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PROPAGANDA EXPOSED: A GLIMPSE INTO THE TRUTH OF HIDDEN AGENDAS

by

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A thesis submitted in partial fulfillment of the requirements

for the Honors in the Major Program in Legal Studies

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Spring 2012 Thesis Chair:

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ABSTRACT

Government propaganda has been a topic of interest since America was founded, and today is no exception. Every recent Presidential Administration has been accused of using taxpayer dollars to fund propaganda. Although the funding of propaganda has been prohibited by the Consolidated Appropriations Act since 1951, it still occurs frequently. There is no entity that reviews government correspondence before it is released to the public, so government agencies are free to produce what they feel is appropriate even if it is prohibited by the Act. Furthermore, there is no law that specifically forbids government propaganda, and the current punishments amount to a slap on the wrist making the production covert propaganda worth the risk.

This thesis will also look at the Smith-Mundt Act and the media that it funds for foreign audiences. The material produced through this Act is banned from being disseminated in the U.S. The Smith-Mundt Act's ban does not take into account for the technological advances that have occurred since 1948 making the ban problematic for public diplomacy.

The intent of this thesis is to evaluate the current state of government propaganda and determine what changes need to occur in order to curtail or eliminate government propaganda. This research will analyze the current laws and types of propaganda that are being used while taking into account the relevant history, frequently used types, and methods of propaganda.

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LIST OF ACRONYMS

BBG	Broadcasting Board of Governors
CMD	Center for Media and Democracy
CPI	Committee on Public Information (1917-1919)
CSU	California State University
DoEd	Department of Education
DOJ	Department of Justice
FCC	Federal Communications Commission
FHA	Federal Highway Administration
FRE	Radio Free Europe / Radio Liberty
GAO	Government Accountability Office
HHS	Health and Human Services
IBB	International Broadcasting Bureau
MBN	Middle East Broadcasting Networks
NCLB	No Child Left Behind
NEA	National Endowment for the Arts
OWI	Office of War Information (1942-1945)
RFA	Radio Free Asia

LIST OF ACRONYMS CONTINUED

VNR Video News Release

VOA Voice of America

[W]hat gunpowder did for war the printing press has done for the mind. Wendell Phillips¹

INTRODUCTION

This thesis will address propaganda's past, present, and future while evaluating whether additional regulations are needed to monitor it. In general terms propaganda is a, "means to disseminate or promote particular ideas."² Propaganda is difficult to define with clarity. Leonard W. Doob even stated that a "clear-cut definition of propaganda is neither possible nor desirable."³ Propaganda can be as abstract as an idea or as concrete as the evening news making it hard to recognize. Typically propaganda has a negative connotation. Lord Ponsonby, a British politician from the early 1900s, believed that propaganda was the worst type of deception imaginable when he said propaganda is "the defilement of the human soul [which] is worse than the destruction of the human body."⁴

Many of the laws that regulate propaganda were created over fifty years ago, before technology changed the way we get information and communicate. To further complicate the issue, there is not a federal agency charged with the task of reviewing the dissemination of government information. While government funding of propaganda is prohibited by a rider in the

¹ JAMES WOOD, *DICTIONARY OF QUOTATIONS FROM ANCIENT AND MODERN ENGLISH AND FOREIGN SOURCES* 535 (F. Warne and Co., 1899) (quoting Wendell Phillips a 19th century American abolitionist).

² GARTH S. JOWETT & VICTORIA O'DONNELL, *PROPAGANDA AND PERSUASION* 2-4 (Gillian Dickens et al. eds., 4th ed. 2006).

³ *Id.*

⁴ *Id.*

Consolidated Appropriations Act, as it has been from 1951 on, this act is not a strong enough deterrent as government funded propaganda still frequently occurs.⁵

There are many benefits to the government using propaganda to influence public perception. Changing the way society views an issue can make the issue easier to handle from the government's perspective. If everyone believed that an issue was not worthy of their attention or that the issue was nonexistent, then government would be free to make its view the majority view. After all, the United States is a country filled with different cultures and beliefs, so it is understandably hard for government to satisfy the majority on every level. A British public official commented about propaganda in the late 1920s, saying it was simply a "good word gone bad" implying that there is a good message in there somewhere that got distorted.⁶ The government likely does this to protect society and keep the peace by trying to show that they are in the right with their particular actions or beliefs and the perceived adversary is wrong.

Although there are benefits for government officials, propaganda can be harmful to society. Propaganda often leaves out key aspects of an issue, so the viewer is not fully aware of what the issue really is. Many people get their news from the television, which does not always present a full analysis of the issues, reducing stories into sound bites. There are few people that have time to put in hours of personal research into every news broadcast to fully understand the topic.

⁵Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, 125 STAT. 788 (2011).

⁶ PHILIP M. TAYLOR, MUNITIONS OF THE MIND 1-5 (3rd ed. 2003).

Another reason that propaganda can be harmful is that it can tend to play on emotions rather than areas of rational thought. We have all had it happen where we hear a horrible story from a friend or family member that elicits a strong emotional response. The events seem clear, but in light of the opposing story, the picture changes dramatically. Instead of eliciting horror for the original “victim”, there are two people that made the situation get to its current state. It is only in ignorance of the entire issue, and perhaps loyalty to one party, that draws opinions to one side. Propaganda works the same way. Of course we will believe what we watch if there is no opposing side of the argument. If the other side is non-existent or suppressed, we will have a difficult time finding the hidden truth.

I. GOVERNMENT AND PROPAGANDA: A LOVE STORY

The government and the press have had a close relationship since the days of our founding fathers.⁷ Thomas Jefferson and Alexander Hamilton were known to hire journalists to print negative material about each other.⁸ Editors in this era were employed by the government and received money or kickbacks for their work.⁹ Some journalists even worked part time as White House aides. So prevalent was the connection, that Abraham Lincoln had the *New York Evening Post* editor William Cullen Bryant introduce him for the Cooper Union speech.¹⁰ Bryant was one of five members of the press on stage with the President.¹¹ Not surprisingly, this time period was dubbed by historians as “the era of the party press.”¹²

Members of the press were even given positions in government in the early days of America. President Andrew Jackson appointed many journalists to office. He is said to have been “closer to the press than perhaps any other U.S. president.” These appointments were not without criticism, but President Jackson adamantly defended his choices, saying “I refuse to consider the editorial calling as unfit for offer a candidate to office.”¹³

At the end of the Civil War there was a study that suggested that eighty percent of the America’s newspapers were funded by a political party.¹⁴ This connection with government and

⁷ See generally HAZEL DICKEN-GARCIA, *JOURNALISTIC STANDARDS IN NINETEENTH-CENTURY AMERICA* (1989).

⁸ Jonathan Alter, *The End of 'Pay to Praise,'* NEWSWEEK, Feb. 7, 2005 at 39.

⁹ See Dicken-Garcia, *supra* note 7, at 30-40.

¹⁰ *Id.* at 32.

¹¹ *Id.* at 32.

¹² *Id.* at 32.

¹³ *Id.* at 103.

¹⁴ *Id.* at 40.

press continued without much resistance until the turn of the century when papers began to rely on advertising for income and objectivity became something to strive for.¹⁵

In 1902, Gifford Pinchot, from the Forestry Division of the U.S. Department of Agriculture, decided to take it upon himself to create “press bulletins” that were sent to newspapers detailing, among other material, his speeches and agricultural research. The bulletins were criticized by Congress as the role of the Forestry Division was not apparent in the authorship of the bulletins.¹⁶ Congress subsequently introduced and passed an amendment, in 1908, to the agriculture appropriations bill that would ban funding appropriations for news articles.¹⁷

Pinchot’s escapades set the stage for Congress to investigate public relations tactics that were used at the time which included the common use of government hired P.R. experts who could influence the press.¹⁸ Representative Frederick H. Gillette introduced a bill, in 1913, that would that would eliminate the funding for P.R experts. The debate included John Fitzgerald’s belief that “[n]o service of the Government should employ a man whose duty is to extol or to advertise the work of the service with which he is connected. That will be best advertised by the efficiency with which the work is performed.”¹⁹ That bill is very similar to the current day appropriations rider which states “[a]ppropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.”²⁰

¹⁵ C. Edwin Baker, *Advertising and a Democratic Press*, 140 U. Pa. L. Rev. 2097, 2129-30 (1992).

¹⁶ Stephen Ponder, *Progressive Drive to Shape Public Opinion, 1898-1913*, 16 Pub. Rel. Rev. 94, 96 (1990).

¹⁷ 42 Cong. Rec. 4137 (1908).

¹⁸ 50 Cong. Rec. 4409 (1913).

¹⁹ *Id.* at 4410.

²⁰ See Consolidated Appropriations, *supra* note 5.

At the start of World War I, President Wilson created a Committee on Public Information (CPI) to be a clearinghouse for information about the government, and it was headed by journalist George Creel.²¹ CPI was served a dual purpose of an “information agency and an instrument for rallying Americans behind the country’s war effort.”²² This committee overloaded newspapers with material from the government that included, among other media, press releases, cartoons, and pamphlets.²³ This approach was successful in creating “organized patriotic enthusiasm where it existed and creat[ing] it where it did not.”²⁴ The CPI was attempting to control the news by overwhelming the media outlets with information or facts to such an extent that some newspapers received up to six pounds of material a day.²⁵

The Office of War Information (OWI) was authorized in 1942. Headed by reporter Elmer Davis, the OWI was a greatly scaled back from the CPI with the goal of making sure “the American people are truthfully informed.”²⁶ Unfortunately this was not the case. In 1943, congress passed a bill that prohibited the OWI from distributing domestic propaganda.²⁷ The OWI was canceled in controversy in 1945.²⁸ Some of their writers even resigned in protest because they felt it was impossible for them to report truthfully.²⁹

In 1951, Congress made an amendment to the appropriations bill that stated “no part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not

²¹ STEPHEN VAUGHN, HOLDING FAST THE INNER LINES 1-6 (1980).

²² *Id.* at, 4.

²³ *Id.* at 39 to 97.

²⁴ *Id.* at 4.

²⁵ *Id.* at 194.

²⁶ ALLAN M. WINKLER, THE POLITICS OF PROPAGANDA 31-47 (1978).

²⁷ *Id.* at 70.

²⁸ *Id.* at 149.

²⁹ *Id.* at 64-65.

heretofore authorized by the Congress."³⁰ This was in response to a 1948 house report that stated the federal spending on publicity was almost seventy-five million dollars.³¹ The rider has not changed much over the years, and it is still seen in the appropriations bills.³² Despite this prohibition, several administrations have run afoul of the law.

President Reagan was investigated for the use of propaganda when his administration used “government prepared editorials” endorsing “President Reagan's proposal to transfer the Small Business Administration to the Department of Commerce.”³³ The articles ran in national papers without any indication of their true source. The 1986 GAO investigation found these articles to be “beyond the range of acceptable agency public information activities and, accordingly, violate the ‘publicity and propaganda’ prohibition.”³⁴ In 1987, the GAO investigated the Reagan Administration once again and found that they distributed “covert propaganda” when the State Department's Office of Public Diplomacy for Latin America hired consultants to “to write op-ed pieces in support of the Administration's policy on Central America for distribution to newspapers.”³⁵

The Clinton Administration was one of the first administrations to use “video news releases”, or a prepackaged news story made to be undistinguishable from regular news, (discussed in more detail in the current events chapter) as an attempt to gain acceptance for the administration’s agenda. He used the VNRs to promote Medicare reform. During that time the

³⁰ 97 Cong. Rec. 4098 (1951).

³¹ FINAL REPORT OF THE SUBCOMMITTEE OF PUBLICITY AND PROPAGANDA, H.R. DOC. NO. 2474, at 2 (1948).

³² See Consolidated Appropriations, *supra* note 5.

³³ B-223098 Op. Comp. Gen. 11 (Oct. 10, 1986).

³⁴ *Id.*

³⁵ *Id.* discussing 66 Comp. Gen. 707 (Sept. 30, 1987).

Department of Health and Human Services (HHS) also produced VNRs to support the Administration's Medicare plan.³⁶

During the Bush Administration the tradition of creating VNRs continued.³⁷ In 2003, HHS created a VNR to promote legislative goals, and in 2004 the Office of National Drug Control Policy created a VNR about illegal drugs. Both aired without disclosing their sources, and both were deemed by the GAO to violate the appropriations laws and considered "covert propaganda."³⁸

USA Today ran an article in 2005 about the Department of Education hiring Armstrong Williams to promote the No Child Left Behind (NCLB) "law on his nationally syndicated television show and to urge other black journalists to do the same."³⁹ He was paid \$240,000 to complete this task. He never mentioned the contract when he promoting NCLB, and he even defended himself by saying he understood that it could be considered unethical, but he said "I wanted to do it because it's something I believe in."⁴⁰ Not surprisingly, the GAO found this to be covert propaganda that violated the publicity or propaganda prohibition for 2004.⁴¹ It is important to note that Williams was investigated by the Department of Justice. While he was ordered to pay back \$34,000 for an ad that he did not produce, he did not admit to wrongdoing and did not face criminal charges.⁴²

³⁶ B-302710 Op. Comp. Gen. (May 19, 2004).

³⁷ B-303495 Op. Comp. Gen. (Jan. 4, 2005).

³⁸ *Id.*

³⁹ Greg Toppo, *Education Department Paid Commentator to Promote Law*, USA TODAY, Jan. 7, 2005, at 1A.

⁴⁰ *Id.*

⁴¹ B-305368 Op. Comp. Gen. (Sept. 30, 2005).

⁴² Greg Toppo, *Commentator to Pay \$34,000 in Propaganda Case*, USA TODAY, Oct. 23, 2006. At 6A.

The Federal Emergency Management Agency (FEMA) also produced propaganda when the agency held a fake press conference in 2007. Members of the press were invited to the event five minutes before the press conference started, and the phone guests were not allowed to ask questions. The room was filled with FEMA staff who appeared to be reporters. They asked questions about how FEMA was handling the Southern California Wildfires and about the improved procedures since hurricane Katrina. They seemed initially unaware that they did anything wrong, but it became clear in the coming days when they were reprimanded by their superior agency, the Department of Homeland Security.⁴³

⁴³ Pierre Thomas, Theresa Cook, Jason Ryan & Jack Date, *FEMA Apologizes after Sham News Conference*, ABC NEWS (Oct. 26, 2007), <http://abcnews.go.com/TheLaw/story?id=3782176&page=1#.T2j1exGPUsl>.

II. TYPES OF PROPAGANDA

There are various ways to categorize types of propaganda. One way is to use the white, grey, and black classifications. These color classifications relate to the degree of concealment that the sponsors of the material use to hide or admit their participation.

White propaganda is similar to the concept of a white lie or a white witch. It is still not pure in nature, but it is not totally deceiving either. Keeping with that theme, white propaganda lets the viewer know the source of the propaganda. Although still propaganda, white propaganda is clear about where it came from, and tends to be “open and aboveboard.”⁴⁴ Jacques Ellul, the writer of *Propaganda: The Formation of Men’s Attitudes*, explains white propaganda as “one admits that propaganda is being made; its source is known; its aims and intentions are identified.”⁴⁵ White propaganda is often a cover for black propaganda because it distracts people from the more perverse black propaganda.⁴⁶ Voice of America (discussed in more detail in chapter 5) is a good example of white propaganda. VOA is funded by the United States government⁴⁷, a fact that is clearly noted on their website and even evident by the name Voice of America, but VOA is still a government funded interpretation of world news.

Grey propaganda differs greatly from white propaganda because it conceals both the source and the sponsor of the material. Gray propaganda is used to influence an audience that

⁴⁴ JACQUES ELLUL, PROPAGANDA: THE FORMATION OF MEN’S ATTITUDES 15 (1965).

⁴⁵ *Id.*

⁴⁶ *Id.* at 16.

⁴⁷ Inside Voice of America, <http://www.insidevoa.com> (last visited Mar. 1, 2012).

may not be receptive if the sponsor was known. When the material comes from a seemingly unbiased outlet it is perceived differently than a sponsored public announcement⁴⁸. Of course someone promoting a new law or program is going to try to show the proposal in the best possible light, but a news program, for example, is perceived as an unbiased reporter of information. A video news release is a perfect example of grey propaganda in action because it is watched as news not a sponsored announcement.

Black propaganda is similar to grey because the sponsor is not identified, but black propaganda differs when it comes to attributing the message to a party. Black propaganda actually attributes the material to a party other than the one that produced the message. The major characteristic of black propaganda is that “people are not aware that someone is trying to influence them and do not feel that they are being pushed in a certain direction.”⁴⁹

Credibility of the source and the receptiveness of the audience are crucial to the success of black propaganda. If the creator is not careful, the message may not have its intended result or be unsuccessful altogether.⁵⁰ This type of propaganda is meant to embarrass, slander, and undermine. It uses, “all types of creative deceit.”⁵¹ This type of propaganda is clandestine because knowledge of the source would likely cause harm to the creator if linked back to its original source.

One illustrative (literally) example of black propaganda in action happened in the 1960s when a *Black Panther Coloring Book* depicting black men and children killing a pig in police

⁴⁸ Encyclopedia of American Foreign Policy, *Propaganda*, <http://www.encyclopedia.com/doc/1G2-3402300123.html> (last visited Mar. 12, 2010).

⁴⁹ See ELLUL, *supra* note 44, at 15.

⁵⁰ GARTH S. JOWETT & VICTORIA O'DONNELL, *PROPAGANDA AND PERSUASION* 20 (5th ed. 2012).

⁵¹ *Id.* at 18.

clothing was circulated in the United States.⁵² The coloring book was not produced by the Black Panthers but was actually produced by the Federal Bureau of Investigation in an attempt to damage the reputation of the Black Panthers.⁵³

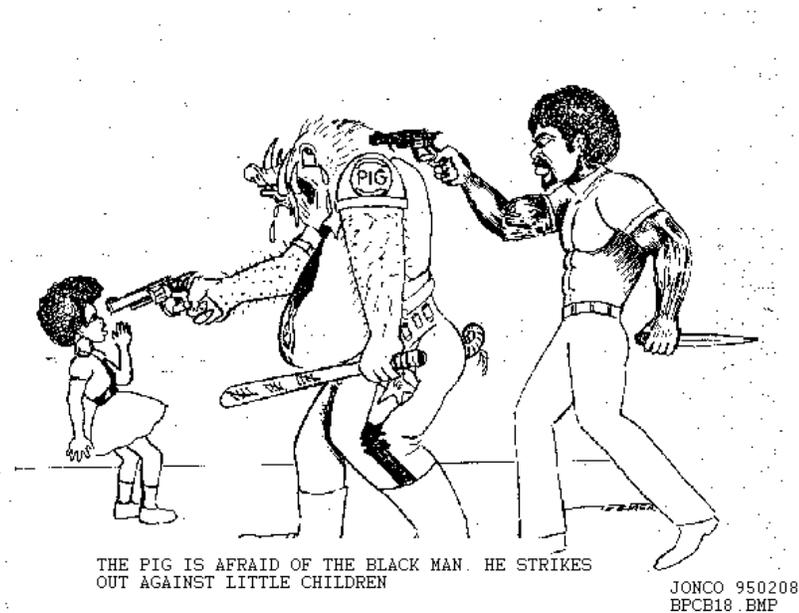


FIGURE 1: Black Panther Coloring Book. Source: <http://Whatreallyhappened.Com/Rancho/Politics/Cointelpro/Bpcb18.Gif>

Another type of propaganda classification is “fast” and “slow.” Fast and slow classifications are used to identify the speed of reaction intended by the propagandist.

Television, newspapers, email, etc, are fast propaganda because they seek to cause immediate

⁵² *Nation: Police and Panthers: Growing Paranoia*, TIME, Dec. 19, 1969, available at <http://www.time.com/time/magazine/article/0,9171,941720-1,00.html>.

⁵³ George Lardner Jr., *15 Years of Dirty Tricks Bared by FBI; 15 Years of FBI Dirty Tricks Bared: Coloring Books, Wizards, Awful Odors; Tactics of Disruption*, THE WASH. POST, Nov. 22, 1977 at A2.

reactions to the material. Slow propaganda may take years to accomplish and can be found in books, various other educational mediums, or cultural outlets.⁵⁴

An easy way to explain how fast and slow classification can work is to use anti-smoking campaigns. The sad commercials and graphic pamphlets are used to elicit strong reactions that the makers of the material hope will cause an immediate disgust and opposition to smoking. There are also programs at schools and information in textbooks about the dangers of smoking. This is meant to change the younger generation's views on cigarettes over a long period of time.

The use of the above classifications can be a very helpful tool in identifying propaganda in action.

⁵⁴ See Encyclopedia of American Foreign Policy, *supra* note 48.

III. METHODS OF PROPAGANDA

There are various methods of propaganda. In order to recognize what propaganda is, we need to know the common ways that it is used.

The most common methods of propaganda are described in the following sections.

A. Name Calling

This method links an idea or person to a negative idea. The idea is to have the negative connotation be so strong that the audience blindly rejects the person because of the name associated with him or her. Political mudslinging very often employs name calling.⁵⁵

This form of propaganda can be very effective as the Institute for Propaganda Analysis noted when they stated:

"Bad names have played a tremendously powerful role in the history of the world and in our own individual development. They have ruined reputations, stirred men and women to outstanding accomplishments, sent others to prison cells, and made men mad enough to enter battle and slaughter their fellow men. They have been and are applied to other people, groups, gangs, tribes, colleges, political parties, neighborhoods, states, sections of the country, nations, and races." (Institute for Propaganda Analysis, 1938)⁵⁶

⁵⁵ Institute for Propaganda Analysis. *Propaganda Analysis*. New York: Columbia University Press, 1938.

⁵⁶ *Id.*

B. Glittering generalities.

This method tries to reverse name calling by using labels that have different meanings to different people making the meaning of the message hard to decipher.⁵⁷ If a newscaster talks about Christianity to an audience, it is reasonable to assume that the word could have numerous meanings. If it was used to appeal to Christian audiences, the audience members could incorrectly assume that the speaker has the same feelings as they do when in reality, there could be a huge disparity in the actual agenda and what it appears to be. This can be a calculated misunderstanding.⁵⁸ One recent example of this type of propaganda in action is President Obama's campaign slogan of hope. Hope is a very inspiring word that most people can relate to, but hope can have a different meaning for different people.

⁵⁷ *Id.*

⁵⁸ *Id.*



FIGURE 2: Barack Obama "Hope" Poster, (Originally by Shepard Fairey 2009).

C. The Euphemism

This method takes a negative idea or connotation and renames it in an attempt to make it more acceptable to society. An example of this happened in the 1940's when, the War Department was changed to the Department of Defense.⁵⁹

D. Transfer

Transfer uses a place or person that is respected to promote a program which in turn is viewed more favorably because of the association.⁶⁰ Instances of this happen all the time for commercial and political reasons. Take the simple fish symbol that appears in the

⁵⁹ *Id.*

⁶⁰ *Id.*

advertisements for certain companies. The symbol is meant to be a sign of Christianity. Religion has little to do with the cleaning of pools, serving food, or the numerous other businesses that use the symbol. The owners of these sorts of companies are attempting to associate the company with Christianity for commercial gain.

E. Testimonial-

This type of propaganda commonly uses people to promote an idea on which they are not qualified to have an opinion.⁶¹ Celebrities who place their political favorites on display are doing this. If people have a favorable view of the celebrity, they may be likely to form opinions based on the celebrity's endorsement of the candidate, not the candidate or other more reliable sources.

F. Plain Folks

This method is used in attempt to make the user look like an everyday citizen. For example, presidential candidates and elected officials make statements aligning themselves with "plain folks", when in reality most of them are millionaires that have not lived a plain day in their lives.⁶² With the wealth gap growing between rich and poor this is put to frequent use. For example involves presidential hopeful Mitt Romney's numerous ploys to make himself look like a regular guy. He makes a show of eating fast food, flying on Southwest Airlines, and he even went so far as telling a group

⁶¹ *Id.*

⁶² *Id.*

of unemployed people that he was also unemployed, although his net worth is around \$200 million dollars.⁶³

G. Bandwagon.

This method attempts to make the viewer feel the urgent need to join a group accepted by the lure of mass appeal. “Millions of women have already tried it”, “for a limited time only”, and “come get yours today” are common phrases that use the bandwagon technique in commercial advertisements. The consumer feels left behind and is rushed to catch up for fear of missing the bandwagon.⁶⁴

H. Fear

This method displays a disturbing event then describes a behavior that will prevent the event thus using fear to cause a behavior.⁶⁵ An example of this type of propaganda would be a commercial of someone getting robbed then an advertisement for a brand of mace follows. This tells the viewer that they could be robbed, but buying a personal protection device would conceivably prevent the robbery. In reality, many different situations could happen allowing the robbery to take place regardless of the mace. Fear causes the consumer to buy the product, and the agenda of the company is successful. The use of fear confuses the audience with words, concept, and misleading connections.⁶⁶

⁶³ Ashley Parker, *Mitt Romney Has Some Down-To Earth Tastes, He'd Like You to Know*. N.Y. TIMES, Sept. 21, 2011, available at <http://www.nytimes.com/2011/09/22/us/politics/adventures-of-a-common-man-mitt-romney.html?pagewanted=all>.

⁶⁴ Institute of Propaganda Analysis, *supra* note 55.

⁶⁵ *Id.*

⁶⁶ *Id.*

IV. LAWS REGULATING PROPAGANDA

A. The First Amendment

The First Amendment states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; *or abridging the freedom of speech, or of the press*; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”⁶⁷ The press cannot be regulated by the government, and so “[t]he [First] Amendment grant of free speech serves as protection to dissenters and propagandists alike.”⁶⁸

B. US Information and Educational Exchange Act of 1948

This is also known as the Smith-Mundt Act which states in part:

(a) Dissemination of information abroad. The Secretary is authorized, when he finds it appropriate, to provide for the preparation, and dissemination abroad, of information about the United States, its people, and its policies, through press, publications, radio, motion pictures, and other information media, and through information centers and instructions abroad. Subject to subsection

(b) Dissemination of information within United States.

(1) The Director of the United States Information Agency shall make available

⁶⁷ U.S. CONST. amend. I.

⁶⁸ Stanislav Getmanenko, Comment, *Freedom from the Press: Why the Federal Propaganda Prohibition Act of 2005 is a Good Idea* 114 Penn St. L. Rev. 251(2009).

to the Archivist of the United States, for domestic distribution, motion pictures, films, videotapes, and other material prepared for dissemination abroad 12 years after the initial dissemination of the material abroad or, in the case of such material not disseminated abroad, 12 years after the preparation of the material.⁶⁹

It has been said that the Smith-Mundt Act is, “[o]ne of the most influential, and least understood, laws affecting American national security.”⁷⁰ This act allows the government to fund media such as radio, personal contact, and other forms of communications to inform foreign nations about news and the American agenda. Since 1972, there has been a ban on domestic dissemination of this material.

C. The Communications Act of 1934, 47 U.S.C. § 151 *et seq.*

This Act has since been partly amended by the Telecommunications Act of 1996 (discussed below), but it is important to mention because it established the Federal Communications Commission (hereafter referred to as the FCC). The FCC “regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states,

⁶⁹ 22 U.S.C. § 1461 (1988).

⁷⁰ KATHY R. FITZPATRICK, UNIVERSITY OF SOUTHERN CALIFORNIA CENTER ON PUBLIC DIPLOMACY, U.S. PUBLIC DIPLOMACY’S NEGLECTED DOMESTIC MANDATE (2010), *available at*, http://uscpublicdiplomacy.org/index.php/about/announcements_detail/cpd_perspectives_domestic_mandate/ (citing THE REPORT ON THE **SMITH-MUNDT** SYMPOSIUM ON JANUARY 13, 2009, ARMSTRONG STRATEGIC INSIGHTS GROUP, LL C, MARCH 12, 2009, <http://mountainrunner.us/symposium/>).

the District of Columbia and U.S. territories.”⁷¹ According to the FCC some of their responsibilities are: “Developing and implementing regulatory programs; Processing applications for licenses and other filings; Encouraging the development of innovative services; Conducting investigations and analyzing complaints; Public safety and homeland security.”⁷² FCC regulations require the disclosure of sponsors of political programming.⁷³

D. Telecommunications Act of 1996

This act was created 62 years later with the intention to “let anyone enter any communications business -- to let any communications business compete in any market against any other.”⁷⁴ It also added internet media to the list of media regulated by the FCC.

E. Truth in Broadcasting Act of 2005

This act is intended “[t]o amend the Communications Act of 1934 to ensure that prepackaged news stories contain announcements that inform viewers that the information within was provided by the United States Government, and for other purposes.”⁷⁵ This act was a

⁷¹ Federal Communications Commission, <http://www.fcc.gov/what-we-do> (last visited Jan. 20, 2012).

⁷² *Id.*

⁷³ 47 C.F.R. §§ 73.1212(d) and 76.1615(c).

⁷⁴ Federal Communications Commission, <http://transition.fcc.gov/telecom.html> (last visited Jan. 20, 2012).

⁷⁵ See Truth in Broadcasting Act of 2005, S.967. 109th Cong. (2005).

response to the growing concern about VNRs created by the government, and it (would require) requires the source of the videos be clearly identified.

F. Federal Propaganda Prohibition Act of 2005

This act was introduced in an attempt “To require notification to Congress of certain contracts, and to amend title 31, United States Code, to prohibit the unauthorized expenditure of funds for publicity or propaganda purposes.”⁷⁶ The purpose would be:

- “(1) to ensure that advertising and public relations campaigns paid for with Federal appropriations are unbiased and factual, and do not contain a political message or covert propaganda;
- (2) to increase the oversight and evaluation of advertising campaigns paid for by the Federal Government by requiring that agencies provide notice to the appropriate congressional committees of all public relations, media relations, and advertising contracts;
- (3) to require that all public relations and media outreach tools developed by Federal agencies inform the target audience of the source of funding for the message; and
- (4) to make permanent the prohibition against spending Federal funds on publicity and propaganda that has been included in appropriations Acts since 1951.”⁷⁷

⁷⁶ Federal Propaganda Prohibition Act of 2005, H.R. 373, 109th Cong. (2005).

In other words the goal of this act would be to regulate government propaganda in a way that we have never experienced before. It would stop funding for government propaganda and add oversight to material that the government releases to make sure the material is impartial.

G. Government Accountability Office and Federal Appropriations

The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO investigates how the federal government spends taxpayer dollars. The head of GAO, the Comptroller General of the United States, is appointed to a 15-year term by the President from a slate of candidates Congress proposes.⁷⁷ For the purpose of this thesis we will be looking at the GAO's investigations of the misuse of federal funds under the annual Consolidated Appropriations Act.⁷⁹ This statute says that "[n]o part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress."⁸⁰ Furthermore, the Act states in section 716 that:

"No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation

⁷⁷ *Id.*

⁷⁸ Government Accountability Office, <http://www.gao.gov/about/index.html> (last visited Feb. 4, 2012).

⁷⁹ Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, 125 STAT. 788 (2011).

⁸⁰ *Id.*

designed to support or defeat legislation pending before the Congress, except in presentation to the congress itself.”⁸¹

In other words, if there is a government individual or agency misusing federal funds to distribute propaganda the GAO will investigate the incident.

⁸¹ *Id.*

V. CURRENT EVENTS

A. Video News Releases

One way government uses propaganda is through video news releases (VNR). These VNR's look like a regular news story, and it is very difficult, if not impossible, to tell which is which. Although a video news release looks just like a reporter covering a story, VNRs are a carefully constructed public relations tool. The events portrayed, while at times truthful, do not display their sources. This type of deception leaves the public without the resources to evaluate the agenda behind the VNR. The viewer would likely have a different opinion about the information if it was known that the story was paid for by a government agency or public corporation, the reporters were actors reading from a script, and the interviewee or expert interviews were carefully edited to portray a specific message.

There are a handful of recent examples of how government is, at least initially, succeeding in making tax-payer funded propaganda. The Government Accountability Office (GAO) says that the “obvious, ‘critical element’ of covert propaganda is concealment of the agency’s role in preparing the material from the target audience.”⁸² While this seems like a clear requirement, it has not blocked the Department of Education from using covert propaganda to promote the Bush administration’s No Child Left Behind Act (NCLB). The Department of Education hired Ketchum, Inc. (Ketchum) to do media analysis and produce a VNR about some of the programs

⁸²B-304228 Op. Comp. Gen. 4 (Sep. 30, 2005).

that are available through the NCLB act.⁸³ When this VNR was distributed to news stations, it was perceived to be a reporter's story and not a government funded advertisement. The GAO found that the Department of Education violated the prohibition against propaganda. It was irrelevant that all the material reported was factual. The VNR was still propaganda funded by government because the VNR neglected to identify the Department of Education as the source.⁸⁴

“The fact that the press silently serves as a distributor for government propaganda can be viewed as a violation of American's First Amendment rights of free speech and freedom of the press.”⁸⁵ In a response to mounting concerns, Congress passed the Truth in Broadcasting Act of 2005.⁸⁶ This was an attempt to make the media, once again, responsible for creating independent news stories free of government sponsorship.

The Truth in Broadcasting Act requires broadcasters to make the sources of VNRs apparent to viewers. This is opposed by many media outlets because they do not see the use of VNRs as a violation of the viewers' First Amendment rights. Media outlets view the new regulations as a violation of their First Amendment rights to free press and free speech because it places new limitations on broadcasting that were not present in the past. The benefit of VNRs to news stations is undeniable. Broadcasters get ready made news that they didn't have to investigate report on, or pay for.⁸⁷ Broadcasters seem all too ready to let the government step in to report

⁸³ B-305368 Op. Comp. Gen. (Sept. 30, 2005).

⁸⁴ *Id.*

⁸⁵ Antonella Aloma Castro, Note and Comment, Truth in Broadcasting Act: Can it Move the Media Away From Indoctrinating and Back to Informing? 27 Loy. L.A. Ent. L. Rev. 127 (2006/2007).

⁸⁶ See generally Truth in Broadcasting Act of 2005, S. 967, 109th Cong. (2005).

⁸⁷ Robert H. Wood, *Battle of the Acronyms: The DOJ and the GAO square off on the Use of VNRS*. *Southern Law Journal*, XVI (1) (2006).

one sided news, making the Truth in Broadcasting Act a necessary step to ensure the integrity of the news.

Now that broadcasters are being held accountable for their content, the FCC has investigated claims of misconduct. In March of 2011, the FCC fined several news stations for airing VNRs for corporations without proper identification of sponsors.⁸⁸ According to one study, conducted by the Center for Media and Democracy (CMD) representing less than one percent of news stations, over 100 VNRs were being used by local news stations.⁸⁹ The Free Press organization along with the CMD brought the violations to the attention of the FCC in 2006.⁹⁰ The FCC investigated the stations and fined a handful of them. The fine was \$4000.00 to \$20,000, so it is likely not going to be a strong deterrent.⁹¹ Also, not all the stations were fined, so this could be an issue when it comes to future use of VNRs.

B. Reverse Smith-Mundt

Another recent issue involves the US Information and Educational Exchange Act of 1948 referred to commonly as the Smith-Mundt Act.⁹² The section of the Act in question is the

⁸⁸ Jenn Ettinger, *FCC Fines Local TV Stations for Airing Fake News*, FREEPRESS, Mar. 25, 2011 available at <http://www.freepress.net/press-release/2011/3/25/fcc-fines-local-tv-stations-airing-fake-news>.

⁸⁹ *Id.*

⁹⁰ Linda Graves, *FOX to Be Fined by FCC for Fake News; CMD's Complaint on "Video News Releases" Nets New Proposed Fines*, Mar. 24, 2011, available at <http://www.prwatch.org/spin/2011/03/10471/fox-be-fined-fcc-fake-news-cmds-complaint-video-news-releases-nets-new-fines>.

⁹¹ *Id.*

⁹² 22 U.S.C.S. § 1431 (2012).

provision that prohibits the government from disseminating propaganda domestically that was intended for a foreign audience.

There have been numerous attempts to lift the ban as “[a] domestic constituency for public diplomacy does not exist”⁹³ when we don’t have access to the information that our government is providing. With the world quickly becoming more of a global society, this ban of information is becoming archaic. The media created from this Act is only available 12 years (through the National Archives) after its original broadcast.⁹⁴ In addition, the broadcasts are exempt from the Freedom of Information Act.⁹⁵ While this may have been an admirable addition to the act in 1948, media and society have changed drastically since then. Today, with the prevalence of the internet, transparency of information is customary. At the time of the Act’s inception, the government believed it should be responsible to shelter the public’s view of government actions regarding propaganda. Since then, US policy has changed to facilitate openness about government activities and make the government’s agenda/actions transparent and available for the public’s view. The Smith-Mundt Act has not kept up with the changes in government or flow of information, making it problematic and outdated. This Act no longer protects the public but, instead, encourages secrecy in government.

The case of *Gartner v. United States Information Agency* challenged the ban on domestic dissemination of the VOA when Gartner, head of NBC News and an editor for an Iowa

⁹³ KATHY R. FITZPATRICK, UNIVERSITY OF SOUTHERN CALIFORNIA CENTER ON PUBLIC DIPLOMACY, U.S. PUBLIC DIPLOMACY’S NEGLECTED DOMESTIC MANDATE (2010), available at, http://uscpublicdiplomacy.org/index.php/about/announcements_detail/cpd_perspectives_domestic_mandate/.

⁹⁴ Charles F. Gormly, Comment, *The United States Information Agency Domestic Dissemination Ban: Arguments for Repeal*, 9 ADMIN. L.J. AM. U. 191, 196 (1995).

⁹⁵ Ralph A. Uttaro, *Voices of America in International Radio Propaganda*, 45 L. & CONTEMP. PROBS. 104 (1982).

newspaper, brought a lawsuit against the USIA because he was denied verbatim copies of VOA editorials.⁹⁶ Gartner thought that the ban was unconstitutional and violated his First Amendment rights. The U.S District Court for the Southern District of Iowa did not agree with Gartner, ruling in 1989 that there is no constitutional “right to access to all sources of information within government control.” The court further stated that “[t]he first amendment proscribes the government from passing laws abridging the right to free speech; the first amendment does not prescribe a duty upon the government to assure easy access to information for members of the press.”⁹⁷ The ruling is clear that any change in the access to this material would have to come through Congress.⁹⁸ Furthermore, the ruling states that “the first amendment reads in the negative, “Congress shall make no law . . .,” not in the affirmative. The amendment constrains our government from acting in ways which infringe upon our right to free speech; it does not create an affirmative duty upon the government to act.”⁹⁹ The court did say that the press could obtain the broadcasts through “less convenient channels such as receiving the broadcasts in other countries”, but that is understandably a lot more work than they were hoping for.¹⁰⁰

C. Broadcasting Board of Governors

The Smith-Mundt Act authorizes a variety of media that is maintained by the Broadcasting Board of Governors (BBG) which is “responsible for all U.S. Government and government-

⁹⁶ 726 F. Supp. 1183, 1185 (S.D. Iowa 1989) .

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

sponsored, non-military, international broadcasting.”¹⁰¹ The BBG “assumed authority for the International Broadcasting Bureau (IBB) and its broadcasting services – the Voice of America (VOA) and the Office of Cuba Broadcasting (OCB). The Board also oversees three grantee organizations, Radio Free Europe/Radio Liberty (RFE/RL), Radio Free Asia (RFA), and the Middle East Broadcasting Networks (MBN).”¹⁰² Worldwide these broadcasters reach an audience of more than 165 million, and the broadcasts are in 59 languages.¹⁰³

The Voice of America is the largest U.S. international broadcaster and “one of the largest multimedia news organizations in the world.”¹⁰⁴ It is produced in 44 languages with over 123 million viewers weekly.¹⁰⁵ The VOA charter provides:

1. VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.
2. VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.
3. VOA will present the policies of the United States clearly and effectively, and will also present responsible discussions and opinion on these policies.¹⁰⁶

¹⁰¹Broadcasting Board of Governors, <http://www.bbg.gov/about-the-agency/history/> (last visited Mar. 10, 2012).

¹⁰² *Id.*

¹⁰³BBG List of broadcasters, <http://www.bbg.gov/broadcasters/> (last visited Mar. 10, 2012).

¹⁰⁴ VOA Fact Sheet, http://media.voanews.com/documents/VOAFactSheet_Jan2011.pdf (last visited Mar. 10, 2012).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

The charter sounds typical to other news charters, so there should not be a continued need for secrecy. Section 2 says that VOA represents all of America, so we should at least be able to access the material that is contained in the broadcasts.

Radio Free Europe / Radio Liberty (RFE) broadcasts to 21 countries in 28 languages.¹⁰⁷ The countries include Iran, Iraq, Afghanistan and Pakistan, to name a few, with an audience of over 21 million a week.¹⁰⁸ This is a private not for profit corporation that receives its funding from the BBG.¹⁰⁹ Some of the stations are winning broadcasting awards such as the “Silver Microphone” award recognizing achievements of women (February 2010, RFE’s Armenian Service) and the Rafto Prize for human rights reporting (2009, RFE’s Azerbaijani Service) among others.¹¹⁰ RFE’s station Radio Azadi has 50% media market share in Afghanistan, and there is even an exhibit in the Library of Congress showing some of the letters and scrolls written by the listeners to the station.¹¹¹

Radio Marti TV’s broadcasts are intended to influence the Cuban audience. The Cuban audience is told about world news, Cuban news, and ideas such as free markets and economic self sufficiency.¹¹² The focus is on news that is blocked or slanted by the Cuban government, and

¹⁰⁷ Radio Free Europe and Radio Liberty fact sheet. <http://www.bbg.gov/wp-content/media/2011/12/RFERL-Corporate-Factsheet-2011.10.04.pdf> (last visited Mar. 10, 2012).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Radio Marti TV fact sheet, http://media.voanews.com/documents/OCB_Fact_Sheet_1-7-11.pdf (last visited Mar. 10, 2012).

there is a risk involved for Cuban listeners, who could be threatened or imprisoned if they were found by the government.¹¹³

Reaching the Middle East audience is the Middle East Broadcasting Networks, Inc (MBN). The MBN are Arabic stations that broadcast in 21 countries such as Jordan, Lebanon, and Iraq among others.¹¹⁴ The MBN “supports democratic values by expanding the spectrum of ideas, opinions, and perspectives available in the region’s media.”¹¹⁵

Radio Free Asia (RFA), is news broadcasted in 9 languages such as Mandarin, Vietnamese, and Korean. This news station also won awards such as the Outstanding Online Reporting on the Environment from the Society of Environmental Journalists. RFA brings international news and opinions from Asia to “demonstrate freedom of expression.”¹¹⁶

D. Obama Administration

More recently, the Obama Administration has been accused of “covert and expensive” propaganda. According to Rep. Darrell Issa from California, a ranking member of the House Oversight Committee, Obama may have used taxpayer funded propaganda more than any other modern day President to promote his agenda. Issa stated that “[u]sing new technologies and the remnants of the most expensive Presidential campaign in history, the Obama

¹¹³ *Id.*

¹¹⁴ Middle East Broadcasting Networks, INC. fact sheet, <http://media.voanews.com/documents/MBN+Fact+Sheet.pdf> (last visited Mar. 10, 2012).

¹¹⁵ *Id.*

¹¹⁶ Radio Free Asia fact sheet, <http://www.bbg.gov/broadcasters/rfa/> (last visited Mar. 10, 2012).

Administration's use of taxpayer dollars to engage in covert propaganda is disconcerting. This new report and a GAO investigation are needed to help shed light on how taxpayer dollars are being spent to illegally further a political agenda."¹¹⁷ The report claims that the White House made it look like there was grassroots support for a policy when in fact the support was paid for using taxpayer dollars.¹¹⁸ Below are some of the allegations of the report by the House Oversight Committee.

1. National Endowment for the Arts

Yosi Sergant used his position as communications director for the National Endowment for the Arts and the enticement of NEA grant money to encourage artists to create pieces that supported the goals of the President's *United We Serve* Program. The exchange was through a conference call between "artists, producers, promoters, organizers, influencers, marketers, tastemakers, leaders, or just plain cool people"¹¹⁹, Nell Abernathy, Director of Outreach for United We Serve, and Buffy Wicks, Deputy Director of the White House Office of Public Engagement.¹²⁰ Wicks expressed gratitude for their work during the President's campaign and encouraged them to support the President "with the same enthusiasm and with the same energy that we all saw in each other during the campaign."¹²¹ Sergants told participants that

¹¹⁷ Staff of H.R. Comm. on Oversight and Government Reform 111th Cong., *Analysis of the First Year of the Obama Administration: Public Relations and Propaganda Initiatives* (Comm. Print 2010).

¹¹⁸ *Id.*

¹¹⁹ *Id.* (referring to the conference call invitation from Yosi Sergant, Aug. 6, 2009).

¹²⁰ *Id.* (referring to the transcript of NEA Conference Call, Aug. 10, 2009).

¹²¹ *Id.*

they have “[a]n amazing opportunity for each of us not only to do what we do daily but to do it within an infrastructure and framing of a national program. This is a chance for us to partner with the White House and the Corporation for National and Community Service in immediately affecting some change in our communities.”¹²²

Three days after the call twenty-one arts groups signed a release endorsing President Obama’s healthcare plan. Sixteen of those groups either received NEA funding or were involved with groups that did. It is hard to imagine that Sergeant thought that this kind of interaction was legal especially when he ended the call with concerns about “what [this] looks like legally” and “bear with us as we learn the language so that we can speak to each other safely.”¹²³

2. Department of Justice

The DOJ was also accused of government propaganda because the author of the Justice Department’s official blog, Tracy Russo, made an attempt to change public opinion by anonymously posting on blogs that were critical of the Administration. She attacked the author and or the content of the blogs with a technique called “astroturfing”¹²⁴ which looks like grassroots support for a political agenda, but the posts are fake and created for political or

¹²² *Id.*

¹²³ *Id.*

¹²⁴ “Astroturfing,” <http://en.wikipedia.org/wiki/Astroturfing> (last visited January, 2012).

commercial reasons.¹²⁵ Taken from the idea of AstroTurf, it may look like grass at first glance, but upon closer inspection it is just green plastic.¹²⁶ This is the case with Tracy Russo's anonymous blogging. The report on Russo's activities states that:

The deployment of Justice Department resources to generate clandestine comments on message boards and blogs is a highly improper use of the Department's resources. The GAO has frequently ruled that covert propaganda violates federal law and appropriations riders. Title 5 U.S.C. § 3107, prohibits the use of publicity experts unless specifically appropriated for that purpose. Additionally, the Justice Department is held to an even higher standard of conduct than other agencies as it is tasked with enforcing the nation's laws in an objective, nonpartisan, and nonpolitical manner. The allegations that Department employees have engaged in a practice of clandestine commenting raise serious doubts about this Justice Department's ability to accomplish that task.¹²⁷

3. Department of Education

The Department of Education was once again involved in a violation of the ban against covert propaganda when Deputy Assistant Secretary for External Affairs and Outreach Massie Ritsch sent an email on the morning of April 24th 2009 to his colleagues stating that President Obama would be speaking about his Direct Loan student aid program later in the day. The email

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Analysis of the First Year of the Obama Administration: Public Relations and Propaganda Initiatives, see *supra* note 117.

stated the Department’s endorsement of the plan and implored the reader to spread the word to “members and other audiences.” There were eight bullet points that praised President Obama’s federal student loan plan. The Oversight Committee’s report stated that the “intent of the e-mail is clearly to create grassroots support for the President’s education agenda by inappropriately leveraging Ritsch’s position as a DoEd employee. Because it was drafted and disseminated using Department of Education resources, and because it was designed or intended to influence Members of Congress while they consider the President’s federal student loan program plan, it is unlawful.”¹²⁸

4. White House Office for Health Reform

Several emails were sent in March 2010 by Nancy-Ann DeParle, the Director of the White House Office for Health Reform, to civil servants in the Executive Branch that promoted the White House’s health care incentives. The emails were sent from the “messages.whitehouse.gov” address and were perceived as a call to action by some of the recipients. This is not surprising considering the strong wording contained in the emails such as “No ifs, ands, or buts about it – if we do nothing to reform our broken health care system, costs will continue to skyrocket and break the budgets of American families, small businesses and the Federal Government...”¹²⁹ The email encouraged the spreading of the message in an attempt to

¹²⁸ *Id.*

¹²⁹ Richard Grenell, *Crossing a Line in the Health Care Debate?*, CBS NEWS, Mar. 10, 2010, available at <http://www.cbsnews.com/stories/2010/03/19/opinion/main6313300.shtml> .

create a grassroots response to the healthcare plan. This was not acceptable because it violated Title 18 of the United States Code, Section 1913 as highlighted in the Laws Regulating Propaganda section above.¹³⁰

5. Department of Health and Human Services

In 2009, Jonathan Gruber was contracted by the Department of Health and Human Services (HHS) to determine what changes would occur in insurance costs and coverage with the President's healthcare plan. He was paid \$297,000 and \$95,000 on separate occasions.¹³¹ Gruber wrote several articles recommending President Obama's healthcare plan, and he granted several interviews to various media outlets. He never mentioned that he was contracted by HHS at the time of the articles and interviews. It was not realized that he was a consultant to HHS until he did an interview with the *New England Journal of Medicine*, and that was only because of the journal's rigorous rules on disclosure.¹³² One of Gruber's articles was even used to "respond to skepticism about a lack of cost controls in the President's health care proposal."¹³³ Obviously, his status as a consultant should have been very clear. Without that status it appears that he was hired to spread covert propaganda about the healthcare plan.

¹³⁰ Analysis of the First Year of the Obama Administration: Public Relations and Propaganda Initiatives, see *supra* note 117.

¹³¹ Jonathan Gruber and Peter Orszag, *Health Experts and Double Standards*, WALL ST. J., Jan. 14, 2010.

¹³² Greg Toppo, *Education Dept. Paid Commentator to Promote Law*, USA TODAY, Jan. 7, 2005.

¹³³ Analysis of the First Year of the Obama Administration: Public Relations and Propaganda Initiatives, see *supra* note 117 (referring to the letter from Senator Charles Grassley to HHS Secretary Kathleen Sebelius, Jan. 12, 2010).

Additionally, HHS provided a link on its website that read “[s]tate your support for health care reform this year.”¹³⁴ The link takes the viewer to www.healthreform.gov where a form letter written to President Obama containing support for healthcare reform is displayed. The letter states that “By signing this statement we affirm our commitment to work with you and our Congressional leaders to enact legislation this year which provides affordable, high quality coverage for all Americans.”¹³⁵ When signed, it was sent to the President. This violated “HHS annual appropriations bills [which] clearly provide[s] that no appropriated funds may be used to pay the “salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation pending before the Congress...” Because the form letter was clearly designed to influence members of Congress when considering health care reform, it would be impermissible for HHS to spend money from its annual appropriations to support its distribution.”¹³⁶

Perhaps HHS’ biggest gaffe happened when they funded and aired a commercial featuring Andy Griffith advancing Medicare and the Democrats’ healthcare reform law.¹³⁷ The \$700,000 ad was aired on stations that seniors frequent as well as the HHS and the White House web sites.¹³⁸ HHS funded a partisan ad, which violated appropriations law.

¹³⁴ Formerly on the HHS website, available at <http://www.hhs.gov/> (last visited Jan. 17, 2012).

¹³⁵ Formally on HHS supported site [Healthreform.gov](http://www.healthreform.gov) form letter, “State Your Support,” <http://www.healthreform.gov/support.html>.

¹³⁶ Analysis of the First Year of the Obama Administration: Public Relations and Propaganda Initiatives, see *supra* note 117.

¹³⁷ Mike Lillis, *GOP Senators Want HHS to Yank Andy Griffith Ad*, THE HILL, (Aug. 3, 2010), available at <http://thehill.com/blogs/healthwatch/health-reform-implementation/112411-gop-senators-want-hhs-to-yank-andy-griffith-ad>.

¹³⁸ Ricardo Alonso-Zaldivar, *Andy Griffith’s New Role: Pitching Health Care Law*, ASSOC. PRESS, (July 30, 2010), available at http://www.usatoday.com/life/people/2010-07-30-andy-griffith_N.htm.

6. Recovery.gov

Recovery.gov is a web page intended to “foster greater accountability and transparency in the use of funds made available in this [American Reinvestment and Recovery] Act.”¹³⁹ This site is operated by the Executive Branch, and it is intended to “provide taxpayers with user-friendly tools to track how and where Recovery funds are spent.”¹⁴⁰ A section of the site formerly contained a section on “Jobs Created/Saved” by the Recovery Act. During a speech Vice President Biden noted that as of October 30, 2009, about 650,000 had been saved or created by the Act. This statement caused some suspicion, and upon further investigation, the job totals were found to be deceptive, with many of the numbers being counted numerous times or counting jobs that were not produced by the Act.¹⁴¹ Upon further investigation, there were many errors in the numbers for this section of the site. A school district in Columbus, Ohio that had “saved” thirty-six principals and assistant principals was revealed to be false because they were not going to lose their jobs in the first place.¹⁴² The site also counted 26,156 jobs “saved” from the California State University System (CSU) which was over *half* of their employees! Furthermore, a CSU spokesperson said “[t]his is not really a real number of people. It’s like a budget number.”¹⁴³ There were even raises counted as “saved” jobs.¹⁴⁴ “The information was misleading in an attempt to promote the stimulus.”¹⁴⁵

¹³⁹ About Recovery.gov, formerly available at <http://www.recovery.gov/About/Pages/About.aspx>.

¹⁴⁰ *Id.*

¹⁴¹ Brett J. Blackledge & Matt Apuzzo, *Stimulus Jobs in U.S. Overstated by Thousands*, ASSOC. PRESS, (Oct. 29, 2009), available at http://www.usatoday.com/news/nation/2009-10-29-stimulus-jobs_N.htm.

¹⁴² Bill Bush, *Not All Jobs ‘Saved’ by Stimulus Were in Danger*, THE COLUMBUS DISPATCH, Nov. 3, 2009.

¹⁴³ Phillip Reese, *Many California Jobs ‘Saved’ by Stimulus Funds Weren’t in Jeopardy*, THE SACRAMENTO

7. Highway Signs

The Federal Highway Administration (FHA) pressured states to display signs that indicated that the stimulus funded the new highway projects. The signs stated “Project Funded by the American Recovery and Reinvestment Act” and many even had the stimulus logo with the recovery.gov website displayed as well. Although the signs were not mandatory, FHA encouraged the signs to be posted at stimulus projects sites by threatening the withholding of funds if the signs were not posted.¹⁴⁶ Even so, the signs were not adopted every state. New Hampshire Sen. Judd Gregg stated: “These are self-congratulatory signs; they’re political signs. They’re so that lawmakers can pat themselves on the back,” he said. “But these signs cost money. Actually, when you add them all up, they cost a lot of money.”¹⁴⁷ He was right. Some estimates put the signs at \$500 to \$8,300 a piece.¹⁴⁸ Some areas even went above and beyond by making yard signs for smaller projects. According to DOT spokeswoman Nancy Stinger of the

BEE, Nov. 6, 2009.

¹⁴⁴ Brett J. Blackledge and Matt Apuzzo, *STIMULUS WATCH: Salary Raise Counted As Saved Job*, ASSOC. PRESS, Nov. 4, 2009.

¹⁴⁵ Analysis of the First Year of the Obama Administration: Public Relations and Propaganda Initiatives, see *supra* note 117.

¹⁴⁶ Stephen Dinan, *Millions go to Signs Flagging Stimulus Projects*, WASH. TIMES, Sep. 17, 2009.

¹⁴⁷ *Id.*

¹⁴⁸ Michelle Breidenbach, *Highway Signs Identifying Federal Stimulus Projects Cost Thousands of Dollars Each*, SYRACUSE POST-STANDARD, July 5, 2009.

DOT said that \$5 million dollars were spent on these sorts of signs.¹⁴⁹ It is propaganda, and a huge waste of taxpayer money.

8. Healthcare Action Center

On several occasions, when President Obama gave speeches about healthcare reform there was a background that contained the web site “HEALTHCARE.BARACKOBAMA.COM” which (when the site was up and running) redirected the user to the “Health Care Action Center” on www.barackobama.com.¹⁵⁰ The site gave visitors easy ways to call or tweet members of congress and provides examples of what views should be expressed when writing to newspapers about the bill. The inappropriateness of this sort of propaganda was unacceptable, and the report stated:

Laws regulating executive branch propaganda allow the President to “go public” to promote his agenda. However, by virtue of his office, the President is more visible than any member of Congress or head of an agency. Leveraging the natural communication advantage of the office to direct citizens to a website owned and operated by the DNC is inappropriate. Informing the public is the

¹⁴⁹ Hillary Chabot, Katie Carlin, and Joe Dwinell, *Critics Blast \$500G in Stimulus Sign Language*, BOSTON HERALD, July 20, 2010.

¹⁵⁰ Chris Cillizza, *Obama Announces Grass-Roots Lobby*, WASH. POST, Jan. 18, 2009.

President's responsibility; using taxpayer resources to mount a sophisticated propaganda and lobbying campaign is an abuse of the President's high office.¹⁵¹

¹⁵¹ Analysis of the First Year of the Obama Administration: Public Relations and Propaganda Initiatives, see *supra* note 117.

V. RECOMMENDATIONS

Propaganda is a constant problem, and one of the reasons for this is the absence of a modern statute to regulate the use and transparency of propaganda in modern society. Propaganda is investigated by the GAO, but the GAO does not have the same authority as the Department of Justice. This lack of power is apparent by the continued use of propaganda. The current regulations are not effective. We need to take a new look at propaganda regulations in America.

The Federal Propaganda Prohibition Act of 2005 should be adopted because it would help fill in the gaps that exist in the current propaganda statutes. This Act would require that Congress be notified of “all public relations, media relations, and advertising contracts”¹⁵² which would create an atmosphere of accountability. Some agencies might think twice or completely forgo a potentially unethical or illegal contract if they had to initially report it to Congress. Additionally, every public relations and media outreach would be required to have the source of funding displayed within the material. Much of the material that is released by government agencies would be completely ineffective as propaganda if the funding source was displayed, so this would greatly discourage the use of propaganda in media.

Included in this Act, is the repeated prohibition of federal funds being used for propaganda. The Act wants to make this a law not just a rider on an appropriations act. Unfortunately, the rider is proving not to be sufficient in hindering federal funding from being used for propaganda, but an actual law would make the prohibition very clear to the agencies that

¹⁵² Federal Propaganda Prohibition Act of 2005, H.R. 373, 109th Cong. (2005).

didn't take the rider seriously. The Act would also ensure that any federally funded public relations campaigns remain accurate and impartial. This is no small feat, but with additional oversight impartial communications can be achieved.

Oversight for government media communications is minimal to nonexistent. The system is reminiscent of grade school. For example, a congressman sees an improper communication or contract and reports it to the GAO which in turn slaps the transgressing party on the wrist. There needs to be an agency that can review government communications before they are released so that the solution does not come after the damage has already been done.

Lack of a federal agency to review government information furthers the spread of propaganda. Government agencies would be less likely to risk using taxpayer money to fund propaganda if they knew that everything they did would be reviewed. The proposed agency would be responsible for ensuring that all the above mentioned criteria is met prior to the information being sent to media outlets, and if the material does not meet the criteria, it should be sent back to the originator for revision or disposal if needed. Since that is not the case, agencies take the risk because there is a chance they will get away with it. Furthermore the current punishment is not much of a deterrent, so this would be a way to stop propaganda before the investigations, embarrassing news articles, and distrust that occurs.

An area for further study is the punishment of agencies that produce propaganda. Since the propaganda is produced by many different people it is hard to find anyone responsible and even harder to think of a punishment that would discourage such an act. If the agency is held

responsible, there is not really a way to punish the agency because it could potentially harm the people that benefit from the agency.

The Smith-Mundt Act's ban on domestic dissemination of the media produced for foreign audiences should be repealed to allow the material broadcasted to be available to Americans. It is necessary for the world to receive news and, in some cases American views, but it is not acceptable to keep the content of that material secret from Americans. First, the ban no longer serves its complete purpose because with the use of the internet or satellite radio, the banned material can be heard. Second, some of the stations are award winning broadcasters that have secured sources in areas where others have failed. Some of the news produced through this act could be of great value to U.S. media outlets, and they should have access to it. Third, the ban hinders diplomacy, and can cause distrust with the viewers when they realize that the news they are listening to is not available to the citizens of the country that produced it. The ban should be repealed and the news should be available to anyone that wants access to it.

Although the issue surrounding government use of propaganda is complex, the solutions above would slow or stop the spread of taxpayer funded propaganda. Harsher regulations need to be in place for propaganda to stop.

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