸ H.R. 1757 § 311.

⁴⁶⁹ *Id.* sec. 323 § 305(D).

⁴⁷⁰ 143 CONG. REC. H3321 (daily ed. June 4, 1997), 143 Cong Rec H 3291, at *H3321 (LEXIS); 143 CONG. REC. H3686 (daily ed. June 16, 1997), 143 Cong Rec H 3670, at *H3686 (LEXIS).

⁴⁷¹ 143 CONG. REC. S5789 (daily ed. June 17, 1997), 143 Cong Rec S 5789, at *S5789 (LEXIS); Foreign Affairs Reform and Restructuring Act of 1997, S. 903 105th Cong. (1997), 1997 CONG US S 903 (LEXIS).

Senate amendments to the bill and requested a conference.⁴⁷² After some conferring, both the House and the Senate agreed to the conference report.⁴⁷³ The arduous process of getting the bill passed seemed to be over, except that it was not.

President Clinton vetoed the bill because the bill included restrictions on the U.S. government providing funds to nongovernmental organizations (NGOs) that used their own funds to provide abortion and family planning programs around the world and in developing countries and not because the bill restricted the ability of the executive to reorganize U.S. government foreign affairs entities. This exemplified just how complicated the process of passing such legislation can be: The entire legislation failed because of the presence of absence of certain provisions, provisions that were totally unrelated to civilian international broadcasting.

Although he vetoed the bill, President Clinton expressed his pleasure at the fact that the bill included most of the provisions on the reorganization of U.S. public diplomacy entities that he had supported. He was also heartened by the fact that Congress had included these provisions in another bill—the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999.⁴⁷⁴ Representative Frank Wolf sponsored the appropriations bill, also known as House Bill 4328.⁴⁷⁵ House Bill 4328 passed in the House by a vote of 391-25, and the Senate took up the bill.⁴⁷⁶ The Senate inserted the text of Senate Bill 2307 and passed the bill, the House did not

⁴⁷² 143 CONG. REC. H5868 (daily ed. July 28, 1997), 143 Cong Rec H 5868, at *S5868 (LEXIS).

⁴⁷³ 144 CONG. REC. H1600 (daily ed. Mar. 26, 1998), 144 Cong Rec H 1600, at *H1600 (LEXIS); 144 CONG. REC. S3686 (daily ed. Apr. 28, 1998), 144 Cong Rec S 3686, at *S3686 (LEXIS).

⁴⁷⁴ 144 CONG. REC. H11,698 (daily ed. Oct. 21, 1998), 144 Cong Rec H 11698, at *H11,698 (LEXIS).

⁴⁷⁵ A Bill Making Appropriations for the Department of Transportation and Related Agencies for the Fiscal Year Ending September 30, 1999, and for Other Purposes, H.R. 4328 105th Cong. (1997), 1997 CONG US HR 4328 (LEXIS).

⁴⁷⁶ 144 CONG. REC. H6739 (daily ed. July 29, 1998), 144 Cong Rec H 6704, at *H6739; (LEXIS); 144 CONG. REC. S9389 (daily ed. Jul. 30, 1998), 144 Cong Rec S9,389, at *S9389 (LEXIS).

agree with the Senate amendments and requested a conference between the two chambers.⁴⁷⁷ As part of the process of conferring, the House added the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999.⁴⁷⁸ After consideration of the conference in both the House and the Senate, the House passed the bill by a vote of 333 yeas to 95 nays.⁴⁷⁹ President Clinton signed Public Law Number 105-277 on October 21, 1998.⁴⁸⁰ The Senate continued considering the conference report and passed the report by a vote of sixty-five yeas to twenty-nine nays.⁴⁸¹

Provisions in the bill passed by Congress and signed by the President that became the Foreign Affairs Agencies Consolidation Act were those provisions that abolished the USIA entirely and moved the functions of the USIA to the State Department.⁴⁸² The BBG remained as the only entity with oversight over civilian international broadcasters. Other provisions restricted government officials from interfering with the broadcasters under the BBG.⁴⁸³ In this way, Congress had strengthened the BBG firewall that Congress had established in 1994 by removing the ambiguity of the relationship between the BBG and the USIA by abolishing the USIA altogether. Perhaps Senator Biden had kept his word about making all the broadcasters completely independent from the USIA.⁴⁸⁴ Dr. Joseph Duffey must not have been happy about the abolition of the USIA after advocating so strongly for the continued existence of the

⁴⁷⁷ 144 CONG. REC. H7712 (daily ed. Oct. 15, 1998), 144 Cong Rec H 7712, at *H7712 (LEXIS). A Bill Making Appropriations for the Department of Transportation and Related Agencies for the Fiscal Year Ending September 30, 1999, and for Other Purposes, S. 2307 105th Cong. (1997), 1997 CONG US S 2307 (LEXIS).

⁴⁷⁸ 144 CONG. REC. H11,044 (daily ed. Oct. 19, 1998), 144 Cong Rec H 11044, at *H11,044 (LEXIS).

⁴⁷⁹ 144 CONG. REC. H11,668 (daily ed. Oct. 20, 1998), 144 Cong Rec H 11592, at *H11,668 (LEXIS).

⁴⁸⁰ 144 CONG. REC. H11,708 (daily ed. Oct. 21, 1998), 144 Cong Rec H 11708, at *H11,708 (LEXIS).

⁴⁸¹ 144 CONG. REC. S12,741 (daily ed. Oct. 21, 1998), 144 Cong Rec S 12741, at *S12,741 (LEXIS); 144 CONG. REC. S12,809 (daily ed. Oct. 21, 1998), 144 Cong Rec S 12,789, at *S12809 (LEXIS).

⁴⁸² Foreign Affairs Agencies Consolidation Act sec. 1322(a) §§ 304(a)(1)-(2).

⁴⁸³ *Id.* sec.1322 § 304(a)(3)(B), sec.1323(i) § 305(d).

⁴⁸⁴ *Foreign Affairs Reform and Restructuring Act of 1997 and Fiscal Year 1998 International Affairs Budget Request*, *supra* note 450, at 132.

Agency.⁴⁸⁵ Nevertheless, the law preserved the professional independence of civilian international broadcasters, and all the lawmakers and policy makers who had been involved in the deliberations on the reorganization and consolidation of the broadcasters over the past eight years could be happy about this.

⁴⁸⁵ *Reorganization and Revitalization of America's Foreign Affairs Institutions*, *supra* note 458, at 132-137.

CHAPTER SEVEN

CONCLUSION

During the eight years of deliberations that eventually completed the evolution of the BBG firewall, lawmakers asserted that granting civilian international broadcasters professional independence would make them more credible and would serve to advance U.S. government foreign policy objectives. Policy makers were more interested in protecting and in some cases promoting their own turf, be it the BIB, the VOA, the USIA, or the CPB. Each one of them believed that the entity for which he or she worked for could ably protect the professional independence of the broadcasters. But would an independent governing entity really benefit the government?

Perhaps the knowledge by foreign audiences and the officials in foreign governments that the broadcasters were not directly under the U.S. government but were under an independent entity like the BBG would make the broadcasters more credible. These respective audiences would still know that the government was funding the broadcasters, as they had known for decades before the establishment of the BBG firewall, which could still affect how credible the broadcasters were perceived. Besides, the bigger question this study sought out to examine was why the government decided to establish the BBG firewall when it did. Why did Congress establish the BBG firewall after the end of the Cold War? The clue, perhaps, is to examine the history of U.S. government dissemination of propaganda.

Historically, the U.S. government had exercised significantly more editorial control over its propaganda entities and its civilian international broadcasters during times of geopolitical crisis and allowed them to have professional independence in times of no crises. For instance, the government exercised significant editorial control over the CPI and the OWI during World Wars

I and II respectively. Similarly, VOA had experienced considerable editorial control from the government during World War II and throughout the Cold War, as did RFE/RL even though they were supposedly protected by the BIB firewall. Ensuring the professional independence and credibility of the broadcasters at this time had not been a pressing concern for lawmakers and policymakers in government, though it had been a concern for broadcast journalists. Audiences around the World had listened to the programs of civilian international broadcasters—credible or not. When the Cold War ended, however, the government did an about turn and eagerly granted these broadcasters professional independence.

Perhaps the most logical conclusion is that the one factor that most influenced the decision to establish the BBG firewall was the fact that the end of the Cold War meant the Soviet Union no longer threatened the United States with communist propaganda. Consequently, the U.S. government did not need to counter communist propaganda through its broadcasters and could afford to give them professional independence. Altogether, this meant that government officials had less of an incentive to control the programs of civilian international broadcasters: The stakes were just not as high with the Soviet Union gone.

Although lawmakers and policymakers did not say this explicitly during their deliberations to establish the BBG firewall, the truth was that they were all more or less committed to guaranteeing the professional independence of civilian international broadcasters quite simply because they could afford to do so at that particular time in history. The almost persistent state of war that had existed since World War I ended after the Cold War. Lawmakers and policy makers could relax somewhat, and one way in which this relaxed state of affairs manifested itself was in more professional independence for civilian international broadcasters.

Moreover, the end of the Cold War had culminated in the development of democratic governments in the countries of Eastern and Central Europe that had previously been under the influence of the communist Soviet Union. The U.S. government was compelled to support these democracies by broadcasting pro-democracy programs through its surrogate broadcasters. The strategic mission of the broadcasters changed from channeling U.S. government anti-Soviet programs to channeling U.S. government pro-democracy programs. The new mission was hardly the sort of mission that government officials needed to exercise editorial control over, and the government was willing to cede to the broadcasters their professional independence and thereby enhance whatever credibility they already had with their audiences.

Lawmakers in Congress asserted that they believed that the new broadcasting service to China would be more credible to audiences in the region if protected by the BBG firewall. On the face of it, this argument seemed plausible. After all, RFE/RL had played a role in dismantling communism in the countries of Eastern and Central Europe while they operated under the independent BIB. The government had reason to believe that an independent broadcaster to China and the countries in Asia could do the same thing. On the other hand, lawmakers and policy makers may have been willing to give the broadcaster to China and Asia independence because they did not think China was the threat that the Soviet Union had been for so many years. China was a security threat to U.S. allies in Asia, a violator of human rights, and arguably a bad global citizen, but it was hardly the mortal threat the Soviet Union had been for the United States and its allies during the Cold War.

The eager willingness of lawmakers in giving the new broadcaster professional independence may have been a reflection of the lesser stakes involved in dealing with China. They were perhaps willing to give the broadcaster to China independence because they felt that

they could afford to do so because they had nothing to lose. Maintaining direct editorial control over the broadcaster to China was not so clearly beneficial under the circumstances.

Government officials' view of how much editorial control to exercise over propaganda entities, including civilian international broadcasters, has tended to fluctuate with how much they have needed the entities to achieve U.S. foreign policy objectives. The more the government has needed to use the propaganda entities to achieve U.S. foreign policy objectives the more government officials have exercised editorial control over them. As such, the establishment of the BBG firewall to protect the professional independence of civilian international broadcasters reflected the view of lawmakers and policy makers that the government did not have to exercise editorial control over the broadcasters after the end of the Cold War.

Changes in geopolitics and not necessarily a sincere belief in the need to grant the broadcasters professional independence motivated the establishment of the BBG firewall. The broadcasters still serve the purpose of advancing U.S. foreign policy objectives, but now those objectives have changed, and exercising editorial control over the broadcasters is no longer necessary. Strategically, the government is better off presenting the broadcasters as independent entities rather than government foreign policy instruments.

Of course, what the government has given the broadcasters the government can also take. After all, as this study has shown, the government was under no legal obligation to guarantee their professional independence. They belong to the government, they receive funds from the government, and they serve the interests of the government. The government could in future just as well tell them exactly what to say in their programs.

If history is a guide, the future existence and professional independence of the broadcasters under the BBG is very much dependent on world events and the perception by

lawmakers and policy makers of how much they need the broadcasters to achieve U.S. foreign policy objectives around the world. The establishment of two broadcasters to the Arab world after the events of 9/11 is an example of how the government can quickly create new broadcasters to meet a geopolitical need. Some have said the events of 9/11 have rejuvenated civilian international broadcasting, which was sluggish after the end of the Cold War.⁴⁸⁶

Such events can also have a negative impact on the required objectivity of the broadcasters. For instance, some have shown that VOA was not able to live up to the standards of objectivity immediately after the events of 9/11 and came under considerable pressure to cast aside objectivity.⁴⁸⁷ Others have suggested that where the rubber meets the road, lawmakers and policy makers still have considerable sway in telling the broadcasters under the BBG what to do especially with respect to news pertaining to the War on Terror.⁴⁸⁸ Much more research into the functions of the BBG is necessary.

Suggestions for Further Research

The President appoints members of the Board with the advice and consent of the Senate; naturally, this is a very political process. A study might look at how this political process of appointment of the members of the Board might affect their functions. The BBG is supposed to be a firewall between those who make policy and those who broadcast programs, but Carnes Lord has suggested that the BBG firewall has meant that there is no strategy for the conduct of

⁴⁸⁶ See JOSEPH S. NYE JR. *SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS* 123- 125 (2004). *But see* LAWRENCE PINTAK, *REFLECTIONS IN A BLOODSHOT LENS: AMERICA, ISLAM, AND THE WAR OF IDEAS* (2006) (suggesting that U.S. public diplomacy, even to the Arab world, is not all it could be).

⁴⁸⁷ See MONROE E. PRICE, *MEDIA AND SOVEREIGNTY: THE GLOBAL INFORMATION REVOLUTION AND ITS CHALLENGE TO STATE POWER* 220-221 (2002).

⁴⁸⁸ See, e.g., Monroe E. Price, Susan Haas & Drew Margolin, *Tools of Public Diplomacy: New Technologies and International Broadcasting: Reflections on Adaptations and Transformations*, 616 *ANNALS AM. ACAD. OF POL. & SOC. SCI.* 150, 167 (2008).

civilian international broadcasting, which, in his view, is scandalous considering the fact that American taxpayers fund this service completely.⁴⁸⁹

Some have suggested that the fact that the government funds the BBG and the broadcasters under it is enough to discredit the objectivity of the broadcasters.⁴⁹⁰ Every year, the President of the United States includes in his budget, the request of funds from the BBG for itself and the various broadcasters under the Board and sends his budget to Congress. Congress then appropriates funds to the BBG and the broadcasters under the BBG.⁴⁹¹ Since the end of the Cold War, funding for civilian international broadcasters has continued to dwindle.⁴⁹² The appropriation process is a politically fraught process. Most likely, lawmakers in Congress, government officials in the executive, Board members and broadcast journalists at civilian international broadcasters all seek to serve their own interests during this budget process, all of which must have some impact on the functions of the BBG. A study on the impact of the budget process and the congressional appropriation process on the functions of the BBG as a governing entity and as a firewall would provide some interesting insights. Maybe one study could even comprehensively examine the feasibility and benefits of doing away with the arrangement where only government funds go to the BBG and instead have both the public and private sector fund the BBG and its broadcasters.

Another prime research area involves the legal issues surrounding government exercising editorial control over civilian international broadcasters. In general, the legal issues surrounding government speech and civilian international broadcasters could do with some more

⁴⁸⁹ LORD, *supra* note 74, at 84-92.

⁴⁹⁰ See DJEREJIAN & MARTIN, *supra* note 165.

⁴⁹¹ See generally BROADCASTING BOARD OF GOVERNORS, FISCAL YEAR 2009 BUDGET REQUEST: VOICE OF AMERICA, RADIO/TV MARTI, RADIO FREE EUROPE/RADIO LIBERTY, RADIO FREE ASIA, MIDDLE EAST BROADCASTING NETWORKS (2009), available at http://www.bbg.gov/reports/budget/bbg_fy09_budget_request.pdf.

⁴⁹² ILAN BERMAN, WINNING THE LONG WAR: RETAKING THE OFFENSIVE AGAINST RADICAL ISLAM 34 (2009).

examination, as they have hardly been examined in the legal literature. For instance, legal scholars could do more to explore the legal limits, if indeed they exist, of the editorial control the government has on the programs disseminated by civilian international broadcasters. Currently, these programs are protected by the BBG firewall. Supposing they were not, could government officials tell the broadcasters to say whatever they wanted them to say? In *Pleasantgrove*, Justice Scalia said that the government-speech doctrine did not give the government the right to operate a religious establishment.⁴⁹³ One possible legal question to examine could be whether the government under the government-speech doctrine could use U.S. civilian international broadcasters to disseminate religious propaganda and how this could be reconciled with the restrictions imposed upon the government by the Establishment clause.

The BBG is unlike any other entity the government established in the past to govern broadcasting. It is unlike the USIA, the BIB, the Board for Broadcasting to Cuba, and even unlike the CPB, which governs public broadcasting. It is fully funded by the government but is also independent from the government. Its mission is noble: The BBG has to protect the independence of civilian international broadcasters. Despite the best intentions of the U.S. government in making the BBG a firewall for civilian international broadcasters, the broadcasters remain part of the government. They are an instrument the government funds and wields at its discretion.

If nothing else, the fact that the BBG and the broadcasters under it are beholden to their masters in Washington who fund them is the biggest reason to study the effectiveness of the BBG firewall. Indeed, the very professional independence the government has given them to boost their credibility is intended to serve the needs of the government. At any time, the government could just as easily rescind this professional independence. Of course, this assumes

⁴⁹³ *Johanns*, 544 U.S. at 1129-1131.

that currently the broadcasters are in reality—as opposed to only symbolically—independent, protected by the BBG firewall from editorial interference coming from government officials.

Since World War I, the government had exercised editorial control over the propaganda entities it created. The end of the Cold War and the establishment of the BBG firewall marked the first time the government had kept itself from exercising such editorial control. How successful the BBG is in doing this going into the future will largely depend on the state of global geopolitics and the state of U.S. government foreign policy.

CHAPTER EIGHT

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