

BIGOTRY AND CABLE TV

LEGAL ISSUES AND COMMUNITY RESPONSES

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INSTITUTE REPORT NO. 3

**NATIONAL
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AGAINST
PREJUDICE
&
VIOLENCE**

NATIONAL INSTITUTE AGAINST PREJUDICE & VIOLENCE

Violence and intimidation motivated by racial, religious or ethnic prejudice have been an integral part of American history. Arson, bombings, threats, assaults, and acts of vandalism continue to disrupt the lives of victims and the stability of communities. Despite this long history, there has been no comprehensive effort to document and analyze these issues or to develop programs of prevention and response.

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by
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AUTHOR'S NOTE

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INTRODUCTION

In 1948, John Walson strung a cable from a mountaintop down to his appliance store in the coal-mining town of Mahanoy City, Pennsylvania. He had an idea that he could sell more television sets if he could show folks a clear picture coming in all the way from Philadelphia ninety miles away. His idea worked. But people didn't just want the TV's, they wanted the cable, too. More than thirty years later another man, this one a middle-aged TV repairman with a shop in Fallbrook, California, also had an idea. Tom Metzger had been a member of the John Birch Society, and later the California Knights of the Ku Klux Klan. He had risen to the position of Grand Dragon in the California Klan before leaving in 1980 to form two groups of his own, the White Aryan Resistance and the White American Political Association. His idea was to create a mass movement of Whites sympathetic to his dream of a separate White nation within the United States. A basic strategy was to attract young Whites to his cause. To accomplish this he needed access to a large audience for his message of bigotry, hatred and violence.

In late 1984, Austin Community Television (ACTV) received a call from a man who said he wanted to become the local sponsor of a half-hour show called "Race and Reason."¹ He said he was receiving tapes of the show on a regular basis and wanted to have them scheduled for showing on the public access cable TV channel operated by ACTV. Alan Bushong, Executive Director of ACTV, recalls that the first tape, a half-inch VHS video cassette, was barely viewable or audible it was so crudely done. But the message of bigotry and hatred was loud and clear. Tom Metzger's message had found its medium in public access cable TV.

These two ideas, from their modest origins in TV shops thirty-five years and a continent apart, have presented both challenges and opportunities to people who are concerned about the spread of bigotry and violence and the intensified activities of extremist groups. Cable TV has grown to a \$12 billion industry that is a pervasive feature of American life. Currently, cable TV is comprised of 8,000 cable systems connected to more than half the households in the continental U.S., with over 100 million viewers regularly tuning in.² Metzger, for his part, has seen his show aired over cable systems in more than twenty-five communities, and he is aiming for more.

This report will first describe the "Race and Reason" series, its content and how it is produced and distributed. Although "Race and Reason" is not the only program cablecast by hate groups, it is the most widespread such effort. Other examples will be

¹Telephone interview with Alan Bushong, 21 January 1988. Unless otherwise indicated, all subsequent statements attributed to Mr. Bushong are taken from this interview.

²National Cable Television Association, *Cable Television Developments*, December 1987, pp.1-2, 4, 6. Sources for these statistics include the A.C. Nielsen Company, Arbitron Television, and Paul Kagan Associates, Inc.

mentioned in the course of the report. The second section outlines the legal framework in which public access TV operates. In the third section, we present three case histories of communities that have experienced racist³ cable programming. Our focus is on the communities' response to racist programming, their subsequent efforts to come to terms with it, and the outcome. The fourth section of the report is an attempt to learn from these experiences how others can effectively respond to incidents of racist programming in their own communities. The focus is to develop a basic approach to the issues presented by public access as the foundation of a response to racist programming, followed by specific suggestions to assist in developing comprehensive strategies of prevention and response. Following the report is a list of resources that are available to assist in planning and implementing such efforts.

"RACE AND REASON"

"Race and Reason" is a series of 30-minute programs produced in a talk-show format. The shows feature Tom Metzger, as moderator, interviewing representatives of extremist groups who more or less share his White-separatist views. Metzger's guests have included Richard Butler, Pastor of the Church of Jesus Christ Christian—Aryan Nations; members of the Skinheads, a militant neo-Nazi youth group; and J. B. Stoner, Klan leader and former chair of the National States Rights Party, who was convicted in the 1958 bombing of a predominately-Black church in Birmingham, Alabama. One episode features Wally George, conservative talk-show host from California, engaging in a continuous shouting match with Metzger while Metzger's Nazi-uniformed "security" men punctuate George's remarks by smashing prop furniture in the background.

The shows have been produced in several southern California locations. In the fall of 1987 it was reported that two shows per month were being recorded at the Comcast Cablevision public access studio in Fullerton; before that the shows were being produced in studios at California State University at Fullerton, until weeks of student protests forced them out.⁴ In the spring of 1987 Metzger himself claimed he was taping "Race and Reason" at a Group W studio near Los Angeles. Randy Ammon, coordinator of Pocatello-Vision 12, the Pocatello, Idaho public access station, says that major financial support for the production is provided by Alexander Foxe. Metzger himself has been quoted as saying, "The cameramen, the production people, it's all volunteer, so the cost to us is minimal. Our supporters pay for the tapes and the postage." The supporters Metzger refers to are the local sponsors who actually submit the tapes for broadcast in their own communities. These local sponsors claim affiliation with a variety of extremist groups including the Klan, Aryan Nations, the American National Socialist Party, White American Skin Heads, and others, in addition to Metzger's own White Aryan Resistance and White American Political Association.

³Wherever the word "racist" appears, it should be understood by the reader to include bigotry and hatred on the basis of race, religion, ethnicity and sexual orientation. Although the controversies have focused on racism and anti-Semitism, the programs usually also contain material espousing hatred of and violence against other ethnic groups as well as homosexuals.

⁴Christine Cafarella, "WAR in Orange County," *Orange Coast Magazine*, November 1987, p. 106.

The basic theme of the series is a call for creation of a separate White nation in the United States. In support of this objective Metzger and his guests present offensive and bizarre arguments claiming to show the inferiority of Blacks and other racial minorities, the conspiracy of Jews to dominate the U.S. government, and the superiority of Whites. The shows are imbued with hatred and violence. One episode reportedly advocated "gassing all these niggers," while another praised the Skinheads in San Francisco for attacking homosexuals. In a recent program, which may be the most outrageous yet, J. B. Stoner claimed that the AIDS virus is carried by Blacks and Jews.

To date, sixty-three episodes of "Race and Reason" have been recorded on tape.⁵ Metzger himself claims he has succeeded in having "Race and Reason" cablecast over 25 cable systems around the country. Some of the communities affected are San Francisco, Orange County, San Diego and Sacramento, California; Phoenix, Arizona; Atlanta, Georgia; Pocatello, Idaho; Chicago, Illinois; Raleigh, North Carolina; Norwood, Ohio; Corvallis, Oregon; Austin, Texas; Richmond, Virginia; and Spokane, Washington. Metzger has been quoted as saying, "we plan to target every urban area."⁶

THE CABLE ACT AND THE FIRST AMENDMENT

Metzger and others are able to force the showing of racist programming over cable TV systems in communities where the cable franchise agreement requires the cable operator to provide "public access" channels. Under the Cable Communications Policy Act of 1984,⁷ a local franchising authority may require the cable operator to provide free access to designated channels for "public, educational, or governmental use." Once "public access" is mandated in a cable franchise, the Cable Act prohibits the exercise of any editorial control over program content, with the exception that programming which is "obscene or...otherwise unprotected by the Constitution" can be prohibited. The cable operator is expressly freed from any liability for carrying any program on a public access channel. Instead, criminal sanctions are imposed upon the person(s) responsible for the cablecast.

This means that any programming which constitutes speech protected by the First Amendment to the U.S. Constitution is fair game for showing over a public access channel and may not be censored. The scope of First Amendment protection for public access programming is as broad as that afforded spoken or published speech. Michael Meyerson, a law professor at the University of Baltimore Law School and a

⁵Telephone interview with Randy Ammon, 5 January 1988. Unless otherwise indicated, all subsequent statements attributed to Mr. Ammon were taken from this interview.

⁶Chicago *Tribune*, 17 March 1987.

⁷Codified at 47 U.S.C. Sec. 521 *et seq.*

recognized expert on First Amendment issues arising under cable TV regulation, refers to public access as "...an electronic Tom Paine; it's an electronic pamphleteer."⁸

The Supreme Court recognizes very few permissible limitations on spoken or published speech under the First Amendment. The major arguments which have been advanced to justify censoring racist programming include that it is obscene, that racist speech constitutes "fighting words," that it defames minorities, and that it advocates violence. Racist programming certainly is "obscene" in the sense that it is "foul," "filthy," "repulsive" and "disgusting," as *Webster's New Twentieth Century Dictionary* defines the term. However, the First Amendment standard for obscenity is much more specific. Two leading obscenity cases are *Miller v. California*⁹ and *Roth v. United States*.¹⁰ The current test for obscenity, set forth in *Miller*, requires as one of the elements that, "...the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law...."¹¹ In other words, without sexual conduct a work cannot be censored as obscene. Further, it is not enough to show that vulgar or indecent language is used, especially in the context of political speech.¹²

It is sometimes asserted that the ethnic slurs and derogatory remarks uttered in racist programs constitute "fighting words" which are not protected speech under the First Amendment. Fighting words are "...face-to-face words plainly likely to cause a breach of the peace by the addressee."¹³ They are the kind of provocative, personal insults that have a direct tendency to cause an immediate and violent response by the average person to whom they are addressed.¹⁴ The fighting words doctrine requires a direct, face-to-face confrontation between the speaker and the listener, without which there cannot occur the likelihood of immediate responsive violence which justifies punishing or censoring the speech. Thus, the doctrine does not apply to speech transmitted over a communications medium such as cable TV.

Another argument frequently made is that racist programming holds particular minorities (especially Blacks and Jews) up to hatred, contempt and ridicule, and is therefore defamatory to them as a group. The most recent Supreme Court case dealing with so-called "group libel" statutes is *Beauharnais v. Illinois*.¹⁵ That case involved prosecution of a White supremacist under an Illinois statute prohibiting publication of

⁸Dave Bloch, ed., "Public Access Cable Television: What Limits to Controversy?" *Community Television Review*, Summer 1987, p. 8.

⁹413 U.S. 15 (1973).

¹⁰354 U.S. 476 (1957).

¹¹413 U.S. at 24.

¹²See, *Cohen v. California*, 403 U.S. 15 (1971), in which "Fuck the Draft" was held not to be "fighting words" which would justify a conviction for breach of the peace.

¹³*Chaplinsky v. U.S.*, 315 U.S. 568 (1942) p. 572 .

¹⁴For a discussion of the fighting words doctrine, see, Stephen W. Gard, "Fighting Words as Free Speech," *Washington University Law Quarterly*, 58 (1980) 531.

¹⁵343 U.S. 250 (1952).

materials that defamed a class of citizens on the basis of their race, color, creed or religion. The purpose of the statute was to prevent the promotion of racial hatred, as well as any resulting breaches of the peace or riots. In a five to four decision, the Court upheld the Constitutionality of the statute.

Many scholars believe that later Supreme Court decisions on the law of libel have so badly undercut the *Beauharnais* holding that a group libel statute could not survive First Amendment attack today.¹⁶ Only a handful of states currently have statutes which would provide a basis for challenging racist programming as group libel. But apart from the legal tenuousness of group libel, it is an approach that carries with it serious hazards to First Amendment protections. The problem, as Professor Meyerson notes, is that "...any term you use, any way you phrase it, [you] can not keep the censor in a box."¹⁷

The most frequently asserted ground for denying air time to racist programming is that it advocates violence and other criminal actions against Jews, Blacks and other minorities. The leading case in this area is *Brandenburg v. Ohio*.¹⁸ The Supreme Court overturned the conviction of a Ku Klux Klan leader for advocating violence to achieve the Klan's racist political reforms, holding that mere advocacy of violence is protected by the First Amendment so long as it doesn't incite people to imminent lawless action. By this standard it's not enough to show that the speaker advocated violence in the abstract, or at some future time. It must be shown that his words were directed to incite or produce imminent violence, and that the circumstances made it likely this would, in fact, occur.

As a practical matter, the *Brandenburg* test is very difficult to meet. Such cases seem to turn mainly on the seriousness of the violence which follows the speech and the close proximity of the violence to the speech.¹⁹ The issue is complicated in the case of a cablecast, where the speaker is physically removed from his audience and the members of the audience are separated from each other. The classic setting in which incitement occurs—a highly-charged atmosphere generated by a closely-packed crowd listening to the exhortations of a forceful speaker—simply isn't present. It would therefore be even more difficult to find either incitement or the likelihood of imminent violence in the case of a cablecast.

If racist programming does go over the line into the realm of Constitutionally unprotected speech, the question remains what can be done about it. The Cable Act clearly intends that the program will be shown first, with legal rights and liabilities to be settled by the courts, if necessary, after the cablecast. In close cases the cable

¹⁶See, for example, J. Nowak, R. Rotunda & J. Young, *Constitutional Law*, 2nd ed. (Minneapolis: West, 1983) pp. 943-944. For an article supporting the Constitutionality of group libel statutes, see Kenneth Lasson, "Racial Defamation as Free Speech: Abusing the First Amendment," *Columbia Human Rights Law Review*, 17 (1985) 11.

¹⁷Id.

¹⁸395 U.S. 444 (1969).

¹⁹See, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

operator knows that the Cable Act will protect him from liability if he errs by showing unprotected programming. But he is open to liability if he errs on the side of censoring protected speech. This is in keeping with the Supreme Court's very strong disapproval of prior restraint of speech.

The classic prior restraint case is *Near v. Minnesota*²⁰ in which the Supreme Court virtually equated the First Amendment's guarantee of freedom of the press with immunity from prior restraints. The four "exceptional circumstances" recognized as possibly justifying prior restraint in certain cases were (1) to prevent irreparable harm to the national security (e.g., obstruction of military recruitment or publication of troop movements); (2) to prevent publication of obscene materials; (3) if necessary to prevent "incitement to acts of violence"; and (4) to prevent "...uttering words that may have all the effect of force [*i.e., fighting words*]." ²¹ Prior restraint has been upheld most often by the Supreme Court in obscenity cases, and in a few cases involving national security. The Court has yet to uphold, on First Amendment grounds, prior restraint of "fighting words"²² or speech advocating imminent lawless action.

In summary, the Cable Act and the applicable First Amendment standards make it almost impossible to prevent the showing of racist cable programming over a public access channel. Despite attempts in a number of communities to prevent the cablecast of racist programming, the author is unaware of a single case in which such efforts have ultimately succeeded. Subsequent to cablecast, if the rare case arises in which such programming does cross the line into Constitutionally unprotected speech, the persons responsible for the program may be subject to criminal penalties under the Cable Act, including a maximum \$10,000 fine, imprisonment for up to two years, or both. An individual who believes he has been defamed may pursue private remedies against those responsible. This suggests that it is worthwhile to closely monitor racist programs for potential violations, if only to put the producers and local sponsors on notice that there will be a price to be paid if they exceed the broad bounds of First Amendment protection.

RACIST PROGRAMMING IN THREE COMMUNITIES

Public access has been implemented in a variety of ways. In some communities the public access channel is managed directly by the cable operator. This is the case with the Viacom Cablevision franchise in the East Bay area south of Oakland, California. In other communities an independent nonprofit corporation is established to operate public access. Austin Community Television and Sacramento Community Cable Foundation are examples of this approach. A third variant places responsibility for managing public access in the hands of a public (usually municipal) agency, such as in Pocatello, Idaho. Finally, Cincinnati represents a hybrid in which it is currently

²⁰283 U.S. 697 (1931).

²¹*Id.* at p. 716.

²²*Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957) involved offensive words coupled with numerous acts of violence.

unclear whether the public access channels are ultimately controlled by the cable operator, Warner Cable Communications, or the Cincinnati City Council.

There is also wide diversity in the procedures employed in the production, scheduling and cablecasting of public access programming; the amount and level of training available to people interested in producing a program; the production facilities available for public use; and the number of public access channels. These variables are a function of the specific cable franchise agreement and the level of funding available to support public access. This diversity is also reflected in the communities discussed below.

"RACE AND REASON" INVADES THE EAST BAY AREA

On July 6, 1987, 20-year-old Clinton Sipes, a resident of Dublin, California and member of the local klavern of the American Klan, Knights of the Ku Klux Klan, made a request to Viacom Cablevision to air "Race and Reason" over its public access channel, "Channel 30." Viacom-East Bay serves over 40,000 subscribers in the Tri-Valley area encompassing the northern California communities of Dublin, Livermore, Pleasanton, and San Ramon.

The initial media coverage of Sipes' request indicated a mild response in the affected communities. Most local officials and community leaders quoted in local newspapers expressed the view that it would be best to ignore "Race and Reason." One San Ramon City Councilwoman, however, supported cablecast of the show: "The general public needs to know what kind of trash they're pushing. The more we know about what everybody's doing the better off everyone will be. I'm going to watch it."²³ In the same report Jim Burt, Viacom's manager of Channel 30, stated Viacom's obligation under federal law and the First Amendment to "air what the public brings in to us." Burt pointed out that Viacom has no censorship powers over public access programming, said he didn't know where Viacom was supposed to draw the line, and couldn't say what Viacom would do if someone asked it to air pornography.

A week later, a group of local teenagers staged a demonstration in front of Viacom's offices to protest racism generally, not the showing of "Race and Reason" (one of the organizers acknowledged that Viacom was "caught in the cross fire" of the battle over racism). The demonstration drew six members of the All People's Congress from San Francisco, whose objective was to block the showing of "Race and Reason."²⁴ Several of the approximately 30 demonstrators were quoted in the *Argus* report as stating such things as: "We don't believe the right to speak freely extends to fascist and racist organizations like the Klan," and "Promoting ideas and actions that can physically harm people is not protected under the First Amendment." Other demonstrators said they felt it important to be there to show that racism is not welcome in their community.

²³Oakland *Tribune*, 8 July 1987.

²⁴Fremont *Argus*, 16 July 1987.

On July 20th Sipes delivered the first two "Race and Reason" tapes to Viacom. Following the example previously set in San Francisco, a local minister submitted to Viacom a show from the Anti-Defamation League of B'nai B'rith (ADL) series entitled "Liberty and Justice for All," which was produced by ADL to balance the message of racial hate and religious intolerance espoused in "Race and Reason." A Viacom spokesperson stated that no decision would be made on whether or not to air "Race and Reason" or the ADL tape until they had both been previewed by Viacom's attorneys in East Bay as well as at Viacom International headquarters in New York. Five days later the San Francisco *Chronicle* quoted the President of the Tri-Valley Cable Television Board, the oversight organization for Viacom-East Bay, as saying,

"Actually, I do not think there is a whole lot of concern about this whole matter one way or the other. There isn't a lot of viewership of that channel to begin with, and the board has not been asked to take a position about the tape....I believe Viacom has to broadcast it, but I don't think anyone has decided when."

The *Chronicle* also quoted Channel 30 manager Burt Jones as stating that he had not yet seen the tape, although Viacom's attorneys had. That same day, the Pleasanton *Valley Times* reported that Sipes had overcome the last hurdle to airing "Race and Reason" when he signed papers agreeing to indemnify Viacom against the costs of any legal action brought against it because of the show. Viacom's lawyers required Sipes to sign the agreement after receiving a letter from a local resident stating that to the extent "Race and Reason" advocated criminal conduct it was not protected speech under the First Amendment. The letter also suggested that the show might violate federal regulations concerning obscenity and pornography. "In a sense, bigotry is obscene," the letter claimed. The letter went on to say that Viacom might be held liable for any harm resulting from the broadcast of such material. Viacom said it was still reviewing "Race and Reason" and the ADL tape and no decision on air time had been made. Sipes, meanwhile, complained that he had been put through "a bunch of baloney" to get "Race and Reason" on the air, and said he thought it was unfair to make him sign the indemnity agreement. "We can't even have a white talk show without everybody rampaging us," quoted the *Valley Times*.

On July 29th, Viacom announced that the first "Race and Reason" tape would be aired on Monday, August 3 at 11:30 p.m. It would be preceded by "Molly's Pilgrim," ADL's 1986 Academy Award-winning film which tells of the story of a young Russian Jewish girl who immigrated to this country to escape religious persecution only to face a struggle for acceptance by her new American classmates. Viacom said that the "Race and Reason" tapes were less objectionable than they expected.

Editorials appearing in local newspapers prior to broadcast denounced the Klan and its message, but supported its First Amendment right to express its views no matter how abhorrent, and called upon local viewers to ignore "Race and Reason." The Oakland *Tribune* felt Viacom had an affirmative responsibility to seek "a wider spectrum of reply to air with the Klan program." The ADL show was "necessary, but not enough"; a reply by Blacks and others in the community was also needed. Noting Viacom's statement that no additional program was planned because nobody came forward with one, the *Tribune* urged Blacks "to flood the station with requests for a chance to reply."

Both "Race and Reason" and "Molly's Pilgrim" were broadcast as scheduled, with no additional reply from the community. In the days immediately following the broadcasts there was little reaction. Viacom attributed the lack of response to low interest in the public access channel (based on a survey conducted eighteen months previously), as well as the 11:30 p.m. broadcast time. Local newspapers gave detailed accounts of both shows, highlighting the contrast between the sensitive, tastefully done "Molly's Pilgrim" and the poorly-done, "laughable" "shouting match" engaged in by Metzger and his guest Wally George on "Race and Reason." People interviewed in local newspapers expressed relief that the particular "Race and Reason" episode shown wasn't as overtly racist as they had feared.

The second tape of "Race and Reason" was apparently aired with little resulting controversy. As the time approached for the third episode, however, it was reported that "Race and Reason" would not be seen in its regular time slot because Clinton Sipes, the sponsor, had been arrested for parole violation for picketing in front of the Dublin police department in a Klan costume. Sipes was on parole from the California Youth Authority following conviction for assault with a deadly weapon. Engaging in Klan activities was prohibited under the terms of his parole. With Sipes gone, there was no one to sponsor the show and deliver new tapes. The controversy had lost its central figure, and thus the East Bay area's first confrontation with racist programming came to an end.²⁵ But if the experience of other communities is any guide, it will not be the last.

NEO-NAZIS RECRUIT IN CINCINNATI

Cincinnati's brief confrontation with racist cable programming spanned two short months in the late summer and early fall of 1987. In the greater Cincinnati area the cable system is complex, encompassing municipal subdivisions which have separate cable TV franchise agreements. Cincinnati's franchise is held by Warner Cable Communications. Norwood, a city in suburban Cincinnati, has its own franchise agreement with Warner Cable. Each city has its own separately-run public access channels, but there are also system-wide cable services serving both communities. Just across the Ohio River from Cincinnati, northern Kentucky communities such as Covington are served by Storer Cable.

Further complicating matters in Cincinnati, the language of the franchise agreement is unclear enough that ultimate control of the public access channels was in dispute. Warner Cable and the Cincinnati City Council each claim control of public access. Warner Cable funds and manages three access centers in the city where it conducts free training in program production for the public. Warner is also responsible for general management of the public access channels, including scheduling and playback of shows. Warner is required to provide funding for the Cincinnati Cable Access Corporation (CCAC), an independent nonprofit membership organization of producers of public access programming. CCAC monitors Warner Cable's compliance with the franchise agreement, conducts community outreach seminars to encourage

²⁵Three months later Sipes was released by the California Youth Authority. Within days, he announced he had experienced a religious awakening and renounced the Klan and his old ways of hate.

use of public access, and serves as an advisory group to the Cincinnati Citizens Cable Board on policy issues relating to operation and content of the channels. The Cable Board in turn advises City Council on policy issues affecting cable TV generally.

Cincinnati was at the time coming to grips with the increasing activities of neo-Nazi youth groups such as the White American Skin Heads (WASH) and the SS Action Group. These groups had for several months been attempting to recruit young Cincinnati-area Whites to their cause by distributing leaflets in neighborhoods and at area schools, and by hanging out at local punk rock music spots. There had been reported incidents of young people being harassed and intimidated by the groups. Police reported that fights had occurred between the Skinheads and local Blacks. One area of concentrated neo-Nazi activity was Norwood, which was suffering severe economic distress from the recent closing of a General Motors plant. Finally, all of this occurred during the final stages of a political campaign in which the Mayor of Cincinnati and other city council members were running for re-election.

The city had made a well-developed effort to establish public access cable TV as an important community resource. As part of its franchise agreement, Warner Cable provided six access channels in Cincinnati: two channels for public access, one for educational access, a channel for governmental access, one for religious access, and a channel dedicated for use as a community bulletin board. There also was a large base of citizens and community groups who were both sophisticated about and supportive of public access. As of October 1987, over 3,000 individuals representing about 1,000 groups had received training in video production. And Cincinnati Cable Access Corp. (CCAC) had an experienced executive director in Chuck Sherwood, who came to Cincinnati from Manhattan (New York City) Cable in 1986, bringing with him twelve years' experience in public access.

On August 31, 1987, this 20-second message first appeared on Norwood's public access "rolling" bulletin-board:²⁶ "Join the American Nazis and smash Red, Jew and Black power." The message was signed by the SS Action Group, which claimed it was united with White American Skin Heads (WASH). Within two weeks local newspaper coverage of the racist messages increased and the community's reaction began to build. Warner Cable and Norwood city officials stressed that under federal law there was nothing they could do to stop the messages so long as technical requirements were met. Dr. Michael Rapp, executive director of the Jewish Community Relations Council, acknowledged that the messages tried his support for free speech, but said, "What is fortunate is that this type of speech and thinking is rejected by the overwhelming majority of Americans."²⁷

The sponsors of the messages soon identified themselves and expounded for the press the anti-minority, White-supremacist beliefs of their neo-Nazi groups. Media reports of community opinion further intensified when a similar message, this one

²⁶A "rolling" bulletin board is a series of messages that scroll up the viewer's television screen. Typically it comprises announcements of community activities and other items of interest and resembles a TV version of the classified section of a newspaper. Any member of the community served by the cable system can place an item on the bulletin board, free of charge.

²⁷Cincinnati *Post*, 23 September 1987.

sponsored by WASH, appeared on Cincinnati's city-wide bulletin board on channel 22: "Attention great American white youth. Unite and fight against the anti-white system." A local Black business owner called a press conference to express his outrage at the messages and urged Warner Cable to remove them. "They're hollering about freedom of speech. But I think you have to draw the line when the message becomes obscene. What (WASH) is saying is obscene to me," he said.²⁸ Monty Whitney, executive director of the Cincinnati Human Relations Commission, focused on the substance of the messages and took issue with WASH co-founder Mike Lewis' claim that WASH was pro-white rather than anti-Jew or anti-Black: "That's different from having pride in your race. You're putting others down to make yourself feel superior." In the same report it was announced that community groups and city leaders would meet in several days to discuss the neo-Nazi groups.

Political fuel was added to the fire just one day before community leaders were scheduled to meet. On September 29th Mr. Z. Eugene Price, a member of the Cincinnati Citizens Cable Board, submitted his resignation because of the Board's failure to do anything to stop the neo-Nazi messages. In his letter of resignation Price said, "If the present board and/or the Cincinnati Cable Office will not take action against Warner Cable for displaying [the messages], why should the councilmen of Cincinnati continue to fund the Cincinnati Cable Office?"²⁹ Later that day the *Post* quoted further from his letter of resignation:

...Warner Cable placed profit before decency. When does someone have a right to slander someone else? What about the Jews and the blacks? What about their rights? It seems to me anything connected with Nazism is pornographic.

In the *Post* report Cincinnati Mayor Charles Luken, who had appointed Price to the Cable Board, responded, "I share his outrage at the content of the messages and believe we need to establish a bottom line as to what can or can't be put on cable. But I don't think his action is productive." Warner Cable's vice president for legal affairs, Patricia Morrison, repeated that federal law and the First Amendment protected the neo-Nazis' right to cablecast their bigoted message over public access. However, she continued, "The one thing we can do and are doing is to encourage people who oppose that announcement to present one of their own to counter it and we will run it on the same channels."³⁰ She also pointed out that public access announcements must be provided free, and the company makes no money from them.³¹

But Mayor Luken was not convinced that Ms. Morrison's legal analysis was the last word: "It seems to me that when the content of a message is so offensive to community standards and threatens certain groups of people, it should not be protected by the First Amendment freedom of speech," Luken was quoted in the *Enquirer*. Luken

²⁸Cincinnati *Enquirer*, 25 September 1987.

²⁹Cincinnati *Enquirer*, 29 September 1987.

³⁰Cincinnati *Enquirer*, September 29, 1987.

³¹Cincinnati *Post*, September 29, 1987.

added that he intended to ask the city solicitor to determine what could be done Constitutionally to censor offensive messages on public access.

The next day it was reported that three of the neo-Nazi groups were planning a meeting to consider forming an alliance to produce a talk show on public access. Tentatively titled "Nazi Access," the one-hour program would discuss such topics as the historical revisionists' denial of the Holocaust and America's declining morality. For entertainment the show would feature performances by musical groups such as the White Power Band from Covington, Kentucky. James Roberts, 19, unit leader of the SS Action Group, claimed the three groups planning the show included the 15 members of his own Norwood-based group, the 15-member National Socialist Skin Head Alliance based in Covington, Kentucky, and the 40-member White American Skin Heads group from Corryville. Quoted in the *Enquirer*, Roberts noted the advantages of public access over leafleting: "This public access allows us to reach infinitely more people than leaflets do."

In the same *Enquirer* report it was evident that community leaders and human rights groups had begun to organize. The Cincinnati Human Relations Commission (HRC) had convened the first in what would be a series of meetings to plan a comprehensive coordinated response. Monty Whitney, executive director of the HRC, and Lorraine Meyer, area director of the Cincinnati chapter of the American Jewish Committee (AJC), responded to questions following the meeting. Whitney focused on the need for counter-programming: "Some other points of view need to get out to the public. We may look into putting [on] our own public access programs that have very positive messages and can be helpful in improving the human relations of the city." Meyer expressed concern that too much emphasis on counter-programming might have the effect of lending the neo-Nazis more credibility than they had. But Whitney and Meyer agreed that the neo-Nazi groups' First Amendment rights had to be protected, and said they opposed trying to ban their messages from public access.

The following day, September 30, "Race and Reason" was first aired over the Norwood public access channel, sponsored by the SS Action Group. The program, featuring an interview with Pastor Richard Butler of the Church of Jesus Christ Christian—Aryan Nations, was repeated on October 2 and 3. Joyce Miller, Norwood community programming director for Warner Cable, handled complaints about the program from local subscribers. The Cincinnati *Post* later quoted her reaction: "It seems some people love the idea of free speech—just so they agree with the content." The premiere of "Race and Reason" was given feature coverage by the Norwood Enterprise-Press, a small weekly. But in the major Cincinnati dailies, the *Post* and *Enquirer*, the "Race and Reason" cablecast in Norwood was a minor thread in the larger controversy over the neo-Nazi ads.

On Monday, October 5th, the monthly meeting of the Cable Board served as a lightning rod for the growing controversy. Two representatives of the neo-Nazi groups appeared at the meeting to press their First Amendment rights. Jake Brown, described as a 20-year old martial arts instructor from Ludlow, Kentucky, claimed that WASH had disbanded and that its members, along with the SS Action Group, had affiliated with his group, the National Socialist Party. Brown also claimed that combined membership in the groups had risen to 95 since the recruitment messages first appeared. Karl O'Rourke, 19, a factory worker from Covington, Kentucky, attended the meeting with

Brown. O'Rourke claimed to be a former member of the Ku Klux Klan in Michigan who learned to appreciate his racial heritage while growing up: "I was heartbroken when I found out (in history class) that Hitler lost the war," quoted the *Enquirer*.

Mayor Luken and two other city council members pressed the Cable Board to come up with a way to stop the racist programming. Luken went further and suggested that public access be suspended entirely until the Cable Board reached a decision on what to do. Cable Board Chairwoman Robin Harvey said the Board would look into it, but she stressed that protection of free speech was still the bottom line. In the meantime, Ms. Harvey continued, a committee would begin researching what options were legally available to stop the neo-Nazi messages. Brown, responding on behalf of the neo-Nazis, said, "It is unfortunate that Cincinnati would go to the extreme measure of doing away with public access TV to prohibit the free speech of a political group....If you infringe on the right of free speech, you might as well do away with the whole Constitution."³² Vice Mayor J. Kenneth Blackwell responded that the Constitution's framers didn't intend to protect the speech of "those who defend the right to hate and the right to destroy."

Z. Eugene Price, whose resignation from the Cable Board was effective that day, wondered what purpose the Cable Board served if it couldn't influence programming. But other Board members criticized Price for "grandstanding" by taking out a newspaper advertisement to publicize the meeting. In the ad he claimed that city tax dollars were being used to help produce the neo-Nazi messages. CCAC executive director Chuck Sherwood pointed out that under the franchise agreement Warner pays for public access, not the city, and demanded that Price print a retraction.

While all of this was taking place, Cincinnati's community leaders were quietly forming a coalition to develop a comprehensive response. As Lorraine Meyer of the American Jewish Committee recalls, "we met early and often."³³ With the Human Relations Commission serving as coordinator, representatives of the school system, police department, the United Way, neighborhood groups, the AJC, the NAACP, the Urban League, the Jewish Community Relations Council and others met with a multi-faceted agenda before them.

Their first concern was for the safety of the young people, both Black and White, who were directly affected by the neo-Nazi recruitment and harassment activities. Recognizing that not all "Skinheads" were neo-Nazis, the leaders were also concerned for the safety of those young people who were identified as "Skinheads" because of their involvement with the punk rock music subculture, but who had no connection with the racist organizations. It was important to get accurate information to the schools and the parents. Another concern was to bring into play Ohio's recently-passed ethnic intimidation law, which makes it a crime to harass or intimidate persons because of their race or ethnic origin. Police and city officials were encouraged to

³²Cincinnati *Enquirer*, 6 October 1987.

³³Telephone interview with Lorraine Meyer, 19 January 1988. Unless otherwise indicated, all subsequent statements attributed to Ms. Meyer were taken from this interview. Additional background information was obtained from American Jewish Committee membership communications provided by Ms. Meyer.

strictly enforce the law against perpetrators. The media were encouraged to publicize the enforcement effort.

The broadcast and print media were another concern. With coverage intensifying daily, it was important to dissuade the media from excessive or sensationalistic reporting. It was also critical to ensure that the media were being provided with accurate information. The public needed to be educated about what was actually happening in the community as well as the nature of the issues at stake. Finally, there was the question of public access cable TV. The American Jewish Committee was already committed to supporting First Amendment protection of speech on public access. However, the coalition as a whole decided not to stake out a public position on the debate. Rather, the focus would be on mutual support and cooperation in producing positive counter-programming. This, in turn, would involve assistance from Chuck Sherwood and the Citizens Community Access Corp.

Sherwood's own efforts with the media began to pay off. On October 7 the *Post* ran an article surveying the experiences of Austin and Sacramento with racist programming. Headlined "Neo-Nazi programs spark black, Jewish broadcasts," the article pointed out similarities between the Cincinnati controversy and what had occurred in those cities. In the face of similar pressures to restrict what was cablecast on public access, "... in each case, public access leaders stood firmly behind First Amendment protection and federal cable regulations....The result, ironically, was wider use of public access channels by black and Jewish groups." Not only did the controversy spur use of public access by minority and other human rights organizations, the resulting counter-programming had successfully quelled the controversy. Sherwood was quoted as urging a similar approach in Cincinnati: "If you don't like what someone says, don't just sit there. Come in and produce a show to tell your own message." On October 9th, the *Enquirer* published an editorial which clearly laid out the issues at stake and strongly urged Cincinnati to take a responsible approach to the controversy:

The law couldn't be clearer: Those who have a message they want to share with the public, so long as it is not libelous or obscene, must have an opportunity to present it.

Those who believe that neo-Nazis [sic] movements should be denied such coverage have an obvious remedy: seeking a change in the federal law.

Before they do so, however, they need to consider that they themselves may one day be asking for public access. They need to ask whether changes they ask to deny public access to the neo-Nazis or any similarly distasteful movement might eventually deny them a public hearing for their own views and activities.

No community can tolerate racial or ethnic hatred. But neither can a community become a censor of speech protected by the First Amendment. Those who are most troubled may someday need the guarantees of the First Amendment for their own points of view.

On October 6th the *Post* had contributed a piece entitled "Varied Voices," which explained how to go about putting a show on public access and pointed out the rich diversity of community programming already available. The *Post* ultimately provided editorial support for public access as well. The local broadcast media also began to augment their coverage of the controversy with more information about public access.

Chuck Sherwood cites as one good example a piece by the local ABC affiliate. The station broadcast samples of the crude, offensive racist programming alongside footage from the public access channel's excellent call-in show, entitled "City Council Candidates," in which the public had an opportunity to question candidates on issues in the upcoming election. The TV report concluded that the latter was more representative of the kinds of programs local subscribers were likely to see on public access.

Meanwhile, Mayor Luken continued to press for a temporary suspension of public access entirely. Another city council member countered with a suggestion that the city only "pull the plug" during the racist messages, and "let them sue us over First Amendment questions if they want."³⁴ Other council members sided with the Cable Board and said the city should do nothing. "It's obnoxious but it will run its course," the *Post* quoted one council member.

On October 10, the initial results of the coalition's quiet work were detailed in the *Post*. Arzell Nelson of the Cincinnati Human Relations Council announced that counter-programming efforts were underway. The first counter-message to appear, within two weeks, would on be a show already being produced by the NAACP. Other shows were planned for production by a task force comprising such groups as the American Jewish Committee, the United Way, Cincinnati public schools, and the Metropolitan Area Religious Coalition. In addition, it was reported that police were being encouraged to closely monitor reports for cases of racial or ethnic intimidation. High school officials were being contacted to discuss the neo-Nazi activities in the schools. A youth hot line had been established at the HRC so that young people could anonymously report incidents or provide information. Nelson also reported that other cities, such as Atlanta, had provided Cincinnati with information concerning patterns of neo-Nazi recruiting and ways to counter their message of White supremacy. In short, Cincinnati was moving on all fronts to confront the threat of racism and violence in the community.

Meanwhile, the neo-Nazi messages had tapered off and ended by October 5. Their recruiting efforts in the community were also subsiding. There was even speculation that one or more of the groups may have disbanded, although one of the leaders later claimed that the messages ended because of disagreements between White American Skin Heads and the SS Action Group. Within days, however, Mayor Luken once again made headlines with the release of the city solicitor's legal opinion on censorship of public access. The *Enquirer* quoted from the solicitor's opinion: "It is our opinion that the council, with the approval of (Warner), has the authority to temporarily suspend or permanently eliminate access programming....Regulation of the content of individual programming short of such a total suspension is questionable under (federal law), Constitutionally suspect and not recommended." Mayor Luken announced that because of the decrease in neo-Nazi activity he would take no immediate action. But he said he would monitor events and wouldn't hesitate to suspend or cancel public access if the situation were to heat up again.³⁵

³⁴Cincinnati *Post*, 8 October 1987.

³⁵Cincinnati *Enquirer*, 16 October 1987.

Luken's plan came under strong criticism from public access and free speech advocates.³⁶ Chuck Sherwood found it "mind-boggling" that the recruiting messages had elicited such a response from the Mayor. Of particular concern to Sherwood and Marc Mezibov of the American Civil Liberties Union was that Luken's plan effectively gave to extremist groups the power to cancel public access. "Why further empower these people?" asked Sherwood. Said Mezibov, "You don't protect free speech by killing free speech." Mezibov also indicated that if the Mayor followed through on his threat there may be court action to protect the rights of other public access programmers. Referring to the solicitor's opinion that cancellation of public access would require Warner Cable's approval, the *Enquirer* reported that Warner had not decided whether it would join with the city in such a move. "We're a long way from there," said Warner vice president Patricia Morrison.

The next day a group of public access programmers and representatives from organizations such as the American Jewish Committee met with Mayor Luken behind closed doors to urge him to back off from his threat to cancel public access. After the meeting, those who attended were not clear on what, if anything, was accomplished. But some were at least pleased that the Mayor had no immediate plans to cancel public access.

By the end of October the neo-Nazi groups had disappeared from Cincinnati-area public access channels. Their other recruiting activities in the area had also trailed off. But Cincinnati's leaders were not lulled into thinking their confrontation with racist programming had ended. The American Jewish Committee, for example, recognized that while the existing cable programming efforts by extremist groups were crude, they were bound to become more sophisticated in time. One project considered, in conjunction with the Human Relations Commission and the Cincinnati Community Access Corp., was a 20-minute call-in talk show on public access to be called "Recognizing and Overcoming Bigotry."

The AJC also began making plans for establishment of a city-wide Task Force on Public Access Cable to explore the new medium more fully and develop guidelines for public access that would both protect the First Amendment rights of all users and comply with existing federal law. To be chaired by Bob Westheimer, a Cincinnati businessman and former chairman of the AJC's board of governors, this group will comprise community leaders from the Cincinnati Bar Association, the Cincinnati *Enquirer*, the University of Cincinnati Law School, the Chamber of Commerce, the AJC, and other Cincinnati institutions. The AJC's Lorraine Meyer emphasizes that the work of this group will not simply be a reaction to the recent neo-Nazi activities. Rather, the goal will be to establish a permanent mechanism that will be in place for the future.

The future may come to Cincinnati sooner than anyone would like. Chuck Sherwood reported in mid-January, 1988 that five members of the Liberty Lobby were undergoing training in video production at one of Warner Cable's public access training sites in the city. The Liberty Lobby, publisher of the weekly anti-Jewish tabloid *The Spotlight*, has been linked through its founder and leader, Willis Carto, to a number of anti-Semitic publishing activities and organizations, including the promotion of

³⁶Id. All quotations in this paragraph are from this report.

Holocaust "revisionism," which claims that the Nazi extermination of Jews never took place.³⁷ As Mr. Sherwood noted, "Just because the neo-Nazi kids have gone away doesn't mean bigotry and prejudice have left Cincinnati."³⁸

POCATELLO: RERUN OF THE CONTROVERSY

Controversy first erupted over the showing of "Race and Reason" in Pocatello, Idaho in the fall of 1986. For a brief time Pocatello was the focus of national attention when Stan Sorenson, then claiming affiliation with an extremist group called the Arm of God, sponsored the first tape of "Race and Reason" over Pocatello's public access "Channel 12." To a degree, the national attention had less to do with events in Pocatello than it did with its southern Idaho setting. The Northwest had recently been targeted as a sanctuary by some of the most violent hate groups, including The Order. Another of these groups, Richard Butler's neo-Nazi Aryan Nations, is headquartered in a compound at Hayden Lake, Idaho near Coeur d'Alene. Coeur d'Alene had been the scene of a series of firebombings that fall, one of which had damaged the home of Father Bill Wassmuth, chairman of the Kootenai County Task Force on Human Rights. The Task Force had been formed in response to hate incidents and the activities of the Aryan Nations.

With the national media watching every move, and surrounded by known and suspected centers of violent hate group activity, Pocatello was confronted with more than a racist cable program when "Race and Reason" was presented for cablecast. However, they managed to weather the initial controversy without suffering paralyzing divisiveness in the community. The counter-programming efforts of human rights groups were cited by the National Federation of Local Cable Programmers as a model for local response.

In Pocatello public access is operated and funded by the city. Until recently it was operated out of the video department of the public library. Funding and operations are now part of the city's community development department. Randy Ammon, coordinator of public access, is a city employee. Ammon and his staff of two provide community outreach workshops, free training, and technical assistance in producing shows.

The Pocatello/Chubbuck Cable Commission serves as an oversight and advisory body to the city council, which has ultimate control over Channel 12. When the "Race and Reason" controversy first erupted public access had been operating for 12 years, making it one of the oldest public access channels in the country. Both the NAACP and the local Jewish community were longtime users of public access. Ammon cites this longstanding support of public access by the community as a critical factor in the ultimate resolution of the controversy.

³⁷Anti-Defamation League of B'nai B'rith, *Extremism on the Right: A Handbook*, (New York: Anti-Defamation League of B'nai B'rith, 1983) pp. 24-25.

³⁸Telephone interview with Chuck Sherwood, 19 January 1988. Unless otherwise indicated, all subsequent statements attributed to Mr. Sherwood were taken from this interview.

In the face of considerable pressure, the Pocatello city council held to its responsibilities as operator of public access under the Cable Act. Recalled Randy Ammon, "We didn't treat 'Race and Reason' differently from any other show. We put it in the usual two-week cycle of showing it once in prime time and once in non-prime time."³⁹ As counter-programming, the first "Race and Reason" tape was followed by a film on prejudice and then a 30-minute call-in show. So many calls came in during the call-in show that it was expanded to an hour, and even then it had to be cut off. The callers, says Ammon, were "overwhelmingly anti-racist but pro-communication."

Very early in the controversy Pocatello's Human Relations Advisory Council (HRAC) assumed the role of coordinating the response efforts of human rights and other community organizations.⁴⁰ The HRAC is a nonprofit organization, representing all racial and ethnic groups, that was formed to address a wide range of problems in the areas of discrimination and racism. With support from the city, Pocatello's HRAC responds to grievances and incidents of racism, makes referrals to appropriate agencies, and does follow-up.

In response to the "Race and Reason" controversy, the HRAC conducted a public education campaign consisting of well-publicized open meetings, distribution of posters and other materials, and establishment of an information "hot line." On the public access channel, the handling of the initial broadcast established a routine by which the HRAC and the Cable Commission would preview each episode of "Race and Reason." If a particular show contained material which HRAC felt required a response, it would arrange for a counter-program to be produced and aired along with "Race and Reason."

The usual format of the counter-programs was live discussion and call-in. HRAC arranged for the people to appear and the topic of the counter-program, while Ammon and his staff provided technical assistance. Thus, says Ammon, one positive outcome of the controversy was a heightened awareness in the community of both the value of public access and the community's responsibility to provide an effective response to offensive programming such as "Race and Reason."

The controversy over "Race and Reason" soon subsided and the show became a regular on Channel 12, along with the counter-programming. The coordinated response effort among Channel 12, the HRAC and the community worked well for about a year. But in late September 1987, the Pocatello community was tested once again when a particularly outrageous episode of "Race and Reason" was presented for cablecast by its local sponsor, Stan Sorenson, who by this time was claiming membership in the southern Idaho chapter of Richard Butler's Church of Jesus Christ Christian—Aryan Nations.

The show in question featured Tom Metzger interviewing J. B. Stoner, founder and currently the head of the Crusade Against Corruption, described by Stoner himself

³⁹Ammon interview, 5 January 1988.

⁴⁰Background information concerning the HRAC and its response to "Race and Reason" was provided by Chairperson Jeanetta Williams in a telephone interview, 4 February 1988.

as a "white racist political organization"⁴¹ based in Marietta, Georgia. Stoner was released the previous year after serving three and one-half years in prison for the 1958 bombing of the predominately-Black Bethel Baptist Church in Birmingham, Alabama. In the show, Stoner waved a medical text while claiming "it is a medically provable fact" that if a White person has sex with a "negroid" they will contract AIDS (acquired immune deficiency syndrome).⁴² A similar claim was made linking Jews and AIDS. Metzger, in turn, cited this claimed racial link to AIDS in support of his White-supremacist crusade to achieve separation of the races. The show continued on this theme for the full 30 minutes, with Stoner further claiming that through AIDS God was "intervening" on behalf of White Americans, who should view AIDS as a "blessing."⁴³

After previewing this tape, Randy Ammon believed that "Race and Reason" may have finally gone over the line. So he requested city attorney Ivan Legler's intervention to rule on whether or not the tape should be aired. The HRAC had also previewed the tape and, along with local health professionals, was preparing a rebuttal program to be cablecast following the tentatively-scheduled airing of the AIDS episode.

Legler said that his ruling would be based on two factors: First, whether the show violated existing statutes relating to AIDS and public disclosure; and second, "...whether it is obscene, advocates imminent lawless behavior, if it is a fraudulent misrepresentation of known existing facts, or if it contains either an individual or group defamation."⁴⁴ The following day the *Journal* reported Legler's legal opinion: "While a technical argument could be made against showing this particular program, I could see nothing in the tape which could violate any Constitutional law....Although it probably is a close, questionable call, Channel 12 can air the program." Legler also gave Ammon the option to delay cablecast of the show until the HRAC and local health experts were able to produce an appropriate counter-program. Legler expressed the hope that by showing such an "obnoxious" program along with a rebuttal from the community, "the program could be shown for what it is." Mr. Ammon said later that in the reviewing attorneys' opinion, if taken out of context the statements in the show regarding AIDS would have been fraudulent misstatements of fact; however, Stoner was raving so wildly and so totally lacked credibility that no one could possibly take him seriously.

On October 1, the Pocatello City Council considered the "Race and Reason" controversy at its regular meeting.⁴⁵ "This is the most repulsive program I've seen," said John Purce, President of the Pocatello chapter of the NAACP. He and Jeanetta Williams, Chairperson of the HRAC, urged that the city council not permit the tape to be

⁴¹Los Angeles *Daily News* (Valley Edition), 15 December 1987.

⁴²Ammon interview, 5 January 1988.

⁴³*Idaho State Journal*, 9 October 1987.

⁴⁴*Idaho State Journal*, 28 September 1987.

⁴⁵The summary of the October 1 city council meeting was taken from a report in the *Idaho State Journal*, 2 October 1987.

shown. One city council member suggested the council cut off funding for Channel 12 altogether rather than see it used as a platform by White supremacists, but city attorney Legler cautioned that censoring the show could subject the city to a lawsuit by the sponsor. The council unanimously decided to delay airing the show until they had a chance to preview it themselves. Said the council president, "I recognize there is a liability but I think the council should see it and make a political decision on whether it airs."

Newspaper reports published in the days that followed reflected southern Idaho's growing frustration with the bigotry and hatred infecting their communities. On October 4 the *Post-Register* in nearby Idaho Falls published a long and emotional, but misinformed, editorial. Its basic position was that the core of Pocatello's problem was the city council's failure to have established public access guidelines before the controversy arose: "Had the city established policies and guidelines in the first place, its manager could have told the Aryan Nations what it could do with its racial hatred, misguided, [sic] terrorist organization and video tape series it has been airing." The solution, according to the *Post-Register*, was for the city to give Channel 12's manager "...the right to exercise news and taste judgement..." Of course, this was the very thing the city could not do without blatantly violating the federal Cable Act.

The following week the Pocatello City Council viewed the tape and reportedly concluded that they probably didn't have the right to prevent showing of the program. But the council decided to delay a final decision by voting to postpone airing the show indefinitely. The *Idaho State Journal* quoted Councilwoman Karen McGee: "Basically we're confronted with a freedom of speech issue....Because of that, we may not have much choice but to let the program go, even though I personally consider the comments to be degrading."

Four days later, on October 12, the controversy gained momentum at a meeting of the Human Relations Advisory Council.⁴⁶ The HRAC voted 5-1 to recommend that the city not show the program on the ground that "racial untruths" should not be permitted on public access. HRAC members chided city attorney Legler for not attending the meeting, at their invitation, to offer legal advice on whether a case could be made for not showing the program. One HRAC member who abstained from the vote felt that the program raised an issue as to what the regulations were regarding the distinction between opinions versus untruths, and suggested that maybe the best solution would be to counter the show's allegations with facts, point by point. Although she was supportive of the HRAC's position, she felt there "... might not be a prayer in keeping it off the cable system....We still have to think in terms of freedom of speech, even if it is for the lunatics." Another member disagreed: "The people who would be swayed by a good panel discussion are not the people this program is aimed toward."

Still another HRAC member said there were only two options: Either show the program and rebut the allegations, or don't show the program and "let the sponsors sue." He favored the latter approach as an effective tactic to "destroy what [the White supremacists] are doing." In a subsequent editorial the *Idaho Falls Post-Register*

⁴⁶The summary of the October 12 HRAC meeting was taken from a report in the *Idaho State Journal*, 13 October 1987.

persisted in equating public access with the broadcast media, and ultimately endorsed the "let them sue" approach. "At the very least, make it hard for them," it said.

Less than a week later the Pocatello City Council was spared making a final decision when Alexander Foxe, the show's producer, decided to withdraw the tape after lengthy negotiations with city attorney Legler. Randy Ammon later described Foxe as the "money man" behind Metzger and "Race and Reason." Foxe reportedly said he pulled the tape for "...a lot of reasons....However, I felt that in order to resolve other issues it would be best not to make an issue out of the trivial nature of this tape," quoted the *Idaho State Journal*. The reason for Foxe's intervention wasn't clarified beyond his reported statement that, "This will perhaps lay the groundwork to clarify other legal concepts with regard to copyright infringements and the city's liability."

In return for not showing the program, the city agreed to make the tape available for viewing at Channel 12's studios for a two-week period by anyone who wished to see it. After that, the tape would be returned to the show's local sponsor, Stan Sorenson. This was Channel 12's usual procedure in cases where tapes are accepted for cablecast. Mr. Ammon later reported that only one person came in to see the show during its two-week run at Channel 12's studios. That person, said Ammon, was a "good man" who was simply interested to see what the fuss was about.

Foxe's action in pulling the tape seemed to satisfy everyone's immediate objectives. The Human Relations Advisory Council was pleased that the controversial show wasn't cablecast. The city council was relieved at avoiding a final decision on whether or not to air it. Even Foxe and Sorenson seemed satisfied that the tape would at least be available for viewing at Channel 12's studios. But as the *Idaho State Journal* noted in its editorial the next day, the basic issues remained unresolved:

But eventually, city officials will have to come to grips with the thorny First Amendment question posed by "Race and Reason." Is a public access station—which, by definition, is the essence of a free-speech podium—still obligated to air even the most offensive of programming? At last inspection, the First Amendment makes no distinctions for the free speech of groups that most citizens would rightly dismiss as wackos.

Or, does the city—which ultimately sets funding for this electronic soapbox—have the obligation to say who gets to speak? Perhaps this is a rare instance where city government sticks its neck out by allowing a broadcast.

Everyone lucked out this time, avoiding a battle on the fringe of First Amendment rights. Still, the interested parties better figure out where free speech ends, and unprotected Neanderthal babble begins.

Pocatello's respite lasted two weeks. Then the *Idaho State Journal* reported that Stan Sorenson, "Race and Reason's" local sponsor, had announced plans to produce his own show for cablecast in the "Race and Reason" time slot. The subject of the show would be an alleged "cover-up" of the racial link to AIDS. Sorenson's guest on the show would be J. B. Stoner. In the same report, the HRAC said it would not seek to prevent the show from being produced at Channel 12: "Although the same issues still exist, we do not believe it would be in the best interest to halt the program from being produced," said HRAC chairwoman Jeanetta Williams. Ms. Williams also announced that the HRAC would produce a counter-program to rebut Stoner's claims. Three days later, on November 19, Stoner arrived in Pocatello and Sorenson's show

was taped without incident. The *Journal* reported that the show would be aired in about a month in order to give Channel 12's staff enough time to do technical editing of the tape, add the credits and schedule it for showing. Ammon was quoted in the *Journal* as saying that the second tape was more "restrained," although the subject matter was the same.

Finally, Sorenson's interview with Stoner was scheduled for airing on January 12, 1988. The counter-program was taped on January 5 and scheduled for cablecast immediately following Sorenson's show. The counter-program, produced by the HRAC, featured city attorney Legler, health professionals, and medical experts on the AIDS issue to rebut Stoner's false claims regarding AIDS and race. Both Sorenson's show and the HRAC's counter-program were shown on January 12th and again on January 22nd. The HRAC played down the cablecast of both shows, with the result that there was little publicity and very few people apparently saw either one.⁴⁷ In a parallel development, the original 36-show agreement with Sorenson was completed and the regular "Race and Reason" series ended at the same time.

Pocatello's 16-month season of racist cable programming had finished its run. But basic issues remain unresolved, and it is not clear how well prepared Pocatello is for another encounter with racism on public access. Randy Ammon believes that the confrontation with "Race and Reason" has awakened people in the community to a heightened sense of their responsibility to go beyond acting in response to bigotry to take the initiative in promoting positive values over public access. He cites as one example a new monthly series which is planned for Channel 12 called, "Celebration of Diversity."

On the other hand, the Pocatello City Council, which ultimately controls the public access channel, never did come to grips with the tough First Amendment issue of free speech presented by the AIDS episode: It simply delayed its decision and postponed the show until the issue went away, at least for the time being. And there is a lack of consensus evidenced among members of the Human Relations Advisory Council with respect to both the free speech issue as well as the efficacy of its own counter-programming efforts. These basic issues will need to be addressed if Pocatello is to present a united, effective response to racist programming in the future.

LESSONS AND CONCLUSIONS: DEVELOPING EFFECTIVE STRATEGIES

As the preceding case histories show, racist cable programming has proven to be a highly emotional, often divisive, phenomenon. People, outraged by voices of bigotry and hatred speaking throughout their communities over cable TV, have often expended more energy disagreeing among themselves on what to do, than in combatting their common foe. By gaining a feel for the dynamics of what happened in East Bay, Cincinnati, and Pocatello, and by drawing upon the lessons learned in cities such as Austin, Texas and Sacramento, California, we can observe patterns of events that may prove useful in planning effective strategies of response to racist

⁴⁷Williams interview, 4 February 1988.

programming in other communities. Perhaps we can also reach some conclusions about the implications this phenomenon may have, both for the ongoing struggle to improve intergroup relations and for the very individual liberties upon which this struggle is predicated.

The purpose of this section is to consider public access in the context of developing comprehensive strategies of prevention and response. A strategy of prevention is one which includes positive programs to improve understanding among the diverse people in the community, as well as networks of communication among community leaders and public officials. Public access should be viewed as one element in a comprehensive strategy of prevention. Although the focus of controversy may be a racist cable program, the racist program should be viewed as only part of the problem facing the community. The following suggestions are offered with this perspective in mind.

1. SUPPORT THE FIRST AMENDMENT

The starting point for an effective course of action is to identify the issues presented by racist programming on public access cable channels. A basic fact is that the Cable Act defines public access as a First Amendment forum: any speech that is protected by the U.S. Constitution may not be censored. Racist programs such as "Race and Reason" and the neo-Nazi recruiting ads have not been found to exceed the bounds of Constitutional protection. We are left, then, with three options: First, we can challenge the protection of racist speech under the First Amendment. Second, we can seek to silence the racists by attempting to eliminate public access altogether. Our third option is to learn how to use this powerful medium, not only to combat racist cable programs but to promote our own positive goals.

In our view, challenging the Constitutional protection of racist speech under the First Amendment is both dangerous and tactically unsound, at least where the speech is not obscene, defamatory of an individual, or incitement to imminent violence under current Supreme Court standards. It is dangerous because of the difficulty in formulating a principle that would exclude what we might agree is racist speech without at the same time endangering an open exchange of ideas and feelings which is necessary if we are to outgrow our fear and ignorance of one another and achieve mutual respect and understanding. Silencing the bigot is also dangerous because it misleads us into believing we have thereby dealt with the racism, when we have not. The bigot and his racism simply become more difficult to identify and expose for what they are.

The East Bay experience provides an example of why the Constitutional challenge is a tactically unsound response. A number of well-meaning people, outraged by racism in their community, were rendered ineffective in the controversy because their overriding goal was to stop the cablecast of "Race and Reason," and not to deal with the message of racism itself. They focused their energies on making dangerous assertions of what the First Amendment had to mean in order to prevent the airing of "Race and Reason," rather than looking to what the First Amendment actually said, or how they might combat the message with positive action of their own. Ultimately, the effort was doomed to failure; the community was left without a positive common cause around which to organize and they remained fragmented and uncoordinated.

Most cable programming efforts by racists have been relatively crude and lacking in subtlety. As racists become more sophisticated and their racist arguments more subtle, their programs will only become even more difficult to silence on First Amendment grounds. In other words, as difficult as it is now to silence racist programming, this is as easy as it's going to get. Therefore, over the long term, attempting to silence racist programming holds little promise as a tactic of response.

As a final tactical consideration, focusing efforts on silencing racist program may actually have the unintended effect of making martyrs out of the racists. Randy Van Dalsen, Executive Director of the Sacramento Community Cable Foundation, has observed that free speech is a common theme running throughout the "Race and Reason" series. He suggests that what the racists want, in fact, is for human rights groups and others to try to silence them so that they can point to such efforts as evidence that they truly are martyrs for the First Amendment.⁴⁸ Other experts in the public access field have made the same observation.⁴⁹

Finally, there is another dimension to the First Amendment issue which should be addressed. As we have seen, once it becomes clear that a particular racist program cannot be censored because it is Constitutionally protected speech, there are those in the community who advocate censoring it anyway, and who then issue the challenge to "let them sue." Implicit in this tactic is the belief that the sponsors of the programs lack the resources or popular support to effectively assert their rights. This is a disquieting attitude, and one that poses a serious threat to freedom of speech generally. In recent times we have become accustomed to thinking of the courts as the primary protectors of free speech. While this is true to an important extent, and more especially since the early 1960's, it is not the whole truth. For the real scope of free speech is only as broad as that which is, in fact, afforded the unpopular and the powerless. Historically, from the early labor organizers to the modern civil rights movement, the voice that was both unpopular and powerless has had to pay with long struggle and real blood for the right to speak freely in support of their cause. In this case it is easy to say that bigotry and hatred are not only unpopular, they are wrong. But once started down this road it is difficult to stop; the next unpopular voice that is silenced through the crude exercise of power may be our own.

In summary, the first step in an effective strategy of response to racist programming is to achieve a consensus of commitment to the protection of free speech under the First Amendment—for the racists as well as everyone else. The most important benefit will be to preserve a core value of our democratic system. But other important results will be achieved as well. First, people will not dissipate their energies in a futile and misdirected attempt to silence the bigots, believing that they are thereby attacking the substantive problem of racism in their community. Second, a threshold dispute will be avoided among people who otherwise share a commitment to eliminate racism and who should be working together. And third, a positive foundation will be laid for achieving a unity of purpose in the community for dealing comprehensively with the

⁴⁸Telephone interview with Randy Van Dalsen, 21 January 1988. Unless otherwise indicated, all subsequent statements attributed to Mr. Van Dalsen are taken from this interview.

⁴⁹Alan Bushong, executive director of Austin Community TV; Chuck Sherwood, executive director of the Cincinnati Cable Access Corp.; and Michael Meyerson, University of Baltimore Law School.

problem of bigotry and hatred. In short, the beginnings of a coalition will be in place, clearly focused on the substantive problem of racism in the community, and organized around a shared principle that cuts across racial, religious, ethnic and socioeconomic lines.

2. BECOME EDUCATED ABOUT PUBLIC ACCESS

"Public access makes it possible for people to communicate directly with each other, in real time, with their message unfiltered by the media," notes Chuck Sherwood. It is a most powerful medium for community self-expression. But a majority of the public has been slow to realize the opportunity presented by public access. In a few communities, such as the East Bay area, the significance of public access only became evident—and in a negative light—after controversy erupted over such programs as "Race and Reason." Some people have reacted by attacking the medium that brought the hateful message. We believe this is a mistake. Public access should be supported as a First Amendment forum, and exploited as an integral part of a comprehensive strategy of prevention and response to prejudice. Beyond this, we believe that attacking public access in response to racist programming is tactically unwise and self-defeating.

As a general observation, communities have responded most quickly and effectively to racist programs where the medium of public access was not seriously attacked as part of the problem, and where public access was well established in the community. Sacramento, California provides a good example of a positive outcome where the basic elements were in place before the controversy arose.⁵⁰ In Sacramento public access is operated by the Sacramento Community Cable Foundation, an independent nonprofit organization. Public access started in October 1986 and just one month later "Race and Reason" was presented for cablecast. Fortunately, Executive Director Randy Van Dalsen and his staff had spent almost a year out in the community before the access center opened, making contacts and educating people on the First Amendment, what public access was, and how they could use it. Once Van Dalsen knew "Race and Reason" was going to be cablecast he contacted all the major human rights organizations, told them what the show was about, and encouraged them to become involved in public access. After some initial hesitancy the groups began flooding the training programs, contacting their national organizations for existing materials, and producing their own local programs. When "Race and Reason" first started, Van Dalsen says, there were a few calls complaining about the show but they soon died down. After about four months, the local sponsor of "Race and Reason" had a change of heart and withdrew the program. He hadn't bargained for the outpouring of counter-programming from the community.

⁵⁰Information for the summary of Sacramento's experience was obtained from the 21 January 1988 Van Dalsen interview. Additional information was obtained from Bloch, *Community Television Review*, p. 36.

Austin, Texas is another positive example.⁵¹ Public access had been established for 11 years in Austin when the "Race and Reason" controversy arose in 1984. "Race and Reason" has been cablecast every week ever since. Public access is operated by Austin Community TV (ACTV) which, like Sacramento, is an independent nonprofit organization. The initial reaction to "Race and Reason" in Austin was intense, and it didn't die down quickly. But ACTV had devoted considerable effort to educating city officials on the First Amendment and the value of public access, and had convinced them it was in the city's interest not to get involved in issues of program content. It had also done a great deal of community outreach to involve all segments of the community in public access. The result was a number of positive programs that effectively neutralized "Race and Reason." Executive Director Alan Bushong cites in particular the programming efforts of the NAACP and the Jewish Federation. To this day there are groups in Austin who argue that "Race and Reason" should not be permitted on public access. Public access is the vehicle they use to communicate these arguments.

When public access itself becomes the issue in the wake of racist programming, effective response is often delayed, and sometimes never occurs at all. It is a self-defeating approach. The only lawful way to silence racist programming is to eliminate public access altogether. If that occurs, then a handful of racists are empowered to control—that is, eliminate—the exercise of free speech over cable by the whole community. On the other hand, if the threat is unsuccessful, or is not carried out, then at the very least valuable time is lost and resources diverted from more productive courses of action. Often, attacks on public access result in divisions among people who share a commitment to oppose racism but disagree on the public access issue.

Pocatello appeared to have the elements in place when the "Race and Reason" controversy first arose, but later experienced mixed results when the controversy re-intensified over the AIDS episode. On the positive side, Pocatello had a twelve-year history of public access, including longstanding participation by the NAACP and local Jewish organizations. A strong community outreach program had built up considerable public understanding and support of public access. On the negative side, public access was controlled by the city council and was vulnerable to political pressure. When the AIDS tape was cleared for cablecast, public access became the focus. The city council was rendered ineffective, and probably acted illegally when it postponed showing the tape. The controversy was dragged out months longer than it needed to be.

In Cincinnati, Mayor Luken was passionately opposed to the racial hatred exhibited by the neo-Nazis. But instead of using his leadership to unify the community in a strong, coordinated response, he effectively divided the very community that shared his opposition to racial hatred by continually threatening to eliminate public access in order to silence the neo-Nazis. This attack on public access also distracted attention from the positive efforts being made by others in the community to deal substantively with the various neo-Nazi activities. Fortunately, Cincinnati had a number of key

⁵¹Information for the summary of Austin's experience was obtained from the 21 January 1988 Bushong interview. Additional information was obtained from Bloch, *Community Television Review*, pp. 36, 38.

people and organizations who came to terms with the First Amendment and public access very early in the process and moved on to more positive approaches to the real problems facing them.

Thus, commitment to the First Amendment, while a critical first step, is not enough. An effective response also requires that the community become educated about public access as a First Amendment forum—a forum that is available to the entire community, and not just racists. A community that understands public access is more likely to appreciate the possibilities of counter-programming, and less likely to create a distracting and paralyzing conflict among people who would otherwise be united in their opposition to racism.

3. KNOW THE CABLE SYSTEM

Find out how it's organized, what the provisions are for public access in the franchise agreement, who controls public access and how it's funded. This information will reveal the system's strengths and weaknesses. For example, if public access is managed and controlled by the cable company, as in the East Bay area, it may not be a source of positive support in a controversy. Cable companies provide public access primarily because they are required to as part of their franchise: It costs the companies money, and they generally fear that controversial programming will cost them subscribers.⁵² Where public access is controlled by municipal government, it tends to be more vulnerable to political pressures. This is the arrangement in Pocatello. When public access is controlled by an independent nonprofit organization, with funding directly from the cable company as part of the franchise agreement, it is least vulnerable to outside pressures and most likely to be dedicated to increasing community involvement in public access. This is the setup in Austin and Sacramento. But regardless of the public access setup, find out about available resources such as training, production facilities, and technical support. If the public access manager turns out to be unhelpful, the National Federation of Local Cable Programmers may be able to help. The NFLCP is an association that exists to support and promote public access.

4. LEARN ABOUT PROGRAMMING OPTIONS

Everything from live call-in shows to documentaries have been done by local organizations. Local organizations with national chapters should check with the national office to see if a cable committee has been established. The public access managers listed under Resources can provide referrals to similar organizations that have produced effective programs and counter-programs.

For positive programming, use imagination in considering the kinds of programs that can advance the organization's mission. Randy Van Dalsen recounts the

⁵²One notable exception to this is American Cablesystems Midwest, which gets high marks for understanding the value of public access and supporting it. Jewell Ryan-White, ACM's Public Relations/Promotions Coordinator, is particularly involved in developing strategies for increasing use of public access by minorities.

experience of the Oak Park section of Sacramento, a poor area with a high minority concentration and an image in the community as a drug- and crime-infested area. The Oak Park Neighborhood Association produced a documentary showing the people of Oak Park, their pride in their community and their desire to make it better. This show helped dispel Oak Park's negative image and spurred redevelopment activity in the area. Not incidentally, the show also contributed to improving intergroup relations.

In the case of counter-programming, be sure that it addresses the issues presented by the racist program in a relevant way. Monitor the racist program so that these issues can be identified.

5. USE CONTROVERSY AS A SPRINGBOARD FOR ACTION

Recognize controversy as an opportunity, not necessarily a problem. When "Race and Reason" causes controversy, it means people care and are actively concerned about racism. Be prepared to channel this concern in positive directions. The controversy may create a climate receptive to enactment of ethnic intimidation statutes or establishment of victim assistance programs. Opportunities will be presented for getting other community activists involved for the first time in the fight against racism, and for keeping them involved when the controversy ends. A controversy over racist cable programs may be the incident that galvanizes diverse human rights activists to form a coalition that goes far beyond public access. If attention is paid to having the coalition be inclusive of all concerned groups, there is such potential beyond the life of the immediate issue. (This was the case in Cincinnati.) The controversy may also generate support for conducting a community self-study that would yield valuable information concerning the nature and degree of the community's problem with racism and the resources available to combat it.

6. CONSIDER THE OPTION OF A LOW-KEY RESPONSE

If a racist program doesn't generate controversy in the community, the best response may be a low-key one in which direct counter-programming is avoided so as not to give the racist message more credibility than it is earning on its own. However, this does not mean that nothing should be done. If a positive program is not already in place, explore ways to implement one without inadvertently touching off a controversy.

Finally, be open to the unprecedented opportunity which public access represents. Public access is a most powerful communications medium. But it will achieve its potential only if we take the time to learn it, and make the effort to use it well.

RESOURCES

**FOR DEVELOPING STRATEGIES OF PREVENTION AND RESPONSE
TO BIGOTRY ON PUBLIC ACCESS CABLE TV**

INDIVIDUAL CONSULTANTS

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Pocatello—Vision 12
812 E. Clark Street
Pocatello, ID 83201
(208) 233-1266

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Cincinnati Community Access Corp.
2944 Colerain Avenue
Cincinnati, OH 45225
(513) 541-2272

Alan Bushong
Director
Austin Community Television
P. O. Box 1076
Austin, TX 78767
(512) 478-8600

Randy Van Dalsen
Executive Director
Sacramento Community Cable Foundation
4623 T Street
Sacramento, CA 95819
(916) 456-8600

Louis Maletta
National Director
Gay Cable Network
32 Union Square East, Suite 1217
New York, NY 10003
(212) 477-4220

Joseph Van Eaton
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1350 New York Avenue, N.W.
Washington, D.C. 20005-4798
(202) 879-4000

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American Jewish Committee, Cincinnati Chapter
105 W. Fourth Street, Suite 1008
Cincinnati, OH 45202
(513) 621-4020

Michael I. Meyerson
Assistant Professor
University of Baltimore Law School
1420 N. Charles Street
Baltimore, MD 21201
(301) 625-3094

Jewell Ryan-White
Public Relations/Promotions Coordinator
American Cablesystems Midwest
1304 Marquette Drive
Romeoville, IL 60441
(815) 886-9203, (312) 759-4603

ASSISTANCE, VIDEOTAPES AND INFORMATIONAL MATERIALS

American Jewish Committee
165 E. 56th Street
New York, NY 10022
(212) 751-4000

Anti-Defamation League of B'nai B'rith
823 United Nations Plaza
New York, NY 10017
(212) 490-2525

**Foundation for Community Service
Television**
5010 Geary Boulevard, Suite 3
San Francisco, CA 94118
(415) 387-0200

Gay Cable Network
Louis Maletta, National Director
32 Union Square East, Suite 1217
New York, NY 10003
(212) 477-4220

**National Association for the
Advancement of Colored People**
4805 Mount Hope Drive
Baltimore, MD 21215
(301) 358-8900

**National Federation of Local Cable
Programmers**
P. O. Box 27290
Washington, D.C. 20038-7290
(202) 829-7186

**National Institute Against Prejudice and
Violence**
525 W. Redwood Street
Baltimore, MD 21201
(301) 328-5170

**Northwest Coalition Against Malicious
Harassment**
Tony Stewart, President
625 E. Haycroft
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(208) 765-5108, 769-3325

Staten Island Community TV
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636 Harvard Avenue
Staten Island, NY 10301
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NATIONAL INSTITUTE AGAINST PREJUDICE & VIOLENCE

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