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# White House Anti-Drug Policy and Government Manipulation of Media Content

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On January 13 of this year, the Internet-based news organization Salon.com uncovered a little-known White House effort to insert anti-drug themes into nationally broadcast television shows. Under a program of the White House Office of National Drug Control Policy (ONDCP), participating television networks were allowed to resell advertising time already paid for by Congress and earmarked for anti-drug messages—provided the networks ensured their programs incorporated dialogue and action displaying negative repercussions from drug use. By encouraging network participation, ONDCP officials may have caused media executives to become their unwitting accomplices in violations of federal payola laws.

The ONDCP's activities began innocently enough. In October 1997, Congress approved the National Youth Anti-Drug Media Campaign, a five-year, \$975 million purchase of anti-drug television advertising. The ONDCP, headed by "Drug Czar" General Barry R. McCaffrey, was given its first installment of \$195 million for fiscal year 1998 and began running advertisements on NBC, ABC, CBS, WB, and Fox that summer, with UPN added in 1999.<sup>1</sup> One advertisement features a teenager who boasts of an excellent academic record before succumbing to the temptations of marijuana and getting thrown out of his home. Another shows a young woman destroying her kitchen with a frying pan, behavior that is meant to demonstrate the supposed consequences of heroin addiction.

## Scheme Changes, Without Congressional Approval

Although eager to obtain revenue from the expanding market category of government-paid advertising, some of the networks found participation in the Anti-Drug Media Campaign financially unappealing because Congress restricted the purchase of commercial time to networks willing

to "donate" an equal amount of air time—essentially a two-for-the-price-of-one deal.<sup>2</sup> In an effort to make the program more financially palatable, the ONDCP in 1998, without congressional authorization, offered to forego its contractual right to a portion of the matching advertising time in exchange for inclusion of anti-drug themes in the plots of specific shows.<sup>3</sup> This program was not given a name, although the term "ad scheme" may best capture its essence.

Under the ad scheme, government officials and the ONDCP's advertising agency and contractors began examining television shows after they were broadcast. Tapes of the shows were sent to the ONDCP or its ad agency, which then applied formulas to determine the value of the embedded anti-drug messages. A half-hour program deemed sufficiently anti-drug was typically valued at three "units," with each unit representing the value of one 30-second advertisement on that show. Hour-long shows with an approved story line were valued at five units. Unit values also depended on the shows' ratings. The final tally of units was subtracted from the commercial time owed by each network, which was then free to resell the reclaimed advertising time at the going commercial rate.<sup>4</sup>

Eventually, the ONDCP grew discontented with seeing the television programs after they were broadcast and began negotiating changes to scripts of certain shows before filming began, to make them better conform to the government's anti-drug stance.<sup>5</sup> Since then, ABC has revealed that in the first year of the ad scheme, it had submitted finished scripts to the ONDCP; the network withdrew from the program in May 1999 after the ONDCP insisted that continued participation be contingent on ABC's submitting scripts before airing the programs.<sup>6</sup>

The ONDCP's efforts were more successful with WB. After it referred the producers of *Smart Guy* to

George Carey, an expert on effective youth marketing, the show's producers changed the original portrayal of two substance-abusing youths at a party. Based on Carey's feedback, their original depiction as cool and popular boys was changed to show them as losers, consuming their drugs secretly and ashamedly in a utility closet.<sup>7</sup> Altogether, the ONDCP reviewed scripts in advance of broadcast in about 50 cases.<sup>8</sup>

### Cash Encourages Anti-Drug Bandwagon

Media executives, realizing the potential gold mine represented by ad-scheme credit, in some cases specifically requested production of television episodes with anti-drug themes. Though CBS would later deny any causal connection, it was revealed that one executive had asked a producer of *Chicago Hope* to create an anti-drug episode that later garnered ONDCP credit.<sup>9</sup> The result was a story depicting drug-induced death, rape, psychosis, a car crash, a broken nose, and a doctor's threat to withhold life-saving surgery unless the patient agreed to an incriminating urine test. A cancelled flight on the space shuttle was thrown in for good measure.<sup>10</sup>

Since the ad scheme's inception, the ONDCP has assigned a monetary value to the anti-drug themes contained in 23 shows spanning 39 episodes. The shows include NBC's *ER*, *Trinity*, *Providence*, *Hang Time*, *Saved by the Bell*, *One World*, and *City Guys*; Fox's *Beverly Hills 90210* and *America's Most Wanted*; CBS's *LA Docs*, *Promised Land*, *Touched by an Angel*, and *Cosby*; WB's *Seventh Heaven*, *Smart Guy*, and *The Wayans Bros*; and ABC's *Home Improvement*, *Sports Night*, *The Drew Carey Show*, *Sabrina the Teenage Witch*, *Boy Meets World*, *General Hospital*, and *The Practice*.<sup>11</sup> The ONDCP also gave credit to VH1 for airing biographies about rock stars who abused drugs, and to ESPN for covering the drug problems of New York Yankee Darrell Strawberry and University of Connecticut basketball player Khalid El-Amin.<sup>12</sup> Altogether, the networks reaped an additional \$21.8 million in ad revenues in fiscal year 1999.<sup>13</sup>

As noted previously, this January 13, Daniel Forbes, a freelance reporter for Internet-based Salon.com, revealed the ad scheme to the general public. The news was greeted with shock around the country from media executives, journalists, and free-speech advocates. Some members of Congress noted with dismay that the Anti-Drug Media Campaign had never authorized the ONDCP to make expenditures for embedded propaganda in television programs.

Initially, the ONDCP defended its actions vigorously, with spokesperson Robert Weiner unapologet-

ically stating, "We plead guilty to using every lawful means to save America's children."<sup>14</sup> Unwilling to let the scandal interfere with its propaganda efforts, on January 14 the ONDCP even released a study entitled "Substance Use in Popular Prime-Time Television," which praised television networks for their treatment of drug, tobacco, and alcohol use—essentially applauding its own success at buying influence with the networks.

As questions about the constitutionality and ethical implications of the ONDCP's activities continued to mount, the ONDCP made a crude attempt at spin control with a press release designed to "eliminate any confusion" about its activities. The release stated that ONDCP policy was not to review programs before they were aired—only after. The ONDCP also denied any influence on the networks' creative freedom, despite ABC's acknowledgment that it had withdrawn from the ad scheme after being specifically required to provide scripts *prior* to broadcast<sup>15</sup> and despite a WB executive's admission that the ONDCP had been signing off on his network's programs.<sup>16</sup>

### Shades of Payola

Concerns were also raised about whether the ad scheme violated laws against payola, the practice of providing undisclosed compensation to radio or television station personnel or owners in exchange for the inclusion of material in broadcasts. Reports about payola first occurred in the "Big Band" era of the 1930s, when bandleaders and performers were given gifts by music publishers to induce them to include specific songs in their programs and radio broadcasts. The motivation behind this was the realization that greater radio exposure of songs would lead to increased sales of the publishers' sheet music.

Acting on the belief that payola was anti-competitive and harmful to small businesses lacking the resources to make such payments, the Federal Trade

Commission and private associations such as the Music Publishers' Contract Employees Union tried during the 1930s to establish rules that would eradicate the practice. Although these efforts were largely

unsuccessful due to substantial opposition from the bigger music publishers, Congress did respond to one aspect of the problem—secret payments to station owners—by enacting Section 317 of the Communications Act of 1934. Section 317 focuses on the need for radio and television stations to disclose publicly any compensation they have received in exchange for broadcasting any material over the airwaves. Unlike typical advertisements, in which the identity and commercial interest of the sponsor are apparent from the content, ads that do not clearly communicate an underlying commercial message impose a duty on broadcasters to make the public aware of compensation given in exchange for the broadcast.<sup>17</sup> As the FCC would later declare, “the public is entitled to know by whom it is persuaded.”<sup>18</sup>

By the late 1950s, Congressional investigations into payola payments to radio disk jockeys and television employees had convinced Congress and the FCC that more regulation was needed. In response, Congress modified Section 317 to produce a regulation that could be effectively enforced while still retaining the broadcast industry’s support. Section 317(a)(1) now provides the following:

All matter broadcast by any radio station for which any money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.<sup>19</sup>

The FCC’s Sponsorship Identification Rules further state:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) By whom or on whose behalf such consideration was supplied.<sup>20</sup>

Because the networks failed to inform the viewing public of the financial benefits they received from the government in exchange for creating and airing programs containing anti-drug messages, it now appears they have violated both Section 317 of the Federal Communications Act and the FCC’s Sponsorship Identification Rules. ONDCP officials, who are unlikely ever to be prosecuted for their transgressions, are equally responsible for these violations of the payola laws, in both the ad scheme’s original form that involved ONDCP review and modification of television scripts and its current form that assigns point values to shows after broadcast.

The ad scheme is problematic even beyond its narrow violation of payola laws. Propaganda activities have broad negative implications for the freedom of the media and, ultimately, our liberty. Charles Krauthammer of the *Washington Post* has noted that “where liberty is preserved by the separa-

tion and diffusion of power, we rightly refuse to grant government even more power through control of the content of free media.”<sup>21</sup> The ONDCP tactics give our government too much of this power.

### Noble Intentions Gone Awry

If left unchecked, the ad scheme’s methods could easily be applied to other forms of expression. Will the ONDCP someday decide to remunerate the film industry for embedding anti-drug messages in movies, or pay radio stations to emphasize negative stories about drugs in their hourly news broadcasts? What is to stop the ONDCP from applying its Behaviorist methods to other undesirable activities? Is it a great leap to envision a day when government officials regularly infiltrate Internet chat rooms to embed messages opposing abortion, or encouraging choice, depending on the viewpoint of those who occupy the executive branch at that particular moment? Or perhaps our government, with noble intentions, will set aside funds to encourage movies like *Fatal Attraction* in an effort to discourage adultery by dramatizing its negative consequences. How can Americans say that we live in a free society if our government tries surreptitiously to modify our behavior?

Another troubling aspect is the government’s use of its financial muscle to encourage certain beliefs or political viewpoints rather than merely to discourage behavior it perceives as negative. This would be a return to tactics employed during the 1950s: anticipating that George Orwell’s classic book *Animal Farm* would eventually be produced as a movie, the Central Intelligence Agency (CIA) purchased the film rights to *Animal Farm* from his widow after Orwell’s death in 1950.<sup>22</sup> The problem was a section

at the close of the book: "The farm animals looked back and forth at the tyrannical pigs and the exploitative human farmers but found it 'impossible to say which was which.'"<sup>23</sup> Concerned with the message this might send about the moral equivalence of capitalism and communism, the CIA wanted to ensure that the movie version of *Animal Farm* would portray communism in a more negative light. Ultimately, in the 1955 animated film, the humans were removed and only the tyrannical pigs were left.

Perhaps people will someday look back on the ONDCP's ad scheme and judge it to be nearly as absurd, though equally as sinister, as the CIA's dramatic rewriting of the 1950s. For the present, the networks' participation in the ad scheme encourages public perception that the media is becoming a tool of government propaganda and is thereby forgoing its important position as an "independent participant in the formation of public opinion."<sup>24</sup> It is the media's legal duty and, indeed, its moral responsibility to resist this kind of encroachment upon its integrity. ■

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## Endnotes

1. See Daniel Forbes, *Prime-Time Propaganda* (visited Jan. 13, 2000) <[www.salon.com/news/feature/2000/01/13/drugs/index3.html](http://www.salon.com/news/feature/2000/01/13/drugs/index3.html)> [hereinafter Forbes, *Prime-Time Propaganda*]; Daniel Forbes, *Propaganda for Dollars* (visited Jan. 14, 2000) <[www.salon.com/news/feature/2000/01/14/payola/index.html](http://www.salon.com/news/feature/2000/01/14/payola/index.html)>.
2. 21 U.S.C. §§ 1801-1804 (1998).
3. See Forbes, *Prime-Time Propaganda*, *supra* note 1.
4. See *id.*
5. See *id.*
6. See Elizabeth Jensen & Paul Brownfield, *Federal Officials Sought to Preview Scripts, ABC Says*, L.A. TIMES, Jan. 16, 2000, at A8 [hereinafter Jensen].
7. See Forbes, *Prime-Time Propaganda*, *supra* note 1.
8. See Howard Kurtz & Sharon Waxman, *White House Cut Anti-Drug Deal with TV*, WASH. POST, Jan. 14, 2000, at A1 [hereinafter Kurtz].
9. *Id.*
10. See Forbes, *Prime-Time Propaganda*, *supra* note 1.
11. See *id.*; Kurtz, *supra* note 8; *Anti-Drug Media Campaign: Hearings Before the Subcomm. on Telecomm., Trade, and Consumer Protection of the House Comm. on Com.*, 106th Cong. (2000) (statement of Martin D. Franks, senior v.p., CBS Corp.).
12. See Lisa de Moraes, *VH1, ESPN Are Also Drug Office Beneficiaries*, WASH. POST, Feb. 4, 2000, at C7.
13. See *Anti-Drug Media Campaign: Hearings Before*

*the Subcomm. on Telecomm., Trade, and Consumer Protection of the House Comm. on Com.*, 106th Cong. (2000) (statement of Donald R. Vereen, deputy director, ONDCP).

14. Kurtz, *supra* note 8.

15. See Jensen, *supra* note 6 (citing remarks by then ABC Television Network president Pat Fili-Krushel).

16. See *id.* (quoting Rich Mater, WB's senior vice president for broadcast standards, acknowledging that "The White House did view scripts. They did sign off on them."). See also *Oversight Hr'g on the Office of Nat'l Drug Control Policy Anti-Drug Media Campaign: Hr'gs Before the Subcomm. on Treasury and Gen. Gov't*, 106th Cong. (2000) <[www.senate.gov/~appropriations/treasury/testimony/dforbes.htm](http://www.senate.gov/~appropriations/treasury/testimony/dforbes.htm)> (statement of Daniel Forbes, journalist, quoting an electronic mail message sent to ONDCP staff members by Alan Levitt, director of the ONDCP Anti-Drug Media Campaign, that read, in part, "FYI, See WB's *Smart Guy* . . . episode on underage drinking—we worked a lot on that script. . . .").

17. See J. Gregory Sidak & David E. Kronemyer, *The 'New Payola' and the American Record Industry: Transactions, Costs and Precautionary Ignorance in Contracts for Illicit Services*, 10 HARV. J.L. & PUB. POL'Y 521, 522 (1987).

18. 40 F.C.C. § 105 (1961).

19. 47 U.S.C. § 317(a)(1) (1980).

20. 47 C.F.R. § 73.1212(a) (1992).

21. Charles Krauthammer, *A Network Sellout*, WASH. POST, Jan. 21, 2000, at A29.

22. See Laurence Zuckerman, *How the C.I.A. Played Dirty Tricks with Culture*, N.Y. TIMES, Mar. 18, 2000, at A15.

23. *Id.*

24. Robert C. Post, *Subsidized Speech*, 106 YALE L.J. 151, 152 (1996).